

CHAPTER XXI

Processes etc.

1. Service of notice—(a) Except where otherwise provided by these Rules, or ordered by the Court, all summons, notices other documents required to be given to or served on a party or person, who resides within the jurisdiction of this Court, shall be served on such party or person either personally or on his advocate.

(b) Service of any notice, order or other document upon a person, who resides outside the jurisdiction of this Court, but within the territory of India, may ordinarily be effected by posting a copy of the document required to be served in a prepaid envelope registered for acknowledgement addressed to the party or his agent empowered to accept service, at the place where the party or his agent resides or carries on business or personally works for gain.

(c) Notwithstanding anything hereinabove contained in rule 1(b) the Registrar may direct in a particular case or class of cases, that the service shall be effected in the manner provided by the Code for service of summons.

(d) Unless the contrary is proved, a document served by post shall be deemed to be served at the time at which it would be delivered in the ordinary course of post.

2. Time for payment of process fee and consequence of nonpayment—Process fees for the issue of summons, notice or other process and costs of advertisements shall be furnished to the Registrar.

(a) In case where the returnable date fixed is less than *four weeks* within *three days* of the order; and

(b) In other cases *within seven days* from the order directing such summons; or

(c) Within such further time as may be allowed for the purpose by the Registrar.

If the plaintiff or applicant fails to take any step or where the plaintiff or applicant commits default in furnishing the process fee or in making such payment or it appears to the Registrar that he is not prosecuting the matter with due diligence, the Registrar shall call upon him to explain his default and if no explanation is offered, or if the explanation offered appears to Registrar to be insufficient, the Registrar may issue a summons calling upon the plaintiff or the applicant to show cause before the Court why the plaint or the application should not be dismissed.

3. Power to dismiss for non-prosecution—Upon such summons being issued, the Court may, after hearing the plaintiff dismiss the suit for non-prosecution or give such other direction thereon as justice of the case may required.

4. Full address to be given of persons on whom process to be served—Persons on whom processes are to be served or executed, shall be described therein fully, by a statement of the name, father’s name and other particulars as will facilitate identification and service. In the case of service and execution of process in towns the name of the street, lane or section and the number of the house (if any) shall also be given.

5. Summons for final disposal and settlement of issues—Summons shall issue for final disposal in short causes and for settlement of issues in long causes.

6. Returnable date of summons—Unless otherwise ordered every writ of summons shall be made returnable as follows :

(1) If the defendant or all the defendants reside within the jurisdiction of the Court, in four weeks from the date of the admission of plaint; and

(2) In all cases, within such time as may be considered sufficient for the transmission, service and return of the summons.

7. Expeditious issue of processes—Process for service or execution shall be made ready and issued expeditiously.

8. Process to be served after identification of party—The serving officer shall serve all processes entrusted to him after due enquiry as to the identity of the persons on whom or the house or property where, the same is to be served :

Provided that if it appears to the Registrar that sufficient information cannot be given as to the identity and place of residence of the person whom process is to be served or as to the house or property where process is to be served or if the Registrar is satisfied from the affidavit of the serving officer or upon his examination on oath (if necessary) that the person or the house or property or the place of residence of the person aforesaid could not be identified after due diligence and enquiry he may ask the party concerned to supply an identifier.

COMMENTS

A perusal of the provisions of Rules 8 to 11 goes to show that the underlying object behind the abovesaid provisions is to insist on the presence of one respectable person of the locality who may identify the house or property on which the process was affixed on a house or property with which the person sought to be served has nothing to do. The use of the words “whenever possible” in Rule 9 and the words “if any” in Rule 10 clearly suggest that the provision as to presence of the person identifying the property is merely by way of caution: it is directory and not mandatory. The language of Rule 11 goes to suggest that the presence of at least one respectable witness is necessary when the process server writes the report of service on the process. If the presence of at least one respectable witness and attestation by him is not made mandatory by rules 8 to 10, then the presence of one respectable witness at the time of drawing up the report of service by the process serving officer under Rule 11 cannot be termed or held mandatory. It is also directory. Ultimately it is a question of satisfaction of the court as to the sufficiency of service. It is common knowledge that unconcerned persons have a tendency to avoid themselves being involved into court

