

Misc. Case No. 423 of 2021

Order Dated: 01.02.2025

Today is fixed for hearing of interim maintenance application.

Petitioner is present by filling hazira.

Respondent no. 1 is files hazira through his advocate.

It appears from the record that on the previous date the petitioner has filed affidavit along with photocopy of postal receipts and track report and praying for exparte of the instant case against respondent no. 2 to 5.

Ld. Advocate for the petitioner vehemently argued that the notice shall be treated as deemed service as per law as their avoiding to received the notices.

It appears from the materials on record that notice were served upon the respondent no. 2 to 5 through post. In this regard this court relied judgment reported in **2012 (2) CLJ (CAL)** wherein the Hon'ble Mr. Justice Kanchan Chakraborty has held that "*The presumption under Section 27 of the General Clauses Act can be applied when the notice is returned by the sendee as unclaimed*". Another judgment reported in **2017 (3) ICC 113 (SC)** wherein the Hon'ble Apex Court has held that "*When a notice is sent by registered post and is returned with postal endorsement 'refused' or 'not available in the house' or 'house locked' or 'shop closed' or 'addressee not in station', due service has to be presumed*". Therefore, in view of the above judgments I am in firm opinion that the service of notice upon the respondent no. 2 to 5 are legal, valid and therefore it is binding upon the respondent no. 2 to 5. So, the instant case shall run exparte against the respondent no. 2 to 5.

Now record is taken up for hearing of interim maintenance application.

Both parties are duly represented by their Ld. Advocates.

Heard the application in full in presence of both the Ld. Advocates along with the rival parties.

Ld. Advocate for the respondent no. 1 has some photocopy of documents with firsty.

Fix 29.03.2025 for passing order in respect of interim maintenance application.

D/C by me

Judicial Magistrate (1st Class)
2nd Court, Asansol (I/C)
(JO Code: WB01393)

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