

## PART B—SERVICE OF PROCESS

(a) *Mode of Service*

[1] 1. (i) Every attempt should be made to effect personal service in the first instance and failing that service on an agent or a member of the family. The process-server should go again and again for this purpose, if there is time before the date fixed for effecting/scrutiny of service, *and obtain for each successive attempt at service, attestation of witnesses different from those who have attested reports of previous attempt (s)*. In other words service in any of the ways enumerated in Order V, Rules 12 to 16 of the Code of Civil Procedure, should be insisted upon and service by affixation as provided in Order V, Rule 17, Civil Procedure Code, should not be allowed till after the day fixed for scrutiny.

Service by affixation not to be made before the date fixed for scrutiny of service.

(ii) As for service by post, Order V, Rule 10 proviso (as added by Punjab amendment) of the Code, provides that where the plaintiff so wishes, the Court may serve the summons in the first instance by registered post (acknowledgement due) instead of in the mode of service laid down in that rule. Order V, Rule 20(1) proviso (added by amendment) now enables the Court to direct the summons to be served by registered post after it has been returned unserved for any reason whatsoever.

Service by post.

(iii) The Service of Process to the other party can also be effected through electronic means where the party has furnished the requisite details.

e-Service

2. Order V, Rule 20 (1), of the Code of Civil Procedure, provides that when the Court is satisfied that the defendant is keeping out of the way for the purpose of avoiding service, or that, for any other sufficient reason the summons cannot be served in the ordinary way, service may be effected by affixing a copy of the summons in some conspicuous place in the Court house, and also in some conspicuous place of the house, if any, in which the defendant is known to have last resided, or carried on business, or personally worked for gain, *or in such other manner as the Court thinks fit*.

Substituted service.

3. It should be noted, in this connection, that it is the plaintiff's duty to use his best endeavours to discover the

Plaintiff's duty before obtaining orders substituted service.

---

[1] Amended/Inserted vide correction slip no. 182 Rules/II.D4 dated 27.11.2018

defendant’s residence and to satisfy the Court that he has done so and that the defendant is evading service or for any other sufficient reason cannot be served in the ordinary way. It is only after all the other prescribed methods of effecting service have been tried and have failed that it is open to the Court to exercise the discretionary power conferred by the concluding words of Order V, Rule 20 (1), of the Code.

Publication in newspaper.

4. The discretionary power alluded to above is frequently exercised by Courts by publication in one or more newspapers of a notice calling upon the defendant to appear. But in many cases this method is quite unsuitable. When for example, the defendant is illiterate or belongs to a class which cannot be expected to read newspapers such notice is obviously useless. In the case of educated persons likely to read newspapers it may be proper to resort to this method, but even in such cases the practice should only be adopted as a last resort.

Publication allowed in approved paper only.

5. (i) Whenever notice is to be published in a newspaper it should be published in newspaper approved by the High Court. A list of approved newspapers is circulated to subordinate Courts periodically.

[1](ii) The notice shall be published in the approved newspaper in the abridged form alongwith link of the website having details of such notice.

Selection of paper to be made by the Presiding Officer.

6. The object of effecting substituted service by advertisement in a newspaper is to inform the defendant that proceedings are pending against him and that he should appear in Court. This object can only be achieved by publication in a newspaper of wide circulation, which is likely to be read by the defendant or the class to which he belongs. The selection of newspapers in which it is proposed to advertise should, therefore, be made by the Presiding Officer himself and not by a clerk of his office.

Preference to vernacular papers printed in the district of the person to be notified.

7. Care should also be taken that such notices are published as far as possible in vernacular papers, vernacular being the language of the subordinate Courts.

---

[1] Inserted vide Correction Slip No. 182 Rules/II.D4 dated 27.11.2018

They should only be published in papers printed in English if there is good reason to suppose that the persons concerned read English papers and are more likely to be reached in that way. Preference should be given to such papers as are printed in the District where the person notified resides; or if no newspaper is printed in that District, to those printed in the District nearest to it, provided such papers have a good circulation and are likely to be read by the defendant or the class to which he belongs.

8. In sending a judicial notice for publication in a newspaper, the Court should, in the covering letter require the manager of the newspaper to send an intimation immediately after publication of notice to the Court and to send, under postal certificate, the copy of paper containing the notice to the party for whose perusal it is intended at the address given in the notice, marking the notice in question with red ink. He should also be required, as proof of compliance with this order, to attach the postal certificate to his bill when submitting the latter to the Court for payment.