proceedings. If the presence of at least one witness or more at the time of affecting service by affixation is held to be mandatory, two consequences - both undesirable - shall follow. Firstly, it would amount to expressing a distrust in the process serving agency of the court. Secondly, in a good number of cases service by affixation may be rendered difficult and impracticable, if not impossible. The most reasonable view to be taken would be to leave the question of sufficiency of service in an individual case being determined by the Court which may before proceeding ahead with hearing of a matter on merits form its opinion whether it was satisfied on the sufficiency of service by affixation as disclosed by the report of the process server and/or from the inquiry made by the Court which it may deem fit to make regarding the manner or events touching the service. *Sahara Deposits & Investments (P) Ltd. v. Shri Karan Singh*, 1996 (63) DLT 377 : 1996 (1) AD (Delhi) 416.

9. Endorsement of identifier on the original process—If the serving officer is not personally acquainted with the person to be served, he shall, whenever possible obtain on the original process the endorsement by signature or thumb-impression of a respectable person of the locality identifying such person or place of residence or the house or property on which the process is served.

10. Procedure where defendant refuses to accept service or cannot be found—Where the person to be served, or his agent, refuses to sign the acknowledgment of where the serving Officer, after using all due and reasonable diligence, cannot find that person and there is no agent empowered to accept service of the summons on his behalf, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which that person ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued with a report endorsed thereon annexed thereto stating that he has so affixed the copy, the circumstances under which he did so and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed. He shall also obtain the signature of the person on the return, who identified the person or in whose presence the copy was affixed on the said house.

COMMENTS

Rule 1 of the Original Side Rules states that a party must be personally served. This is in consonance with Rules 12 and 13 of Order V of the Code of Civil Procedure. However, Rule 15 of the same Order ought not to be overlooked since it mentions that where personal service is not possible, such a party may be served by any adult member of the family, whether male or female. Rule 10 of the Original Side Rules requires the Process Server to make out a full report and should be read with Rule 12 of the Original Side Rules. While on this subject it is plainly clear that sub-rule (4) of Rule 12 of the Original Side Rules cannot be given effect to as it runs counter to Rule 15 of Order V of the Code of Civil Procedure and is quite palpably a legal anachronism. There is also no report, in the present case, to the effect that the Summons were affixed to the outer door, as is contemplated by Rule 13 of the Original Side Rules. The next following Rule is most often not given due compliance. It is recommended that the Registrar should meticulously follow its provisions so that legal proceedings should not be needlessly protracted. In the present case affidavits of service were not called for and the Registrar appears not to have recorded his satisfaction to the effect that the defendants had been served. It will also be relevant to keep in mind that none of the defendants have been personally served. In this context I may draw attention towards the decision in *Kunja v. Lalaram and others*, AIR 1987 Madhya Pradesh 252.

From a perusal of the records of the case it is evident that efforts to serve the defendants were taken on only one occasion, after notice was issued on 18.12.1996. On the next date the matter was simply adjourned and thereafter the defendants were proceeded *ex parte*. Dasti orders were only in respect of the application for interim relief. The Courts are understandably hesitant to order dasti service at the first instance. Not only did the plaintiff fail to initiate appropriate steps for service by Registered A.D. post, but he also served the summons in the suit dasti without the authority or direction of the Court. Where a party accompanies the Process Server there is always scope for harbouring suspicion that the service report may have been managed. In these circumstances I am in no manner of doubt that all necessary facts were not brought to the Court's notice when the initial order whereby the Defendants were proceeded *ex parte* was passed. In *Grafitek international v. K. K. Kaura & Others*, 2000 (56) DRJ (Suppl) 692. I had *Inter alia* declined to accept Dasti service only as effective notice to the defendant. The view taken then continues to prevail. I had stated that "It is usually a difficult and delicate task to render a decision on applications for setting aside *ex parte* decrees. The competing interests of the Plaintiff and Defendant are broodingly omnipresent. Having obtained a

