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Tr.C.M.P.No. 487 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

Tr.C.M.P. No. 487 of 2022

and

C.M.P.No.8843 of 2022

G. Kavitha

... Petitioner

Vs.

K. Ramachandran

... Respondent

Prayer: Transfer Civil Miscellaneous Petition is filed under Section 24 of C.P.C., praying to withdraw the G.W.O.P.No.251 of 2021 on the file of Principal District Judge, Thiruvallur and to transfer to Principal District Court, Chengalpet.

For Petitioner : Mr. K. Sudhakar

ORDER

This Transfer Civil Miscellaneous Petition is filed seeking to withdraw the G.W.O.P.No.251 of 2021 on the file of the Principal District Judge, Thiruvallur and to transfer to Principal District Court, Chengalpet.



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2. The petitioner is the wife and the respondent is the husband. The respondent filed H.M.O.P.No.160 of 2021 on the file of the Family Court Poonamallee for judicial separation under Section 10 of the Hindu Marriage Act, 1955 against the petitioner herein.

3. The notice sent to the respondent was returned unserved with endorsement “no such addressee”. Admittedly, notice was sent to the respondent to his address mentioned in the H.M.O.P.No.160 of 2021.

4. In a case where the sender has dispatched the notice by post with the correct address written on it, then it can be deemed to have been served on this sendee unless he proves that it was not really served and that he was not responsible for such non service. It is well settled that a notice refused to be accepted or unclaimed by the addressee can be presumed to have been served on him. The Hon'ble Apex Court in ***Harcharan Singh vs Shivrani and others*** reported in ***1981 SCR (2) 962***, held that when service is effected by refusal of a postal communication, the addressee must be imputed, with



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the knowledge of the contents thereof and in our view, this follows upon the presumptions that are raised under Section 27 of the General Clauses Act, 1897 and Section 114 of the Indian Evidence Act.

5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. The petitioner and respondent are wife and husband and their marriage was solemnised on 26.01.2011 at Thirupathi Devasthanam, Mandapam, Neiyveli Township, as per Hindu Rites and Customs. Out of their wedlock, one male child born on 29.01.2012 named as Ashwin. Thereafter, it appears that some disputes arose between them. From 2013 onwards, the petitioner living with her parents. She filed M.C.No.4 of 2015 before Judicial Magistrate, Thirukazlukuntram. The respondent filed H.M.O.P.No.160 of 2021 before the Family Court, Poonamallee for judicial separation. He also filed G.W.O.P.No.251 of 2021 before Principal District Judge, Thiruvallur for guardianship of Ashwin.



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7. Learned counsel for the petitioner submits that the petitioner is residing with her parents at Kalpakkam and she has to travel 100 km by spending Rs.1,500/- for each hearing to attend the case at Thiruvallur. The respondent also not paying any maintenance.

8. Under these circumstances, it is very difficult for her to attend the case in the Principal District Court, Thiruvallur. The learned counsel for the petitioner submits that considering the difficulties of the petitioner being a woman, to transfer the G.W.O.P.No.251 of 2021 on the file of the Principal District Court, Thiruvallur to Principal District Court, Chengalpet in the interest of justice.

9. In *Rajani Kishor Pardeshi v Kishor Babulal Pardeshi*,¹ the Hon'ble Apex Court held that while going into the merits of a transfer application, the Courts required to give more weight and consideration to the convenience of the female litigants, and the Courts should desist from putting female litigants under undue hardships. Therefore, the convenience of the wife is to be preferred over the convenience of the husband.

¹ 2005(12)SCC237



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10. Considering the facts and circumstances of the case and the petitioner is being a lady, definitely she has to face difficulties to travel from Kalpakkam to Thiruvallur to attend the case filed by the respondent. In our considered view, it is appropriate to transfer the G.W.O.P.No.251 of 2021 on the file of the Principal District Court, Thiruvallur to the Principal District Court, Chengalpet.

11. Accordingly, this Transfer Civil Miscellaneous Petition is allowed and the G.W.O.P.No.251 of 2021 pending on the file of Principal District Court, Thiruvallur, is hereby withdrawn and transferred to the Principal District Court, Chengalpet. The Principal District Court, Thiruvallur shall transmit the entire record in G.W.O.P.No.251 of 2021 pending on his file to the Principal District Court, Chengalpet, forthwith, by duly indexed.

12. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

10.06.2024

Index : Yes / No

Neutral Citation : Yes / No

AT

Note: Issue order copy within three days.



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BATTU DEVANAND, J.

AT

To

1.The Principal District Court, Thiruvallur.

2.The Principal District Court, Chengalpet.

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C.M.P.No.8843 of 2022

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