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Tr. C.M.P. No. 1302 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. 1302 of 2022

and

C.M.P. No. 22034 of 2022

C. Vidhyavikasini

... Petitioner

Vs.

P. Anand Babu

... Respondent

Prayer: Transfer Civil Miscellaneous Petition is filed under Section 24 of C.P.C., praying to withdraw the H.M.O.P.No.1247 of 2020 on the file of the Family Court, Coimbatore and transfer the same to the Family Court, Tirupur.

For Petitioner : Mr. Krishna Kumar
for Mr. R. Subramanian

ORDER

This Transfer Civil Miscellaneous Petition is filed seeking to transfer H.M.O.P.No.1247 of 2020 on the file of the Family Court, Coimbatore to the Family Court, Tiruppur.



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2. It appears that notice sent to the respondent and the same was returned with an endorsement “left”.

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***, 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 09.09.2020 in Jathi Matha Marrupu Tirumanam Purivor Matrum Aadharipor Sangam at Coimbatore. The



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marriage was registered in Joint-1 Sub Registrar Office, Coimbatore and the registered certificate No.403 of 2020 was issued by the concerned registrar office. It appears that due to the disputes between both parties, the respondent filed H.M.O.P.No.1247 of 2020 before the Family Court at Coimbatore seeking restitution of conjugal rights. Thereafter, the petitioner also filed H.M.O.P.No.131 of 2021 before the Family Court, Tiruppur for declaration that the marriage between them as null and void and it is pending.

5. Learned counsel for the petitioner submits that the respondent is threatening the petitioner as and when the petitioner is going to Coimbatore to attend the Court proceedings in Family Court. The learned counsel for the petitioner further submits that the petitioner is working as a School Teacher in Tiruppur and she cannot get leave for every hearing dates. Since she is residing in Tiruppur, she cannot travel without assistance of any one, because her parents are old age. Under these circumstances, the petitioner is seeking transfer in H.M.O.P.No.1247 of 2020 on the file of the Family Court, Coimbatore to the Family Court, Tiruppur.



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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.

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 Coimbatore to Tiruppur to attend the case filed by the respondent. In our considered view, it is appropriate to transfer the H.M.O.P.No.1247 of 2020 on the file of the Family Court, Coimbatore to the Family Court, Tiruppur.

¹ 2005(12)SCC237



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9. Accordingly, this Transfer Civil Miscellaneous Petition is allowed and the H.M.O.P.No.1247 of 2020 pending on the file of Family Court, Coimbatore, is hereby withdrawn and transferred to the Family Court, Tiruppur. The Family Court, Coimbatore shall transmit the entire record in H.M.O.P.No.1247 of 2020 pending on his file to the Family Court, Tiruppur, 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 Family Court, Coimbatore.

2.The Family Court, Tiruppur.

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BATTU DEVANAND, J.

AT

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