

SUPREME COURT OF INDIA (D.B.)

BASANT SINGH

V/S

ROMAN CATHOLIC MISSION

Date of Decision: 03 October 2002

Citation: 2002 LawSuit(SC) 960

Hon'ble Judges: [Y K Sabharwal](#), [H K Sema](#)

Case Type: Civil Appeal

Case No: 6489 of 2002

Subject: Civil

Head Note:

CIVIL PROCEDURE CODE, 1908

Order 5, Rule 19A(2), 20 -- Mode of service of summons -- Substituted service -- General Clauses Act, 1897 -- Section 27 -- Meaning of service of post -- Summons -- Service of -- Regd. Post not returned not received back -- Substituted service ordered by publication in one newspaper -- Published in another newspaper -- Summons duly sent through Regd. AD -- Whether service of summons sent through regd. AD can be accepted as sufficient? -- Yes -- Presumption of service, though rebut-table, available as to the service of notice -- One of the defendant did not appear and the other defendant failed to rebut the presumption -- Summons held to be duly served -- Appeals devoid of merit and dismissed. Held: Order 5, proviso to sub-rule (2) of Rule 19A of CPC provides that where the summons are properly addressed, prepaid and duly sent by registered post with acknowledgement due, notwithstanding the fact that the acknowledgement having lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of the issue of summons, the Court shall presume

that notice is duly served. Further, Section 27 of the General Clauses Act, 1897 provides similar provision. The premises in question is occupied by two defendants jointly -- Hari Singh and Basant Singh. Hari Singh appeared and examined himself stating that he did not received the registered letter. However, the defendant Basant Singh did not appear and no evidence whatsoever, on his behalf, has been led to rebut the presumption in regard to service of summons sent to him under the registered post with acknowledgement due. His own conduct shows that the registered summons had been duly served on him. As already noticed, Hari Singh appeared and save and except the bald statement that registered letter was not tendered to him, no evidence whatsoever was led to rebut the presumption. He could have examined the postman, who would have been material witness and whose evidence would have bearing for proper adjudication. He has failed to discharge the onus cast upon him by the statute. This apart, it is inherently improbable that the registered summons were duly served on Basant Singh but not to Hari Singh when they occupied the tenanted premises jointly. In the facts and circumstances as noticed above, this appeal is devoid of merit and it is, accordingly, dismissed.

Acts Referred:

[Code Of Civil Procedure, 1908 Sec 20, Or 5R 19A, Or 9R 13, Or 5R 20](#)
[General Clauses Act, 1897 Sec 27](#)

Final Decision: Appeal dismissed

Eq. Citations: 2002 (3) DNJ 728, 2002 (6) ALD(SC) 51, 2003 (1) ALT(SC) 1, 2002 (2) ARC 653, 2003 (1) AWC 132, 2002 (4) PLJR(SC) 186, 2003 (1) RajLW 46, 2003 (95) CutLT 324, 2002 (4) RCR(Civ) 572, 2002 (7) Scale 266, 2002 (4) ICC 862, 2002 (7) Supreme 62, 2002 (7) JT 563, 2002 (3) BLJR 2535, 2002 (4) CCC 93, 2002 AIR(SC) 3557, 2002 AIR(SCW) 4171, 2003 (1) AllIndCas 1, 2002 (2) ApexCJ 420, 2003 (1) GLH 47, 2002 (4) LRI 1, 2003 (1) MadLJ 44, 2002 (3) JCR 216, 2002 (132) PunLR 677, 2002 (4) KCCR 2720, 2002 (7) SCC 531, 2002 SCFBRC 596, 2002 (Supp3) SCR 70, 2002 (5) SLT 545, 2002 (10) SRJ 66

Advocates: [M L Lahoty](#), [Sushil Jain](#), [Pratibha Jain](#), [Paban Sharma](#), [S K Gambhir](#), [R K Maheshwari](#)

Reference Cases:

[Cases Cited in \(+\): 52](#)

Judgement Text:-

H K Sema, J

[1] Leave granted.

[2] The sole question that falls for consideration in this appeal is, whether the service of notice sent by registered post with acknowledgment card in terms of O. 5 second proviso to R. 19-A of the Code of Civil Procedure read with S. 27 of the General Clauses Act, 1897 can be accepted as a sufficient notice.

[3] This appeal filed by the defendants (judgment-debtors) arises out of the following material facts. Suit No. 473 of 1985 filed by the landlord ended in passing of an ex parte decree by the trial Court on 30-5-1986. The appellants preferred an application on 6-10-1986 under O. 9, R. 13 for setting aside the ex parte decree which was rejected by the trial Court. Their appeal before the appellate Court and revision-petition before the High Court ended without any success. It appears, initially the plaintiff (respondent herein) could not deposit the requisite process fee for which the summons could not be issued to the appellants-defendants. On 2-4-1986, the trial Court ordered the summons to be issued to the defendants, both by ordinary process and by registered post, and the case was adjourned to 30-4-1986. On a perusal of the record, and not disputed by the parties, we find that the registered notices were issued to the defendants vide postal receipt Nos. 875 and 876 dated 24-4-1986. As on 30-4-1986, summons issued by registered posts were not received back, the case was adjourned to 30-6-1986 awaiting the receipt of the service report. On 30-6-1986, the trial Court again ordered that fresh summons both by ordinary post and registered post be issued within three days. The trial Court also ordered substituted service by resorting to O. 5, R. 20, C.P.C. by publication of summons in local daily "Dainik Bhaskar." On 5-8-1986, it appears that a notice of publication in daily newspaper "Aacharan" instead of "Dainik Bhaskar" as ordered by the Court has been produced. This is one of the grievances of the appellants, which we shall be dealing at appropriate place. On 22-8-1986, the trial Court passed an order to proceed ex parte and fixed the case for 4-9-1986 for evidence of the plaintiff. As the date fixed 4-9-1986 was declared a public holiday, the plaintiff's witness was examined on 5-9-1986 and the ex parte judgment and decree was passed on 30-9-1986. It is stated that the appellants came to know of the ex parte decree on 1-10-1986 and filed an application on 6-10-1986 for setting aside the ex parte decree,

as noticed above.