decree the Plaintiff ought not to be denied the enjoyment of its delectable fruits on flimsy grounds. There is always the lingering likelihood that service of summons were effected and that the Defendant had not appeared in order to delay proceedings. On the other hand, a judicial decision taken without giving the parties adequate opportunity to present its version of the facts and the law, in my opinion, is a forensic abomination. The Court must fully satisfy itself that parties have been served. Otherwise it would tantamount to dereliction of duty". *Bulganin v. Apex Apartments Pvt. Ltd. & Anothers*, 2001 (91) DLT 446: 2001 (59) DRJ 397.

11. Returns of service—(a) Every process serving officer shall immediately after completion of any duty connected with any process, record with his own hand upon the original process at the place of execution and in the presence of at least one respectable witness his report specifying the manner of execution or the causes which prevented execution. Thereafter, he shall swear or affirm in the correctness of that report before an officer of the Court, duly authorised in this behalf and file the same in Court together with the process.

(b) Process serving officer must invariably note the date, hour and exact place of service on each individual process.

(c) If the process is addressed to more than one person, the report shall describe the manner of service on each person and also the sequence in which the processes are served on different persons.

12. Service by affixing to outer door—The serving officer shall make an affidavit as to the following matters :

(1) The number of times and the dates and hours at which he went to the house;

(2) The attempts made by him to find the person to be served;

(3) Whether he had any and what, reason to suppose that such person was within the house or in its neighbourhood, or endeavouring to evade service; and

(4) Whether any adult male member of the family of the person to be served was residing with him.

13. Notice where summons is affixed to outer door—If a summons to defendant is affixed to the outer door of his house in the manner provided in Rule 12, the serving officer shall affix thereto a notice that the person, so served can upon an application to the Court, obtain a copy of the plaint that shall in his return state that he has done so and shall return the plaint of the Court.

14. Inquiry as to sufficiency of service—The Registrar shall in all cases where the process has been returned and in which an appearance has not been entered on the day appointed therefor hold an inquiry as to the sufficiency of service of process.

Such inquiry may be adjourned, if necessary, from time to time. Affidavits and further affidavits may be received or evidence taken *viva voce* at such inquiry.

No matter shall be placed before the Court unless the Registrar is satisfied that the defendant or the opposite side has been duly served, wherever a defendant has been so served, but does not appear on the date appointed and the Registrar, after holding an inquiry aforesaid, is satisfied that the defendant or the opposite side has been duly served, he shall report the matter to the Court and the Court shall pass such orders as it deems fit.

15. Fresh Process not to issue until previous one returned—Unless otherwise ordered, a second or subsequent process shall not be issued until after the one previously issued has been returned.

16. Registrar to execute or to cause to be executed process—The Registrar and, subject to his directions any other officer of the Court shall execute or cause to be executed through the officers of the Court all processes including all warrants or orders for delivery, attachment or sale of property in execution, or for the arrest or custody of any person, which may be entrusted to Registrar for execution. They shall return all warrant and orders within the time prescribed, with an endorsement specifying the manner of execution or the causes which prevented execution. Such warrants and orders shall be filed in the record. A process service register shall be kept in the prescribed form.

17. Noting of date on processes—The Registrar shall note on every process the date on which it was delivered to the process server.

18. Service on the advocates of parties—Service of any process, notice order or other document on the advocate of any party may be effected by delivering it to the advocate or by leaving it with a clerk in his employ at his place of business.

19. Except where the process, notice order or other document has been served through the Registry, the party required to effect service shall file an affidavit of service along with such proof thereof as may be available stating the manner in which the service has been effected.

20. Where process, notice order or other document has been served through another Court, the service may be proved by the deposition or affidavit of the serving officer made before the Court through which the service was effected.