

SERVICE OF PROCESSES IN CIVIL CASES

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1(A). Object of service of processes : Issue of processes implies doctrine of audi alteram partem. Issue of process is not necessary in all cases. Object of the provisions u/o. 5 CPC is to ensure presence of the defendant. If the defendant is having knowledge of the suit and participating through counsel, he cannot claim thereafter that summons were not served upon him and thus the proceedings are vitiated. See : **Sri Nath Agrawal vs. Santosh Kumar, AIR 1981 All 400.**

1(B). Notice of hearing to other side mandatory even in writ petition under article 226 : Principles of natural justice demand that the parties to proceedings must be heard before passing any order. No court can pass order against a party without hearing and giving such party opportunity of hearing. Party to any proceeding has legitimate right to raise objection. He should at least be heard and his views/stand taken into consideration. In the present case, the High Court had passed order under Article 226 of the Constitution without providing opportunity of objection and hearing to the other side, hence the order of the High Court was set aside by the

Supreme Court and without deciding the case on merits, it was remanded to the High Court for reconsideration with the direction to dispose of the matter within six months. **See: Johra and others Vs State of Haryana and others (2019) 2 SCC 324 1(C).** **Knowledge of the proceedings proposed in the notice sufficient to take action even if the notice was not served** : There lies a distinction between non-service of notice and a notice though served but with some kind of procedural irregularities in serving. In the case of former category of cases, all consequential action, if taken would be rendered bad in law once the fact of non-service is proved whereas in the case of latter category of cases, the consequential action, if taken would be sustained. It is for the reason that in the case of former, since the notice was not served on the person concerned he was completely unaware of the proceedings which were held behind his back thereby rendering the action 'illegal' whereas in the case of latter, he was otherwise aware of the proceedings having received the notice though with procedural irregularity committed in making service of such notice on hi. If a person has a knowledge of the action proposed in the notice, then the action taken thereon cannot be held as being bad in law by finding fault in the manner of effecting service unless he is able to show substantial prejudice caused to him due to procedural lapse in making service on him. It, however, depends upon individual case to case to find out the nature of procedural lapse complained of and the resultant prejudice caused. The case in hand falls in former category of case. See : **Prabin Ram Phukan Vs. State of Assam, (2015) 3 SCC 605 (para 25).**

2. **Notices to be only in writing (Sec. 142 CPC)** : All orders and notices served or given to any person under CPC shall be in writing.

3. **Modes of Service (O. 5, rule 9, 9-A, 10 CPC)** : The different modes of service of processes are as under :

- (1) Process server
- (2) Special messenger
- (3) Amin

- (4) Advocate Commissioner
- (5) Registered post & Speed post
- (6) Publication in News paper
- (7) Courier Services (If approved by High Court)
- (8) Fax message
- (9) Electronic mail service
- (10) Dasti Summons by the party himself

4. Forms and contents of processes (Rule 102 & 103, G.R. Civil) : “There shall be two types of the forms of processes, one printed on white paper to be used in ordinary cases and the other printed on pink paper to be used in urgent cases. Where there are printed forms available for any process, such forms shall invariably be used. Where there is a prescribed form but no printed copies are available, a process shall be written in the prescribed form. In cases where there is no prescribed form, a standard form, if possible, shall be modified to meet the requirements of the particular case. Before issuing a process the issuing officer shall satisfy himself that such description of the person for whom the process is intended or in respect of whom or whose person or property it is issued, is entered therein as will enable the process-server without risk of mistake to identify such person or property. The name, father’s name, occupation, district, mohalla (if any), village or town shall be set forth in the process. Where such description does not appear in the application of the person moving the court to issue the process or in the record, the orders of the court shall forthwith be taken by the issuing officer.”

5. Expenses or postage on processes (Sec. 143 CPC & Rule 105, G.R. Civil) : Expenses/ postage etc. for the issuance of a process in civil cases shall be ordinarily borne by the party applying for issue of the process and paid in court fee – stamps.

6. Duty of Office Clerk in examining the processes submitted by parties for issuance (Rule 103, 105 of G.R. Civil) : Before issuing the processes to the parties, witnesses, counsel or any other person, a duty has been cast under Rule 103 & 105 of the G.R. Civil upon the clerk in the office of the court to examine the

requirements or correctness and the expenses / postage etc. of the processes applied for issuance.