[4] Learned counsel for the appellants contended that the trial Court has acted in violation of the procedure prescribed under O. 5 of the Code of Civil Procedure, in issuing summons to the defendants. He further contended that the substituted service can be resorted to only when the Court is satisfied that the defendant is avoiding the service or the service cannot be effected in an ordinary way. The trial Court having not passed any order about the satisfaction as envisaged under the Code, it was not open to the trial Court to order for substituted service. This submission need not detain us any longer. On the facts of the case the Court's satisfaction is implicit in the order directing service by publication.

[5] Order 9, R. 13 of Code of Civil Procedure insists that the applicant must satisfy the Court two conditions (a) that the summons was not duly served and (b) that the applicant was prevented by any sufficient cause from appearing before the Court when the suit was called on for hearing. In the present case second condition is not attracted.

[6] Regarding the contention of the counsel for the appellants that the summons were not duly served, as the substituted service has been published in the local daily "Aacharan" instead of "Dainik Bhaskar," we may point out that it is the evidence on record that both "Aacharan" and "Dainik Bhaskar" are the local dailies and are widely circulated in the area. In ordinary circumstances, if both the local dailies are widely circulated in the area the change of the name of the local daily from "Dainik Bhaskar" to "Aacharan" would not materially affect the service of notice by way of substituted service, deemed to have been served, and would not invalidate the effect of substituted service just because the notice for substituted service has been published in the local daily which is not ordered by the Court. It is the specific contention of the plaintiff-respondent that the notice has been published in the local daily "Aacharan" on 9-8-1986 and the said local daily is widely circulated in the area and the substituted service would construe as sufficient notice upon the defendants. We are also of the view that it is inherently probable that publication in the local daily "Aacharan" which is widely circulated in the area would have constituted a sufficient notice to the defendants.

[7] Before the trial Court the stand taken by the plaintiff was that the defendants had knowledge about the suit filed by the plaintiff and they had sufficient time to appear and answer the plaintiff's claim but they did not appear and the application had been filed with intention to cause the delay. Be that as it may, we are of the view that the publication of the substituted service in the local daily "Aacharan" instead of "Dainik

Bhaskar" is a mere irregularity in service of summons.

[8] Second proviso to O. 9, R. 13 casts an embargo on the Court that a decree passed ex parte shall not be set aside merely on the ground that there has been an irregularity in the service of summons.

[9] Order 5, proviso to sub-rule (2) of R. 19-A of C.P.C. provides that where the summons are properly addressed, prepaid and duly sent by registered post with acknowledgment due, notwithstanding the fact that the acknowledgment having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of the issue of the summons, the Court shall presume that notice is duly served. Further, S. 27 of the General Clauses Act, 1897 (in short 'Act') provides similar provision. The presumptions are rebuttable. It is always open to the defendants to rebut the presumption by leading convincing and cogent evidence.

[10] It is nobody's case that the postal addresses of the defendants are not properly addressed and, therefore, the registered summons could not be served. It is also nobody's case that the registered summons are not prepaid and not duly sent. In fact the registered summons, bearing receipt Nos. 875 and 876 dated 24-4-1986, were issued is borne out from the record.

[11] Once it is proved that summons were sent by registered post to a correct and given address, the defendants' own conduct becomes important. Before the trial Court, the appellants were allowed to lead evidence in support of their contentions. As order to this effect was passed by the trial Court on 11-1-1991. The premises in question is occupied by two defendants jointly Hari Singh and Basant Singh. Hari Singh appeared and examined himself stating that he did not receive the registered letter. However, the defendant-Basant Singh did not appear and no evidence whatsoever, on his behalf, has been led to rebut the presumption in regard to service of summons sent to him under registered post with acknowledgment due. His own conduct shows that the registered summons had been duly served on him. As already noticed, Hari Singh appeared and save and except the bald statement that registered letter was not tendered to him, no evidence whatsoever was led to rebut the presumption. He could have examined the postman, who would have been the material witness and whose evidence would have bearing for proper adjudication. He has failed to discharge the onus cast upon him by the statute. This apart, it is inherently improbable that the registered summons were duly served on Basant Singh but not to Hari Singh when they occupied the tenanted premises jointly.

[12] As noticed above, the registered summons were sent to Basant Singh and Hari Singh vide postal receipt Nos. 875 and 876 dated 24-4-1986 on the correct and given address is borne out from the record. Ex parte proceedings were ordered on 22-8-1986 and ex parte decree was passed on 30-9-1986.

[13] In the facts and circumstances as noticed above, this appeal is devoid of merit and it is, accordingly, dismissed. No costs.

Appeal dismissed.

