



Tr. C.M.P. No. 1289 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. 1289 of 2022

and

C.M.P. No. 21800 of 2022

Ananthi

... Petitioner

Vs.

Ilavarasan

... Respondent

Prayer: Transfer Civil Miscellaneous Petition is filed under Section 24 of C.P.C., praying to withdraw the petition in H.M.O.P.No.152 of 2022 pending on the file of the learned Sub Judge at Mayiladuthurai and to transfer the same to the learned Sub Judge at Chidambaram and to try along with H.M.O.P.No.153 of 2022.

For Petitioner : Ms. S. Thamizh Poonkuilmozhi

ORDER

This Transfer Civil Miscellaneous Petition is filed seeking to transfer H.M.O.P.No.152 of 2022 on the file of the Sub Judge, Mayiladuthurai to the Sub Judge, Chidambaram and to try along with H.M.O.P.No.153 of 2022.

2. It appears that notice sent to the respondent and the same was



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returned with an endorsement “left”.

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3. 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***, it is 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.

4. The petitioner and the respondent are the wife and husband. Their marriage was solemnised on 06.09.2018 at Vennila Thirumana Mandapam, Mayiladuthurai. It appears that due to the disputes between both parties, the respondent filed H.M.O.P.No.152 of 2022 before the Sub Judge at



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Mayiladuthurai seeking decree of divorce. Thereafter, the petitioner also filed H.M.O.P.No.153 of 2022 before the Sub Judge at Chidambaram for restitution of conjugal rights.

5. Learned counsel for the petitioner submits that the petitioner is residing with her parents at Bhuvanagiri and she has to travel 50 km for each hearing to attend the case at Mayiladuthurai. Further submits that she is living without any source of income depending on aged parents. Under these circumstances, the petitioner is seeking transfer in H.M.O.P.No.152 of 2022 on the file of the Sub Judge, Mayiladuthurai to the Sub Court, Chidambaram and to try along with H.M.O.P.No.153 of 2022.

6. Having considered the submissions of the learned counsel for the petitioner and the facts and circumstances of the case, in our considered view, it is appropriate to consider the request of the petitioner.



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7. 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.

8. Considering the facts and circumstances of the case and the petitioner is being a lady, definitely she has to face difficulties to travel from Bhuvanagiri to Mayiladuthurai to attend the case filed by the respondent. In our considered view, it is appropriate to transfer the H.M.O.P.No.152 of 2022 on the file of the Sub Judge, Mayiladuthurai to the Sub Judge, Chidambaram to try along with H.M.O.P.No.153 of 2022.

9. Accordingly, this Transfer Civil Miscellaneous Petition is allowed and the H.M.O.P.No.152 of 2022 pending on the file of Sub Judge, Mayiladuthurai, is hereby withdrawn and transferred to the Sub Judge, Chidambaram. The Family Court, Mayiladuthurai shall transmit the entire

¹ 2005(12)SCC237



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record in H.M.O.P.No.152 of 2022 pending on his file to the Sub Judge,
Chidambaram, forthwith, by duly indexed.

10. Consequently, connected miscellaneous petition is closed.

11. 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.

To

1.The Sub Judge, Mayiladuthurai.

2.The Sub Judge, Chidambaram.



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BATTU DEVANAND, J.

AT

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