Duties of Manager of newspaper.

[1]9. This covering letter for sending the notice for publication should be sent to the Manager of the selected newspaper who will arrange for the publication of the Court Notice in the newspaper. The bill for the publication should be sent by the Manager direct to the Court concerned for payment. The Court shall pay the amount after checking the correctness of the Court Notice published by the Newspaper and the publication charges.

Covering letter to be sent to the Manager of the Selected Newspapers.

10. If it is proposed for any special reasons to advertise in any paper, not on the approved list whether published in the Punjab as elsewhere, a reference should first be made to the High Court to ascertain whether there is any objection to the course proposed.

Advertisements in papers not on the approved list.

---

[1] Substituted vide Correction Slip No. 51/Rules.XI.Z.3, dated 17.03.1977

*(b) Personal attention to service*

General.

1. It has been found by experience that delays in the disposal of civil suits are very often due to the failure of Presiding Officers to pay personal attention to matters connected with the issue and service of processes. The following instructions, must therefore, be strictly observed in future :-

The Judge should watch process of service before date of hearing.

2. Between the date of the issue of process and the date of hearing, Presiding Officers of Court must personally satisfy themselves that service is being effectually carried out and not content themselves with looking into the matter only on the date of hearing.

Court to fix dates for return of process.

3. In order to achieve this object the following procedure shall ordinarily be observed in respect of service of all processes for attendance of parties or their witnesses :-

[1](a) A very near date shall be fixed for the giving of adequate details of the persons to be served. On this date, the Judge shall satisfy himself that the diet money, etc. have been paid and that the name, address and the particulars of the person to be summoned are reasonably sufficient to secure service. If these conditions have been satisfied, process shall be then issued and two dates shall be fixed. The first for the return of the process with a report of the process-serving agency, and the other for the hearing of the case. The interval between the dates of issue and return on the one hand and between the dates of return and hearing on the other, shall in each case leave adequate time for the service of the process. It is not to be left to the discretion of the process service to decide whether he shall effect personal or substituted service.

---

[1] Substituted vide Correction Slip No. 129/113 Rules/II.D.4 dated 14.11.2003.

- (b) The date of the return should be clearly written on the summons and the Nazir should be warned to return the process before the said date.
- (c) A printed slip showing the following particulars should be filled in by the Reader of the Court and pasted below each order for issuing a process against a party or a witness :-

Reader's note  
about service.

- [1](1) The date when address was put in.
- (2) The date on which the summonses were delivered by the Ahlmad to the Nazir.
- (3) The date on which the Nazir delivered the process to the process-server or sent it to any other agent.
- (4) The date of return by the process-server, or agent.
- (5) The date of return by the Nazir.
- (6) The name of the official who is to blame for non-service.

*Note.*-If the interval between the date of return and hearing is sufficient, a second date for return may be fixed.

- (d) Parties should be invited and encouraged to attend in person or by pleader on the date fixed for return of the summons. Whether they do so attend or not, the Presiding Officer should scrutinize the record and pass any order which may be required, such as an order for the issue of a fresh process. Parties should be encouraged throughout to take dasti summons to accompany the process-servers and to render all assistance in their power.

Parties and  
Judge's duty as to  
scrutiny of service  
on date of return.

---

[1] Substituted vide Correction Slip No. 129/113 Rules/II.D.4 dated 14.11.2003.

Judge to take into consideration party's conduct in deciding about adjournment.

- (e) In deciding whether to give a further adjournment when a process is not served, the Presiding Officer will be justified in taking into consideration whether the party asking for an adjournment had complied with the orders of the Court in paying process fees, diet money, etc., and in giving correctly and promptly the names and addresses of the persons to be served.

Process-server's affidavit *re* service of process.

4. A form of affidavit of the process-server which should accompany the return of the summons has been prescribed by the High Court. See Appendix I to this Chapter. Before passing an *ex parte* order the Court should make it a point to see that this affidavit duly filled in, is with the report of the process-server.

*(c) Proof of Service*

Court shall not proceed *ex parte* if summons has not been duly served.

1. No Court can rightly proceed to hear a suit *ex parte* until it has been proved to the satisfaction of such Court that the summons to a defendant to appear has been duly served, that is, has been served strictly in such manner as the law provides.

