LAW COMMISSION OF INDIA

ONE HUNDRED FORTIETH REPORT

ON

NEED TO AMEND ORDER V. RULE 19A OF THE CODE OF CIVIL PROCEDURE, 1908, RELATING TO SERVICE OF SUMMONS BY REGISTERED POST WITH A VIEW TO FORECLOSE LIKELY INJUSTICE

1991

Tel. No. Off. 38 44 75

LAW COMMISSION
GOVERNMENT OF INDIA
SHASTRI BHAWAN
NEW DELHI-110001

JUSTICE M. P. THAKKAR
Chairman

D.O. No. 7(7)/91-LC(LS)

April 19, 1991.

Dear Minister,

Re : Presentation of 140th Report.

Forwarded herewith please find the 140th Report of the Law Commission of India encaptioned;

"NEED TO AMEND ORDER V. RULE 19A OF THE CODE OF CIVIL PROCEDURE, 1908, RELATING TO SERVICE OF SUMMONS BY REGISTERED POST WITH A VIEW TO FORECLOSE LIKELY INJUSTICE"

Yours sincerely,

Sd/-

(M. P. THAKKAR)

Dr. Subramaniam Swamy,
Minister of Law and Justice,
Government of India,
Shastri Bhawan,
New Delhi.

Encl. : 140th Report.

CONTENTS

CHAPTER I

INTRODUCTORY

1·1 *Perspective.*—The Law Commission of India has *suo motu* taken up the question of amendments needed in regard to the provisions concerning service of summons by registered post on realising that miscarriage of justice has been occasioned in the working of concerned provision.

1·2 *The Problem.*—By way of a brief statement of the problem, it may be mentioned that under Order V. Rule 19A of the Code of Civil Procedure, the court is required to issue a summons for service by post, in addition to personal service. So far as service by post is concerned, the summons is sent by registered post acknowledgment due, and it is provided that once the acknowledgment purporting to be signed by the defendant (or the agent) is received by the court or the postal article containing the summons is received back by the court with endorsement by the addressee of refusal to take delivery, the court "shall declare" that the summons had been duly served. Experience of the working of the law relating to service of summons by registered post embodied in Order V, rule 19A of the Code of Civil Procedure as it stands at present, has revealed a number of instances where injustice has been occasioned to a litigant in as much as the concerned provision enjoins to the effect that if an article containing the summons is received back with the endorsement "refused", the court *"shall"* declare that the summons had been duly served. No discretion is left in the Court as the provision makes it mandatory to make such a declaration. A number of instances discussed in Chapter IV hereafter have come to light where an unscrupulous postman may make such an endorsement for dishonest reasons or a negligent postman might have tendered the article to a wrong person or a person other than the addressee, and he might have refused to accept the article. In the result, an *ex-parte* decree would have been passed against the addressee by reason of the mandatory declaration that he has been duly served and serious prejudice, at times irreparable,would have been occasioned to him.

1·3 The Commission has, therefore, considered it appropriate in order to promote the interest of justice, to examine the question how the provision should be refashioned, so as to foreclose the likely injustice, and reduce the chances of confusion, without affecting the smooth and quick disposal of court work.

1·4 *Present law as contained in Order V. Rule 19A.* Order V. Rule 19A(2) of the Code of Civil Procedure, 1908 reads as under;:—

> *"19-A. