



Tr. C.M.P. No.993 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE BATTU DEVANAND

Tr. C.M.P. No.993 of 2022

and

C.M.P. No.16995 of 2022

Sridevi

... Petitioner

Vs.

Mr.MuthuBharathi

... Respondent

Prayer: Transfer Civil Miscellaneous Petition is filed under Section 24 of C.P.C., praying to withdraw H.M.O.P.No.37 of 2022 pending trial before the Principal Sub-Judge, Virudhachalam and may transfer the same to the file of Family Court, Chennai.

For Petitioner : Mr. S.Nambirajan

ORDER

This Transfer Civil Miscellaneous Petition is filed seeking to transfer HMOP No.37 of 2022 pending trial on the file of the Principal Sub Judge, Virudhachalam to the file of the Family Court, Chennai.



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2. Notice sent to the respondent through Court is returned with an endorsement that "no such addressee". The private notice issued by the learned counsel for the petitioner at one time it returned with an endorsement that "no such person" and at second time it is returned with an endorsement that "addressee left".

3. The learned counsel for the petitioner submits that he sent private notice to the respondent to the address mentioned in HMOP No.37 of 2022 filed by him. It is settled law that if the notice is sent to the address of a party and it is posted thereafter, the responsibility of the sender will come to an end. If the addressee changes his address or he is living in that particular place for a particular period, he has to inform the postal authorities about that fact. Admittedly in the present case, notice sent to the address mentioned by the respondent in HMOP No.37 of 2022 filed by him. As such, it appears that the respondent is avoiding to take notice and accordingly, this Court is inclined to proceed with the matter basing on the material available on record.



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4. In 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 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. The marriage of the petitioner and the respondent was solemnised on 08.02.2015 at Chennai. Both were worked in IT Company. After marriage, they resided at Chennai. Due to mis-understanding arose between them after a lapse of few months, in the month of March 2019, the petitioner left her matrimonial house and went to her parents house. In the end of August 2022, she received a notice from the Principal Sub Judge,



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Virudhachalam in HMOP No.37 of 2022 filed by the respondent for dissolution of marriage. The respondent is working in Bank of America at Medavakkam, Chennai and he is also residing in Medavakkam, Chennai and with an intention to give mental torture to the petitioner, he filed HMOP no.37 of 2022, before the Principal Sub Judge, Virudhachalam.

6.The learned counsel for the petitioner submits that the petitioner and her daughter living under the shelter of her aged parents and they were also not able to travel too long i.e., from Chennai to Virudhachalam due to their ill-health, to accompany the petitioner to each and every hearing to attend the Court proceedings from Chennai to Virudhachalam. Under these circumstances, the present Transfer Civil Miscellaneous Petition has been filed.

7.Having considered the submissions of the learned counsel for the petitioner and the facts and circumstances of the case, it appears that the respondent intentionally avoiding to take notice in this Transfer Civil Miscellaneous Petition and he filed HMOP at Virudhachalam to cause



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inconvenience to the petitioner. The petitioner being a lady, it is very difficult to her to travel from Chennai to Virudhachalam for each and every hearing to attend the Court proceedings. Hence, this Court feels that it is appropriate to consider the request of the petitioner.

8.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.

9.Considering the facts and circumstances of the case and the petitioner is being a lady, definitely she has to face difficulties to travel from Chennai to Virudhachalam to attend the case filed by the respondent. In our considered view, it is appropriate to transfer H.M.O.P.No.37 of 2022 pending on the file of Principal Sub-Judge, Virudhachalam to the file of Family Court, Chennai.

¹ 2005(12)SCC237



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10. Accordingly, this Transfer Civil Miscellaneous Petition is allowed and the H.M.O.P.No.37 of 2022 pending on the file of Principal Sub-Judge, Virudhachalam, is hereby withdrawn and transferred to the Family Court, Chennai. The Principal Sub-Judge, Virudhachalam shall transmit the entire records in H.M.O.P.No.37 of 2022 pending on his file, to the Family Court, Chennai, forthwith, by duly indexed.

Consequently, connected miscellaneous petition is closed.

There shall be no order as to costs.

13.06.2024

Index : Yes / No

Neutral Citation : Yes / No

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Note: Issue order copy within three days.

To

1.The Principal Sub-Judge, Virudhachalam

2.The Family Court, Chennai.



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BATTU DEVANAND, J.

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