Process-server's report to be proved by affidavit or examination in Court.

2. Whenever it is necessary, in *ex parte* proceedings, under Order IX, Rule 6, of the Code of Civil Procedure, to have the report of service of summons proved by the affidavit or statement in Court of the process-server he should be ordered by the Court to appear before the proper officer or Court.

Nature of proof of service in different cases.

3. The nature of the proof of service which the Court ought to require in each case, according as it falls under one or other of the various relevant provisions of the Code of Civil Procedure relating to service of summons, may be shortly stated as follows :-

Personal service.

- (i) When the summons or notice is served on the defendant or respondent personally, the service and

the signature of the defendant or respondent on the back of the process should be proved.

- (ii) If the service be made under Order V, Rule 12, on an agent, it should be proved that this person was empowered to accept service, under Order III, Rules 2, 5 or 6, or Order V, Rule 13, of the Code, as the case may be. The party causing the service to be effected must give proof to this effect. It is a matter of which, ordinarily speaking, the serving officer would have no knowledge. Service on agent.
- (iii) If the service be made under Order V, Rule 14, it should be proved in like manner that the summons or notice could not be served on the defendant or respondent in person, and that he had no agent empowered to accept the service and that the person to whom the process was delivered was an agent of the defendant or respondent in charge of the land or other immovable property forming the subject matter of the suit. Service on in-charge of property.
- (iv) If the service be made under Order V, Rule 15, it should be proved that the defendant could not be found or was absent from his residence and had no agent empowered to accept the service, and that the person to whom the process was delivered was an adult male member of his family, and was actually residing with him at the time of such service. It is to be noted that a servant is not a member of the family within the meaning of this rule. Service on adult male member of the family.
- (v) If the service be made under Order V, Rule 17, it should, in like manner, be proved according to the circumstances of the case, either that the persons to whom the summons or notice was tendered refused to sign the acknowledgement, though he was informed of the nature and contents of the document, or that the defendant could not be found or was absent from his residence, and that there was no Service by affixation under Order 5, Rule 17.

agent empowered to accept service, nor any other person on whom the service could be made; and, in either case, that the house, on the outer door of which a copy of the process was affixed, was the ordinary residence or place of business of the defendant at the time when it was so affixed. It is the duty of the Court in such cases to satisfy itself after taking the process-server's affidavit or statement on solemn affirmation and after such further enquiry as may be necessary, that reasonable efforts were made without success to serve the defendant personally, and then declare whether the summons was 'duly served'. Without such a declaration under Order V, Rule 19, the summons cannot be held to be duly served.

Substituted service under Order 5, Rule 20.

(vi) If the service be made under Order V, Rule 20, it should, in like manner, be proved that the house upon the door of which a copy of the process was affixed, was the house in which the defendant last resided or carried on business or personally worked for gain, and that the service was made in all respects in conformity with the order for substituted service which should accompany the process.

Service by registered post under Order 5, Rule 20 A.

(vii) If the service has been effected by registered post under order V, Rule 20 A, an acknowledgment purporting to be signed by the defendant or his agent or an endorsement by a postal employee that the defendant or the agent refused to take delivery may be deemed by the Court issuing the summons to be *prima facie* proof of service.

Service at address given by parties.

(viii) If service has been effected under Order 8, Rule 12, read with Order 7, Rule 22 (as framed by the High Court), it should be proved that the defendant was not found at the address given by him for service, that there was no agent or adult male member of his family on whom service would be made, that a copy of the summons or notice was affixed on the



outer door of his house, and that on his failure to appear on the fixed date, summons or notice was sent to the registered address by registered post for the next date.

- (ix) If the service be made under Order XXX, Rule 3, it should be proved that the summons or notice was served upon any one or more of the partners of the firm concerned, or at the principal place at which the partnership business is carried on within India, on any persons having, at the time of service, the control or management of the partnership business there. In the case of a partnership which has been dissolved, the summons shall be served on every person within India, whom it is sought to make liable.

Service on a firm.

4. The Court should in all cases obtain the proof which is above described as requisite by the verified statement, recorded in writing, of the person by whom the service was effected, or, if deemed necessary, by the examination in Court, as witnesses, of such persons as the Court may think fit to examine.

Proof of service is imperative.