



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-15-01287-CV

VENKATA CHUKKAPALLI, Appellant
V.
SWAPNA MANDAVA, Appellee

On Appeal from the 303rd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DF-15-02426

MEMORANDUM OPINION

Before Justices Bridges, Lang-Miers, and Whitehill
Opinion by Justice Bridges

Venkata Chukkapalli appeals the trial court's default judgment granting Swapna Mandava a divorce from Chukkapalli. In two issues, Chukkapalli argues the trial court's judgment is void because the trial court did not acquire personal jurisdiction over him, and the trial court abused its discretion in denying his motion for new trial. We reverse the trial court's judgment and remand for a trial on the merits.

In February 2015, Mandava filed her original petition for divorce. The petition alleged Mandava and Chukkapalli were married on July 8, 2007 in India and separated in August 2007. The petition alleged Chukkapalli was a resident of India, and Mandava resided in Texas for six months and Dallas County for ninety days. The petition requested that Mandava be granted a divorce from Chukkapalli but did not request any division of property. The petition stated

service of citation on Chukkapalli could be served at “D.No.4-12-6, NANNAPANENI VARI STREET ITHANAGAR/TENALI GUNTUR DISTRICT 522201 ANDHRA PRADESH, INDIA.”

By affidavit dated May 29, 2015, Mandava’s counsel stated he attempted to serve citation and a copy of the petition on Chukkapalli in India by means of an Indian process server and another person “with the title of Mediator,” but Chukkapalli refused to receive the citation. Counsel stated Chukkapalli had therefore been properly served with citation pursuant to Texas rule of civil procedure 108a for service of process in foreign countries. Mandava also requested citation by publication pursuant to rule 109 and family code section 6.409. Counsel stated “service by publication [could] be completed by posting the citation at the courthouse door in Dallas County, Texas, for seven days.”

Mandava also filed a “motion to judicially notice foreign law” to which he attached Indian civil rules of practice providing that, where a person refuses to accept service of process, the endorsement of refusal shall be attested by a witness, the reasons thereof, if any, given, and it shall be stated how the individual was identified. She also attached a letter from an Indian “Government Pleader,” K.V.G.M. Krishna Rao. The letter states the Indian district court received counsel’s letter and citation with the petition attached; on May 11, 2015, G. Samba Siva Rao, the process server, took Mr. Ch. Balasubrahmanyam, a mediator, to Chukkapalli’s “place” and offered the papers to Chukkapalli; Chukkapalli refused to receive the papers; his refusal was endorsed on the back of the citation by both the process server and the mediator; and the back of the citation was signed and sealed by an official of the district court and notarized. The citation listed Chukkapalli’s address as “-3/22 BRODIPET GUNTUR DISTRICT 522002 ANDHRA PRADESH INDIA.”

On August 13, 2015, the trial court conducted a hearing at which Mandava testified she moved to the United States in December 2006 and had lived in Texas since June 2008. Mandava testified she sought a divorce on the grounds she had not cohabitated with Chukkapalli for three years before filing suit. Mandava and Chukkapalli had no children, and Mandava testified she was not seeking any personal judgment against Chukkapalli. Chukkapalli did not appear at the hearing. The trial court orally granted Mandava a divorce and entered a written divorce decree the same day.

On August 25, 2015, Chukkapalli filed a motion for new trial in which he argued he was not served with process or notified of this lawsuit prior to default judgment; the affidavit in support of citation by publication was defective; the trial court erred in failing to appoint an attorney ad litem for him; and, in the alternative, he satisfied the factors set out in *Craddock v. Sunshine Bus Lines, Inc.*, 134 Tex. 388, 133 S.W.2d 124, 126 (1939). Because of these errors, Chukkapalli argued, he was entitled to a new trial. Chukkapalli's motion was supported by his affidavit in which he stated, among other things, he had never been to the United States; he was not served with citation on May 8, 2015; he was not aware anyone was attempting to serve him with citation; he did not live at the address listed on the citation; and Mandava filed a divorce petition in an Indian court on January 21, 2014.

On September 30, 2015, Mandava filed a response to Chukkapalli's motion for new trial. Mandava conceded Chukkapalli was not served on May 8, 2015 because service was not attempted that day. However, Mandava argued Chukkapalli had notice of the Texas lawsuit by July 2, 2015 because, on that day, Chukkapalli filed with the Indian family court judge a memo complaining that Mandava had filed for divorce in the 303rd District Court in Dallas and arguing that "the petitions filed for similar relief at two places [was] not maintainable." The memo stated

Chukkapalli “herein filed a copy of the petition obtained through internet along with this memo.” Attached to the memo was a letter from Gollaher to Rao requesting service on Chukkapalli.