7. Personal Service when to be held [O. 5, r. 16, 18 CPC & rule 138 G.R.

(Civil) : Where the process server has not given the details of the persons who had identified the addressee and the witnesses of service of summons and the process server had also not filed his affidavit in support of his report regarding service of the process, the summons cannot be presumed to have been served personally on the addressee. See :

1. **Munni vs. Kshetra Pal Singh, 2004 All.L.J. 3852 (All)**

2. **Shiv Charan Singh vs. X ADJ, Aligarh, 2005 (2) AWC 1042 (All)**

Rule 138, G.R. (Civil) : A process should be served with utmost care. One copy is to be delivered to the person named in the summons or to any adult member whether male or female of the family of the person or such other person as may be authorized to receive it for him. On the other copy must be entered the acknowledgement of the person served attested by the neighbours after explaining the contents of the process to him. The process server shall prepare his report on the spot at the time of executing the process.

8. Effect of refusal by addressee to put his sign or thumb impression on

summon when sought to be served : Where the addressee had refused to put his sign or thumb impression on summons when the same was handed over to him by the process server and the addressee had also refused to acknowledge the registered service, it has been held by the Supreme Court that the addressee was not willing to accept notice and the ex-parte decree was rightly passed against him. See : **Bhabia Devi versus Permanand Pd. Yadav, AIR 1997 SC 19 19.**

9. **Service of process on adult member of family (O. 5, r. 15 CPC)** : Where the defendant is absent from his residence at the time of service, the summons may be served by the serving officer on any adult member of his family whether male or female.

10. **Non compliance of the provisions of Order 5, rule 17, 19 CPC & Rule 138 & 139, G.R. Civil** : In case of non observance of the procedure laid down u/o. 5, rule 17, 19 CPC the service of summons cannot be held proper and sufficient. See : **Shah Ahetsham Mostafa Faridi vs. Smt. Radhika Devi, 1991 (2) ARC 305 (All)**

Rule 139, G.R. Civil : If the summons is affixed on the outer door of a house an acknowledgement of this fact is to be taken from two respectable persons of the locality in a town or from Headmen, Lekhpals, Chowkidars or neighbours in a village.

11. **Service by special messenger (Rule 135, G.R. Civil)** : A process may be executed by a special messenger. Court may direct emergent service of process by fixing a special fee to be paid to the special messenger by the party applying for service by special messenger.

12. **Dasti Summons (O. 5, rule 9-A CPC & O. 16, rule 1 CPC)** : Court may permit the parties to serve the dasti summons on the parties or witnesses on their own.

13. **Incomplete, false or fictitious registered address & the duty of court (O. 6, rule 14-A (5) & (8) CPC** : Where the registered address of a party is discovered by the court to be incomplete, false or fictitious, the court may, either on its own motion, or on the application of any party, order : -

- (a) in the case where such registered address was furnished by a plaintiff, stay of the suit, or
- (b) in the case where such registered address was furnished by a defendant, his defence be struck out and he be placed in the same position as if he had not put up any defence.

The court may direct the service of process at any other address, if for any reason, it thinks fit to do so.

14. Diary of process server (Rule 134, G.R. Civil) : Every process server shall keep a diary, containing a copy of this rule on the first page, in the prescribed form wherein shall be recorded day by day in column 2 the time, period and purpose of his attendance in the Nazir's office or in court, the duties performed, places visited by him together with the time spent therein, and stopping place for the night when away on duty from his headquarters; and in the column 3, the signature of the Nazir, or of a court, or of the Lekhpal or other respectable person of the places visited, as the case may be, in attestation of the contents of column 2.

15. Identity of the person served and the duty of process server (Rule 138, G.R. Civil) : It should be impressed upon the process servers that it is their duty and not of the party concerned to find out the person on whom the process is to be served. It is not necessary for the party to accompany them for identifying that person. They should seek the assistance of the village headman, Lekhpal, Chaukidar, etc. to find out person on whom the process is to be served.

