

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

BEFORE THE REGISTRAR SH. H. SHASHIDHARA SHETTY

Transfer Petition(s)(Civil) No(s). 2090/2019

PRIYANKA KUMARI

Petitioner(s)

VERSUS

SHAILENDRA KUMAR

Respondent(s)

IA No. 126261/2019 - EX-PARTE STAY)

Date : 13-10-2023 These matters were called on for hearing today.

For Petitioner(s)

Mr. Kapil Chandna, Adv.
Mr. Manish Kumar, Adv.
Mr. Mukesh Kumar, Adv.
Mr. Shashank Gusain, Adv.
Mr. Akash, Adv.
Mr. Vishwa Pal Singh, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

As per the office report the notice issued to the sole respondent has returned with the remarks "unclaimed".

As it was held by the Hon'ble Supreme Court in K.Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, (1999) 7 Supreme Court Cases 510 that when notice is returned as 'unclaimed', it shall be deemed to be duly served upon the

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addressee and it is a proper service of notice. In the case of Ajeet Seeds Limited Vs. K. Gopala Krishnaiah (2014)12 SCC 685 (2014), the Hon'ble Court while interpreting Section 27 of General Clauses Act 1897 and also Section 114 of Evidence Act 1872 held as under :-

"Section 114 of the Evidence Act, 1872 enables the court to presume that in the common course of natural events, the communication sent by post would have been delivered at the address of the addressee. Further, Section 27 of the General Clauses Act, 1897 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. It is not necessary to 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."

It has been observed that Registry mentions in the office report that where the notice is returned as 'refusal', is complete/proper service, whereas when it is returned as 'unclaimed', is not proper service/incomplete service.

In the opinion of this Court, it is not proper and correct. The word 'refusal' can be interpreted in synonymous to the word "unclaimed". As held by the Hon'ble Supreme Court in the above decisions, when a notice is served to the proper address of the addressee, it shall be deemed to be served unless contrary is proved. Thus, when the notice is returned

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as unclaimed, it shall be deemed to be served and it is proper service. Therefore, service of notice to the sole respondent which has returned as unclaimed is considered as deemed to be served but none has entered appearance.

Registry to process the matter for listing before the Hon'ble Court, as per rules.

H. SHASHIDHARA SHETTY
Registrar