

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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TRANSFER C.M.P.NO.2 OF 2016

ORDER:

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This Transfer C.M.P. is filed by the petitioner-wife against the respondent-husband for transfer of O.P.No.365 of 2015 instituted by the respondent-husband for grant of divorce against the petitioner, pending on the file of Additional Family Court, Visakhapatnam to the file of Family Court, Rajahmundry.

The case of the petitioner is that her marriage with the respondent was performed on 23.10.2013 at Barlapudi Ravindra Kalyana Mandapam, Rajahmundry as per Hindu Rites and Customs. The petitioner joined the company of the respondent in the in-laws house and within a period of one week after their marriage, the respondent started demanding the petitioner for additional dowry. On 04.05.2015 the petitioner gave a complaint against the respondent before Womens' Police Station, Rajahmundry and the same was registered as Crime No.46 of 2015 and thereafter filed M.C.No.55 of 2015 before the Family Court-cum-Additional Sessions Judge, Rajahmundry for maintenance and she also filed D.V.C.No.33

of 2015, which is pending before the VI Additional Judicial First Class Magistrate, Rajahmundry. Thereafter, the respondent filed O.P.No.365 of 2015 for grant of divorce against the petitioner on the file of Additional Family Court, Visakhapatnam. It is also the case of the petitioner that she is presently residing at Rajahmundry along with her parents, where maintenance case is pending. It is also stated that the petitioner is dependant on his old aged parents and there is no source of income and it is very difficult for her to travel all the way from Rajahmundry to Visakhapatnam, which is at a distance of morethan 200 kms.

Though notice is taken out by the petitioner on the address given by the respondent in O.P.No.365 of 2015, the same is returned with an endorsement 'party left'. As per Section 27 of the General Clauses Act, when notice is taken out to the address given to the petitioner, the same is deemed to be served. The Apex Court in **AJEET SEEDS LIMITED VS.**

K.GOPALA KRISHNAIAH^[1] held as follows:

9. This Court then explained the nature of presumptions under [Section 114](#) of the Evidence Act and under Section 27 of the GC Act and pointed out how these two

presumptions are to be employed while considering the question of service of notice under [Section 138](#) of the NI Act. The relevant paragraphs read as under:

“13. According to [Section 114](#) of the Act, read with Illustration (f) thereunder, when it appears to the Court that the common course of business renders it probable that a thing would happen, the Court may draw presumption that the thing would have happened, unless there are circumstances in a particular case to show that the common course of business was not followed. Thus, [Section 114](#) enables the Court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. Consequently, the court can presume that the common course of business has been followed in particular cases. When applied to communications sent by post, [Section 114](#) enables the Court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. But the presumption that is raised under Section 27 of the G.C. Act is a far stronger presumption. Further, while [Section 114](#) of Evidence Act refers to a general presumption, [Section 27](#) refers to a specific presumption. For the sake of ready reference, Section 27 of G.C. Act is extracted

below:

“27. Meaning of service by post.-

Where any [Central Act](#) or regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression ‘serve’ or either of the expressions ‘give’ or ‘send’ or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post”.

14. [Section 27](#) gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. This Court has already held that when a notice is sent by registered post and is returned with a postal

endorsement 'refused' or 'not available in the house' or 'house locked' or 'shop closed' or 'addressee not in station', due service has to be presumed. [Vide Jagdish Singh Vs. Natthu Singh (1992) 1 SCC 647; State of M.P. Vs. Hiralal & Ors. (1996) 7 SCC 523 and V.Raja Kumari Vs. P.Subbarama Naidu & Anr. (2004) 8 SCC 74] It is, therefore, manifest that in view of the presumption available under [Section 27](#) of the Act, it is not necessary to aver in the complaint under [Section 138](#) of the Act that service of notice was evaded by the accused or that the accused had a role to play in the return of the notice unserved."

This Court on 05.01.2016 passed interim orders and the same has been communicated to the court below. In view of the above facts and circumstances, it is deemed that notice is served on the respondent.

Since the averments made by the petitioner in respect of transfer petition are un-controverted and in view of the fact that D.V.C.No.33 of 2015 filed by the petitioner against the respondent is pending before the VI Additional J.F.C.M., at Rajahmundry and the respondent has to attend the said court at Rajahmundry and also in view of the fact that the petitioner being a lady and depending on his old aged parents, she cannot travel all the way from Rajahmundry to Visakhapatnam.

In view of above facts and circumstances of the case and also in view of the decision of the Apex Court in **SUMITA**

SINGH VS. KUMAR SANJAY AND ANOTHER^[2] wherein it was held that while transferring matrimonial proceedings initiated by the husband, the convenience of wife must be looked at, O.P.No.365 of 2015 pending on the file of Additional Family Court, Visakhapatnam is transferred to the Family Court, Rajahmundry.

The Transfer C.M.P. is accordingly allowed. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

A.RAJASHEKER REDDY, J

Dt.25.01.2016
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THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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[\[1\]](#)) (2014) 12 SCC 685

[\[2\]](#)) AIR 2002 SC 396