In the case noted below, it has been held by the Allahabad High Court that if the plaintiff, in contravention of Rule 138, G.R. Civil, had himself accompanied the process server for identifying the defendant who had refused to accept the summons in presence of two witnesses, and the name and address of the persons identifying the defendant and witnessing the delivery or tender of the summons, time etc. were lacking in the report of the process server, the summons was rightly held not served in accordance with law. See : **Smt. Munni vs. Kshetrapal Singh, 2004 ALJ 3852 (All)**

16. Stringent action against process server on fake reports : Process serving wing in the district is under the control of the Central Nazir who works under the guidance and supervision of the District Judge or any other subordinate Judge who is popularly known as officer-in-charge, Nazarat. It is common knowledge that some members of the process serving staff are not discharging their duty sincerely and honestly. There are quite a number of instances in which a fictitious service is effected in collusion with the plaintiff or the applicant. The defendant/opposite party totally remains unaware of any proceeding having been launched against him and

when the mischief is accomplished in the form of an ex-parte decree or order, the affected person rushes to the court to get the ex-parte decree or order set aside. Sometimes, the defendant opposite parties, in their clever move get the process returned as unserved and the process server readily falls prey to their designs for obvious reasons. The complaints are often made against the process servers of getting mixed up with one of the parties to the case and on that account not getting service effected. The District Judge and His deputy, who is designated as officer-in-charge Nazarat, have to be vigilant in this sphere. Random checking of the “personal service” as well as service by refusal has to be made by these officers. It should also be ensured that the service is effected within the period specified and the process servers, who effect service personally in more than 80% of cases, should be commended while the others who fall short of the said target be contemned and taken to task. Some incentive may also be provided to the process servers are getting personal service effected on a number of persons in a month. The High Court may in its administrative side, consider the feasibility of issuing necessary instructions for the constitutions of a summons cell in every district which may be put under the direct charge of an officer whose duty shall be to ensure timely and effective service. To obviate delay in the matter if effecting service because of neglect, lethargy or other extraneous considerations on the part of the process servers, it is necessary that there should be proper administrative supervision of their work. In those cases where the court as a result of enquiry comes to the conclusion that the process server has made a fake report, It should take stringent and prompt action against the process server concerned. Such action undoubtedly would act as a deterrent for other process servers making false reports. See : **Siddhartha Kumar vs. Upper Civil Judge, Senior Division, Ghazipur, 1998 (1) AWC 593 (All—D.B.)**

17. Presumption of service of registered postal article on endorsement Of Postman as to :

- | | |
|---------------------------|----------------------|
| (1) Unclaimed, | (2)Not Met, |
| (3) Not Available, | (4)Premises Locked, |
| (5) Party Not At Station, | (6)Arrival Not Known |

If the postman has made any endorsements as noted above on the postal article, the court may in view of the provisions u/s 27 of the General Clauses Act, 1897 presume that the registered postal article has been served upon the addressee.

See :

- 1a. **Smt. Vandana Gulati Vs. Gurmeet Singh, AIR 2013 All 69**
1. **Ghulam Waris Khan vs. Lt. Col. Ajeet Singh 2008 (71) ALR 13B (All – L.B.)**
2. **D.Vinod Shivappa vs. Nanda Belliappa, (2006) 6 SCC 456**
3. **Jagmohan vs. State of U.P., 2005 (51) ACC 74 (All)**
4. **Prem Chand Vijai Kumar vs. Yashpal Singh, (2005) 4 SCC 417**
5. **V.Raja Kumari vs. P. Subbarama Naidu, (2004) 8 SCC 774**
6. **Dalmia Cement (Bharat) Ltd. vs. Galaxy Traders, (2001) 6 SCC 463**
7. **K. Bhaskaran vs. Sankaran Vaidhyan Balan, (1999) 7 SCC 510**
8. **Sadanandan Bhadrans vs. Madhavan Sunil Kumar, (1998) 6 SCC 514**

18. Presumption of service of registered postal article on refusal by addressee [O. 5, rule (9)(5) CPC & Sec. 27, General Clauses Act, 1897 & Sec. 114, illustration (f) Evidence Act & Clauses 192, 193 of Postal

Manual : (A) According to the provisions u/o. 5, rule (9)(5) CPC, Sec. 27 of the General Clauses Act, 1897, Sec. 114, illustration (f) Evidence Act & clauses 192, 193 of Postal Manual if the addressee refuses to accept the postal article sent through registered post, the notice must be presumed to have been served. Mere statement by the addressee on oath denying tender and refusal to accept delivery is not sufficient to rebut the presumption. See :

1. **Om Prakash vs. Vaish Dharmashala Sabha, 2007 (67) ALR 356 (All)**
2. **Nanhey Khan vs. 1st ADJ, Farrukhabad, 2000 (39) ALR 293 (All)**
3. **Dharam Vir vs. Ram Chandra, 1998 (1) AWC 2(16) (NOC) Allahabad**
4. **Jagdish Singh vs. Natthu Singh, AIR 1992 SC 1604**
5. **Anil Kumar vs. Nanak Chandra Verma, AIR 1990 SC 1215**
6. **Ganga Ram vs. Smt. Phulwati, AIR 1970 All 446 (F.B.)**

