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QUESTION:

What rules are provided in Civil Procedure Code for service of process to defendants? Also Discuss substituted service.

ANSWER:

SUMMONS:

The provisions relating to service are based upon the maxim 'audi alteram partem'. PLD 1971 SC 192. The defendant has a right to appear and defend. The use of word 'may' does not empower the court to refuse to summon the defendant, but refers to the proviso to rule 1, or where the court deems it desirable to adopt, some other mode of intimating the defendant. An appearance in an interlocutory application prior to the registration of the suit, is no appearance in terms of the proviso.

A summons is issued to the defendant after the suit has been duly instituted i.e., registered. It is issued to the defendant at the place where he ordinarily and voluntarily resides, carries on business or personally works for gain. A summons must either bear the signature of the presiding officer, or the seal of the court.

EITHER SETTLEMENT OF ISSUES OR FINAL DISPOSAL:

The defendant is entitled to sufficient time to enable him to make appearance and no decree can be passed prior to the return of the summons. The court should at the time of issuing summons clearly direct whether the summons is to be for final disposal or for framing of issues only. Summons for final disposal should only be issued in simple case. Where a summons is not for final disposal of the suit.

DELIVERY OF SUMMONS:

Once service has been effected upon the defendant, the court gets jurisdiction to dispose of the matter. The object of service on the defendant is to enable him to resist the claim should he so desire. It is immaterial that the defendant has private knowledge of the pendency of the proceedings. Only an agent empowered to accept service in terms of Order 3 rule 6 can be served under this rule. A mere irregularity in effecting the service of summons will not be a good ground for upsetting the decree.

REFUSAL TO ACCEPT:

Where the defendant reads the summons, but does not accept it, there is substantial compliance with the provisions relating to the service of summons. Where the defendant is not served with summons, the mere fact that he had knowledge of the suit is immaterial. Service of summons in accordance with law has to be proved. Merely because a copy of the plaint is not delivered, will not render the service defective.

SERVICE BY POST:

In addition to the ordinary mode of service a summons is also to be sent by registered post. The court should ordinarily direct personal service but it may in a particular case, direct service by post. Where service is effected by registered post, properly addressed, the service shall be presumed to have been effected, even where the envelope is endorsed as refused, or postal acknowledgement not received. However, this is a rebuttable presumption and can be disproved.

PERSONAL SERVICE:

All efforts should be made to effect personal service, and it is only where this is not possible, that the summons should be affixed. In the case of 'purdah nashin' ladies, service can be effected on an adult male member of her family residing with her, or the summons may be affixed. Even minors should be personally served, and service upon the guardian is not enough. Service on the agent is valid only if he is empowered in writing to accept service on behalf of the defendant.

SERVICE ON AGENTS:

Where the defendant does not reside within the jurisdiction of the court, but carries on business or works for gain within such jurisdiction, service may be effected on his manager or agent carrying on such business provided the suit relates to such business or work. A salesman, or the manager, under this rule is a person who has initiative and independent discretion. A mere servant, or a salesman, is not an agent or manager. If service is effected upon the agent or manager, then regardless of whether it was communicated to the principal or not, it will be deemed to be valid service.

SERVICE ON FAMILY MEMBERS:

All efforts should be made to locate and find out the defendant in person for in the absence of such efforts, service on members of the family is not sufficient. Service on a purdah nashin woman is effected under this rule. Service upon a servant is not valid. An adult is a person above 16 years of age, and such person should be a male and not a female. Further such adult male person should be a member of the family and should be ordinarily residing with the defendant.

ACKNOWLEDGEMENT:

The serving officer should obtain the signature of the person upon whom service has been made, in token of his acceptance thereof. Should such person refuse to acknowledge service, the serving officer should affix the summons in the manner prescribed. It is not obligatory on the court to order service by affixation, where the defendant has refused to accept the summons, and the court may treat it as valid service without resorting to rule 17. Affixation should be effected upon refusal to acknowledge, and there need not be a specific order to this effect. However, if the summons is not affixed it cannot be said to have been duly served.

SERVICE BY AFFIXATION:

Service by affixation is to be resorted to when it is not possible to effect personal service. There need not be a specific order to effect service by affixation, and affixation is mandatory. Where the serving officer after using all due and

reasonable diligence cannot find the defendant, or where the person served refuses to sign, and the summons is affixed, the service is complete. However, the process server should take pains to find out the defendant go again and again where the defendant is likely to be present, and make inquiries about his whereabouts and follow him. All the efforts so made by the process server should be stated in the report. Temporary absence of the defendant does not entitle the affixation of the summons. Where the circumstances in which the substituted service was effected are demonstrably false, the service will be void. The copy of the summons should be actually affixed on the outer door or some conspicuous part of the house where the defendant resides, or carries on business or personally works for gain, in the presence of respectable persons of the area, and not merely left there. Before it accepts service by affixation, the court must satisfy itself that the conditions have been fulfilled.

SUBSTITUTED SERVICE:

Where the defendant evades service, or cannot be served in the ordinary way, or refuses to accept service, or has not been heard of for a long time, and the service cannot be effected in the ordinary manner, the court if it is satisfied of the same can order substituted service. It can only be ordered when conditions warranting it exist and the provisions of rule 20 are strictly complied with. Irregularities in this behalf will be of no consequence when the defendant waives proper notice. Unless all efforts to effect service in the ordinary manner are verified to have failed, substituted service cannot be resorted to. Temporary absence does not amount to evasion, not the absence abroad of the defendant. The record should show the efforts made to effect service personally otherwise service by citation in the newspapers may not be sustainable. Where the circumstances in which the substituted service was effected are demonstrably false, the service will be void, as for instance, where the defendant was abroad and service was effected by publication in a local newspaper. Substituted service is as effective as personal service, and the court may on the failure of the defendant to appear when the suit is called on for hearing proceed with the hearing of the suit ex-parte.