On October 1, 2015, the trial court held a hearing on Chukkapalli’s motion for new trial. Chukkapalli’s counsel argued service on Chukkapalli was not valid because the return of service did not state “how they know it’s the correct person,” and service by publication was invalid because counsel’s affidavit did not state that Chukkapalli was absent from Texas or that Chukkapalli did not reside in Texas. Mandava’s counsel responded that Chukkapalli filed “all the papers in this case” in an Indian court a month before the default judgment. Chukkapalli’s counsel responded that, “even though [his] client had notice, he was not served properly under the rule.” The trial court denied Chukkapalli’s motion for new trial, and this appeal followed.

In his first issue, Chukkapalli argues the divorce decree is void because the trial court did not acquire personal jurisdiction over him. Specifically, he argues he was not served with the lawsuit, and there were several errors in the citations, return of service documents, and process by which he was served by publication.

Service of process on a defendant in India is governed by the Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters (The Hague Convention), to which India became a signatory on November 23, 2006. *See* Nov. 15, 1965, 20 U.S.T. 361; *Tuckerbrook Alt. Invs., LP v. Banerjee*, 754 F. Supp. 2d 177, 181 (D. Mass. 2010). The Hague Convention requires each state to establish a central authority to receive requests for service of documents from other countries. *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 698 (1988); *Velasco v. Ayala*, 312 S.W.3d 783, 794 (Tex. App.—Houston [1st Dist.] 2009, no pet.). The Central Authority then forwards the request to the competent judicial authority to effectuate service. *Velasco*, 312 S.W.3d at 794. Article X of the Convention preserves the ability of parties to effect service through means other than a recipient-nation’s

Central Authority as long as the recipient-nation has not objected to the specific alternative means of service used. Convention, art. 10, Feb. 10, 1969, 20 U.S.T. 361; *Gurung v. Malhotra*, 279 F.R.D. 215, 217 (S.D.N.Y. 2011). In signing the Convention, India expressly rejected service through means enumerated in Article X—including service through postal channels and through its judicial officers—but did not expressly reject service through other means such as publication or electronic transmission. *See Gurung*, 279 F.R.D. at 217.

The record shows Mandava’s counsel attempted to serve Chukkapalli by directing a letter, including a copy of the original divorce petition and citation, to an Indian district court. India has expressly rejected service through its judicial officers. *See Gurung*, 279 F.R.D. at 217. Further, Mandava never attempted to serve Chukkapalli through India’s Central Authority. Under these circumstances, we conclude Mandava failed to effectuate valid service on Chukkapalli. *See Velasco*, 312 S.W.3d at 794 (no valid service on Mexican national living in Mexico where no attempt made at service through Central Authority).

As to whether Chukkapalli was served by publication, nothing in The Hague Convention expressly disavows service by publication. *See id.* at 795. However, because service under the Convention is required to be transmitted through India’s Central Authority, it does not appear that service by publication by posting the citation at the courthouse door in Dallas County, Texas, when Chukkapalli was known to be in India, comports with the terms of the Convention. *See id.* (service by publication in English in Texas newspaper not effective on defendant in Mexico).

Thus, the record does not reflect that Mandava effectuated valid service of process on Chukkapalli. *See id.* at 797. Although it appears Chukkapalli had actual notice of the Texas divorce proceeding, actual notice to a defendant of a pending suit, without proper notice, is not sufficient. *Id.* Because Chukkapalli is a citizen of India and the record shows that his address

was known to Mandava at the time she sought to effect service on him, and because Chukkapalli was not duly served with citation under the law, the trial court did not acquire personal jurisdiction over Chukkapalli, and the trial court's divorce decree is void. *Id.* at 800. We concluded the trial court therefore abused its discretion in refusing to grant Chukkapalli's motion for new trial. *See id.* We sustain Chukkapalli's first issue. We note that, upon remand, the parties will be before the court without need for further citation because Chukkapalli has now become subject to the jurisdiction of the court. *See id.* (citing rule of civil procedure 123, which provides that, when judgment is reversed on appeal for want of proper service, no new citation shall be issued, as defendant is presumed to have entered his appearance). Because of our disposition of Chukkapalli's first issue, we need not address his second issue.

We reverse the trial court's judgment and remand for a trial on the merits.

/David L. Bridges/
DAVID L. BRIDGES
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

VENKATA CHUKKAPALLI, Appellant

No. 05-15-01287-CV V.

SWAPNA MANDAVA, Appellee

On Appeal from the 303rd Judicial District
Court, Dallas County, Texas
Trial Court Cause No. DF-15-02426.
Opinion delivered by Justice Bridges.
Justices Lang-Miers and Whitehill
participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **REVERSED** and this cause is **REMANDED** to the trial court for a trial on the merits..

It is **ORDERED** that appellant VENKATA CHUKKAPALLI recover his costs of this appeal from appellee SWAPNA MANDAVA.

Judgment entered June 30, 2017.