(B) Presumption of service of registered postal article :

Where letter to party was sent by registered A.D. but the party denied receipt of the same, as per section 27 of the General Clauses Act, 1897 it was the responsibility of the party/addressee to prove by adducing evidence of official of post office that the said letter had not been delivered to him. See : **2011 CrLJ 705 (SC)**

19. **Non-availability of addressee** : If the addressee is not available at his residence/address when the registered notice was sought to be delivered to him by the postman and the same was returned with the endorsement by the postman that the addressee was not available at his residence/address, no responsibility rests on the sender or the postman to arrange that the notice is served. The postman cannot be equated with the process server of the court. See : **M/s. Madan and Co. vs. Wazir Jaivir Chand, AIR 1989 SC 630.**

20. **Intimation by post office of the postal article** : If the notice is correctly addressed and despite the intimation by the post office, the notice is not accepted by the addressee and is returned unserved, the presumption of law u/o. 5, r. 9(5) CPC, Sec. 27, General Clauses Act, 1897 & Sec. 114 (e), (f) Evidence Act is that the notice has been served on the addressee. See : **P.T. Thomas vs. Thomas Job, (2005) 6 SCC 478.**

21. **Addressee when contradicting the endorsement of the postman** : Where the addressee was contradicting the service of process through registered post u/o. 5, r. 9 CPC by saying that the endorsement made by the process server/postal peon was not correct but no material was placed before the court to show that the endorsement made by the process server was false or erroneous, it has been held by the Supreme Court that the service on the addressee would be presumed to have been made u/o. 5, r. 9 CPC. See : **Indu Bhushan vs. Munna Lal, AIR 2007 SC 1114**

22. **Declaration of service of registered postal article must u/o. 5, rule 9(5) CPC** : Presumption of service u/o. 5, rule 9(5) of the CPC regarding the refusal etc. to accept delivery or non return of the registered postal article within 30 days can be drawn only when the court is satisfied to declare : -

- (a) That the postal article was correctly addressed;
- (b) That the postal article was prepaid;
- (c) That the acknowledgement was attached, See :

1. **Shiv Charan Singh vs. X ADJ, Aligarh, 2005 (2) AWC 1042 (All)**

2. **State of U.P. vs. Ram Prasad, 1997(1) ARC 328 (All—D.B.)**

23. **Postal Certificate** : (A) Where notice was said to have been sent to plaintiff by defendant to get the sale deed executed in compliance with the agreement for sale and Postal certificate was produced, but copy of the notice allegedly sent to plaintiff was neither produced nor proved, it has been held that had any notice been really sent, the same should have been sent through the registered post and the copy of the notice should also have been produced and proved and adverse inference was drawn against the defendant. See : **Vishwa Nath Singh vs. Jogendra Singh, 2005 (2) AWC 2014 (All—L.B.)**

(B) **Presumption of service under postal certificate** : Where notice was sent under certificate of posting & copy of notice alongwith postal certificate was produced in evidence, it has been held that service can be presumed u/s 114 of the Evidence Act. See : **Samitri Devi v. Sampuran Singh, AIR 2011 SC 773.**

24. **Examination of postman** : Postman need not be examined regarding his endorsement on registered postal article as there is always a presumption of service of registered notice/letter u/o. 5, rule 9(5) CPC. See : **Krishna Chand vs. ADJ, Gorakhpur, 2006 (63) ALR 629 (All)**

25. **Publication of notice in news-paper or substituted service [O. 5. r. 20 CPC r/w. rule 141 G.R. (Civil)]** : The court cannot automatically grant the application for substituted service through publication in the news paper without taking steps for service by ordinary procedure as laid down u/o. 5, rules 9, 12, 15 & 17 CPC, it must be kept in view that substituted service has to be resorted as the last resort when the defendant cannot be served in the ordinary way and the court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way. See : **Yallawva vs. Shantavva, AIR 1997 SC 35**

26. Service through publication to be ordered only when all other modes are already resorted to and other methods of service have become impracticable [O. 5, rule 20 CPC & rule 141 G.R. (Civil)] : According to O. 5, rule 20 CPC and rule 141 of the G.R. (Civil), service of notice through publication in the news-paper can be resorted to only when all other modes of service have already been resorted to but the same have become impracticable. See :

1. **Payal vs. Capt. Ashok Kumar Jindal, (1992) 3 SCC 116**
2. **Rai Prem Chandra vs. Obeetee Pvt. Ltd., 1991 AWC 238 (All—D.B.)**

Rule 141, G.R. Civil : Recourse to the mode of substituted service by publication in a newspaper shall be had only when service by any other method is considered impracticable. A careful discretion shall be exercised in selecting the newspaper in which the publication is to be made under Order 5, rule 20, C.P.C. Only a daily newspaper circulating in the locality in which the defendant to be served is last known to have actually and voluntarily resided or carried on business or personally worked for gain, shall be selected. No summons or notice shall be published in a magazine.

27. When the addressee does not read news-paper : Once a summons is published u/o 5, rule 20 CPC in news-paper having wide circulation in the locality, it does not lie in the mouth of the person sought to be served that he was not aware of such publication as he was not reading the said news-paper. See : **Sunil Poddar vs. Union Bank of India, AIR 2008 SC 1006**

28. Publication of Notice in News paper : Personal Liability of Presiding Officer (Rule 141, G.R. Civil & C.L. No.2, dated 1.8.1907 : Presiding officers of subordinate courts shall make every possible effort in the first instance to secure the personal service of summonses on parties and witnesses. When this method of service proves ineffectual and the court is satisfied, as required by Order 5, rules 19 and 20 (1) of the Civil Procedure Code (now Order. 5, rule 9 CPC) that the defendant

is keeping out of the way for the purpose of avoiding service, substituted service by affixing a copy of the summonses in the court house and on the house of the defendant should be attempted. It is only when no other recourse remains that recourse should be had to service by means of notification in the press or the Gazette. The notification should appear in such publication as is most likely to fall into the hands of person to be served. It is, therefore, obvious that, **except in a very few cases, notification published in the Gazette are valueless.** With regard to the public press a careful discretion should be exercised in selecting the paper in which the publication is to be made. Such papers only should be chosen as are likely to be read by the person to be served, or by his friends. **When courts are inspected the inspecting officer should examine cases in which substituted service has been effected and note how far these instructions have not been followed.**

29. Vakalatnama and requisites thereof : In the case of **Uday Shankar Triyar vs. Ram Kalewar Prasad Singh, 2006(1)ARC 1(SC) (Three Judge Bench)**, the Supreme Court, expressing concern in regard to the manner in which defective vakalatnamas are routinely filed in courts, has clarified the necessity of filing fresh vakalatnamas at different stages of proceedings like original suits, appeals, revisions, executions and misc. proceedings and also the manner of filing the vakalatnamas as quoted below : -

“Vakalatnama, a species of power of Attorney, is an important document, which enables and authorizes the pleader appearing for a litigant to do several acts as an agent, which are binding on the litigant who is the principal. It is a document which creates the special relationship between the lawyer and the client. It regulates and governs the extent of delegation of the authority to the pleader and the terms and conditions governing such delegation. It should, therefore, be properly filled, attested, accepted with care and caution. Obtaining the signature of the litigant on blank vakalatnamas and filling them subsequently should be avoided. The Supreme Court took judicial notice of the following defects routinely found in vakalatnamas filed in courts :

- (1) Failure to mention the name/s designation or authority of the person executing the vakalatnama and leaving the relevant column blank.
- (2) Failure to disclose the name, designation or authority of the person executing the vakalatnama on behalf of the grantor (where the vakalatnama is signed on behalf of a company, society or body) either by affixing a seal or by mentioning the name and designation below the signature of the executant (and failure to annex a copy of such authority with the vakalatnama).
- (3) Failure on the part of the pleader in whose favour the vakalatnama is executed to sign it in token of its acceptance.
- (4) Failure to identify the person executing the vakalatnama or failure to certify that the pleader has satisfied himself about the due execution of the vakalatnama.
- (5) Failure to mention the address of the pleader for purpose of service (particularly in cases of outstation counsel).
- (6) Where the vakalatnama is executed by someone for self and on behalf of someone else, failure to mention the fact that it is being so executed. For example, when a father and the minor children are parties, invariably there is a single signature of the father alone in the vakalatnama without any endorsement/statement that the signature is for self and as guardian of his minor children. Similarly, where a firm and it is partner, or a company and it's Director, or a Trust and it's trustee, or an organization and it's office bearer execute a vakalatnama, invariably there will be only one signature without even an endorsement that the signature is both in his/her personal capacity and as the person authorized to sign on behalf of the corporate body/firm/society/organization.

- (7) Where the vakalatnama is executed by a power-of-attorney holder of a party, failure to disclose that it is being executed by an attorney holder and failure to annex a copy of the power of attorney.
- (8) Where several persons sign a single vakalatnama, failure to affix the signatures seriatim, without mentioning their serial numbers or names in brackets as many a times it is not possible to know who have signed the vakalatnama where the signature are illegible scrawls.
- (9) Pleaders engaged by a client, in turn, executing vakalatnamas in favour of other pleaders for appearing in the same matter or for filing an appeal or revision. It is not uncommon in some areas for mofussil lawyer to obtain signature of a litigant on a vakalatnama and come to the seat of the High Court and engage a pleader for appearance in a High Court and execute a vakalatnama in favour of such pleader.
- (10) The abovenoted routine defects are found as registries/offices do not verify the vakalatnamas with due care and caution they deserve, such failure many a time leads to avoidable complications at later stages. The need to issue appropriate instructions to the registries/offices to properly check and verify the vakalatnamas filed requires emphasis.
- (11) Filing a fresh vakalatnama with the memorandum of appeal etc. will always be convenient to facilitate the processing of the appeal by the office.

30. Service of Notice through counsel (O. 3, rule 5 CPC & Rule 138, G.R. Civil : A process served on a pleader of any party or left at his office or residence shall be presumed to have reached the party whom the pleader represents.

31. Notice to counsel means notice to party himself (O. 3, rule 5 CPC) : According to O. 3, rule 5 CPC, notice given to counsel is for all purposes a notice given to the concerned party whom he represents. Mere fact that the counsel on being served, desires the court to send notice to the party concerned, does not change

the position. A notice served on counsel is as good service as upon the party himself.

See :

1. **Brijlal vs. VIIth ADJ, Allahabad, 1995 (13) LCD 62 (All)**
2. **Sheo Ramdas Chela vs. Subhash Chandra, 1999 (36) ALR 324 (All)**

32. “No Instruction” endorsement by counsel : Mere fact that the counsel engaged by the party made an endorsement on the notice sent to him that he had no instructions from his client does not terminate his authority and he continues to be a counsel for the party. See :

1. **Jyoti Prasad vs. Punjab National Bank, AIR 1963 All 374**
2. **Narendra Kumar vs. ADJ, 2007 (67) ALR 530 (All)**

33. “No Instruction” endorsement by counsel & necessity of fresh notice to party : Where the court issued notice to the counsel engaged by defendant but the counsel failed to appear and plead for the defendant by recording endorsement of “no instruction” on the notice with the result that the case was directed to proceed ex-parte and ultimately the suit was decreed ex-parte against the defendant and the counsel had not informed the defendant regarding his non-appearance for him in the court and the court had also not issued any fresh notice to the defendant under these facts and circumstances and the defendant came to know of the ex-parte decree only when he approached the counsel, it has been held by the Supreme Court that the defendant cannot be said to be careless and negligent and ex-parte decree was found liable to be set aside. In view of the provisions u/o. 3, rule 4(2) CPC, a mere statement by counsel that he has no instructions from his client, does not terminate his authority unless he submits the same in writing and obtains permission of the court. See :

1. **Malkiat Singh vs. Joginder Singh, AIR 1998 SC 258**
2. **Ashok Kumar Dhiman vs. Smt. Chandrawati Mehta, 1996 (27) ALR 6 (All)**

34. Counsel deemed to represent the party in court unless withdraws from the case under order of court (O. 3, rule 4 CPC) : According to O. 3, rule 4 CPC a counsel is deemed to continue to represent the party in the court unless he formally withdraws from the case under order of the court. See :

1. 1996 (1) ALR 6 (All)
2. 1996 (1) ARC 76 (All)
3. 1992 (2) ARC 634 (All)

35. Process to Government (O. 27, rule 4 CPC) : The Government pleader (DGC/ADGC- Civil) in any Court shall be the agent of the Government for the purpose of receiving processes against the Government issued by such court.

36. When no order by court for service through any specific mode : When the summons was sent through registered post without the order of the court, it has been held that the summons cannot be deemed to have been served as per law. See :

- 1- Shiv Charan Singh vs. X ADJ, Aligarh, 2005 (2) AWC 1042 (All)
2. Shah Ahetsham Mostafa Faridi vs. Smt. Radhika Devi, 1991 (2) ARC 305 (All)

37. Receipt of case by transfer & information to parties or their counsel (Rule 89-A, G.R. Civil) : If the transferor court has not intimated the parties or their counsel of the transfer of the case, the transferee court must not proceed with case unless the information of the transfer of the case, date fixed and the proceeding to be undertaken have been intimated to the parties or their counsel.

38. Process to MPs & MLAs : The relevant Circular Letter and the provisions in G.R. (Civil) regarding service of processes on MPs & MLAs are as under :

(A) Rule 121 G.R. (Civil) : No process shall be served upon a member of Parliament or the Legislature while he is within the precincts of the House of Parliament or Legislature, as the case may be, nor shall it be served through the presiding officer or the Secretariat concerned. It shall be served direct upon the member outside the precincts of the House of Parliament, or legislature, as the case may be.

(B) C.L. No. 20/2007 dated 11.5.2007, C.L. No. 4/VIIIb-28, dt. 11.9.1953, C.L. No. 16/VIII-28, dt. 20.3.1968, C.L. No. 32/VIII-26G, dt. 7.5.1984 & C.L. No. 3/VIIIe-24/Admn. (G-2), dt. 31.1.1993 : courts should not attempt to serve summonses upon any MP/MLA through the presiding officers or through Secretariat concerned while the summonses should be served direct upon the MPs/MLAs outside

the precincts of the house of Parliament or legislature, as the case may be i.e. at their residence or at some other place, as required by the rules.

39. Service of process on public officers : Or. 5, r. 27 CPC & Rules 115, 116, 117, 118, 119, 120 G.R. Civil : A summons/notice to a public officer, as defendant or as witness, shall ordinarily be sent for service to the head of the office in which he is employed. For service on gazetted officers in the State of U.P. the list given in appendix-3 shows in column 2 the authority through whom summons should be served.

40. Service of process on soldiers, sailors or airmen : Or. 5, rule 28 CPC as amended in U.P. since 5.3.1927 & Rule 115, G.R. Civil : A summons to an officer in the Military, Naval, or Air Forces of the Union of India, as defendant or as witness, shall be sent direct to him for service and a summons to a soldier, sailor or airman, as defendant or as witness, shall be sent for service to his Commanding Officer. In such cases sufficient time shall be given to admit of arrangements being made for the relief of the person summoned.

41. Prisoner's process & Service thereof (O. 5, r. 24 CPC) : A process to a person in prison shall be served through the officer-in-charge of the prison.

42. Process sent to other district or state for service (O. 5, r. 21 CPC & r. 102 G.R. (Civil) : A process in other district or in other state may be sent and served as per the provisions u/o. 5, r. 21 and 23 CPC.

43. Language of process sent to other district or other state (Rule 102-f G.R. (Civil) : Rule 102-f of the G.R. (Civil) provides that where a process is sent to the court of a district of another state where a different language is in ordinary official use, a translation, certified by the transmitting court to be correct, into such other language may also accompany the process. (1) G.L. No.1902/35(a)-1(7), dated 9.3.1921, (2) C.L. No. 25-d, dated 19.3.1959 provide that ordinarily every process shall be written in the court language. But where a process is sent for execution to a

court where the court language is different it shall be written in English and shall be accompanied by a letter in English requesting its execution. In cases where the return of service is in a language different from that of the district from which it is issued it shall be accompanied by an authorized English translation.

44. (A). Service of processes in foreign countries (O. 5, r. 25 CPC as substituted in U.P. w.e.f. 29.3.1958 & 14.4.1962) : “Where the defendant resides out of India and has no agent in India empowered to accept service, the summons, unless the Court otherwise directs, be addressed to the defendant at the place where he is residing and sent to him by registered post if there is postal communication between such place and the place where the Court is sitting. Unless the cover is returned undelivered by the post office on account of want of proper address or other sufficient reason, the summons may be deemed to have been delivered to the addressee at the time when it should have reached him in the ordinary course.”

(B). Rule 112, G.R. Civil : A process meant for service in foreign or Commonwealth countries shall be sent through the High Court to the Ministry of External Affairs and Commonwealth Relations, Government of India, in accordance with such directions as may be issued from time to time. Provided that where in a foreign territory Political Agent has been appointed or Court has been established in accordance with Order V, Rule 26 CPC, the process can also be sent direct by registered post or otherwise to such Political Agent or Court for service.

(C). C.L. No. 33/VIII-b-16, dated 25.2.1970 : Indian Courts can send their summons for service on **defendant residing in Pakistan, to Pakistani Courts having jurisdiction** in the place where the defendants reside. The summons should be **English**.

(D). Rule 113, G.R. Civil : The following directions shall be carefully complied with when any processes are to be issued for service in foreign countries (i.e., a State or Country outside the Union of India :

- (a) They shall be drawn up in proper form and typewritten. Where printed forms are not used, they shall be type-written on good durable paper.

- (b) They shall be written in English and shall be legible. Such summonses etc., shall not be signed by the Munsarim but by the presiding officer of the court issuing them, and he shall satisfy himself that the documents are correctly addressed and properly sealed. This matter shall not be left to the parties and the Munsarim.
- (c) The names and addresses of the individuals upon whom a process is to be served shall also be stated in the forwarding letter accompanying the process.
- (d) All documents not in English shall be accompanied by their translation in English and in addition where the person upon whom the service is desired, is not a British subject, by a translation into the language of the country concerned.

In case of **Iran** full translation into Persian shall accompany all judicial documents including summonses and notices. If, however, this be not possible necessary fee at the rates given below shall accompany such documents for their translation and certification.

- (i) Fees for making or verifying a translation of a document for every 100 words or fraction thereof exclusive of fee for certificate, Rs.7.37 plus 25 per cent=9 shilings 6 pence.
- (ii) Fees for granting any certificate not otherwise provided for, if not exceeding 100 words exclusive of fee for drawing Rs. 10 plus 25 percent=12 shilings 6 pence.

NOTE - Bankers draft either in sterling or in rupees should be sent for the calculated fees chargeable.

- (e) The returnable date to be specified in the documents shall be so fixed as to allow sufficient time for execution and return of the documents to India before the date fixed for the next hearing of the suit. In no case shall the returnable date be fixed at less than 3 months after the date on which the documents are finally dispatched to the High Court. In the

case of **Iran** the period shall ordinarily be not less than **six months** and in case of **Thailand not less than eight months**.

(E). **Rule 114, G.R. Civil** : (1) Where a process is issued to any court outside India, the court issuing the process shall require the party at whose instance the process is issued to pay in **cash (and not in court-fee stamps)** such fee for service as is required by the court to which the process is to be sent and shall transmit the same to such court, together with, in the case of summons to a witness, reasonable traveling and other expenses.

(2) Similarly a process issued by any such court shall only be served upon receipt, of the process-fee chargeable under rule 365 Chapter XIII and of the expenses prescribed by Rule 105-A. The process-fee thus received shall be expended in the purchase of court-fee stamps to be affixed to the process.

NOTE- For approximate cost for the execution of letters of request, commission etc. in foreign countries, see Circular Orders of the High Court, 1976 Edition. (C.L. No. 85/VIII-b-31, dated 7.10.1966)

(F). **C.L. No. 17/2009, dated 28.4.2009 : Guidelines for issuing summons/judicial processes in the matters of diplomats of foreign embassies situated in India** : “All the Courts of the State of U.P. are directed to observe the provisions made under **Article 31 of the Diplomatic Relations (Vienna Convention) Act, 1972** which provides immunities & privileges available to diplomats in judicial matters and also the procedure to be adopted in service of judicial processes to diplomats, in case deemed necessary. In matters other than those covered under the diplomatic immunity, the judicial process can be served through the Ministry of External Affairs and not directly by the courts.”

(G) **Language of process sent to foreign country for service (Rule 113 G.R. (Civil))** : Rule 113 of the G.R. (Civil) provides the detailed guidelines regarding the language of the process and the documents annexed therewith to be sent to foreign countries for service.

45. Process received from foreign countries (Rule 133, G.R. Civil) : A process received for service from foreign courts shall be shown in red-ink in the register of processes; and the Central Nazir or Nazir shall place the register once a week before the Munsarim of the District Judge's court or the Munsarim of his court, as the case may be, who shall mark the last entry in the register and put his initials thereto indicating that he has checked all the entries and issued necessary orders for obviating delay.

46. Warrant of arrest of public servant or of witness (O. 16, rule 10 CPC & Rule 120, G.R. Civil) : No warrant of arrest shall ordinarily be executed against any Government servant until notice of the intended arrest has been given to the head of his office.
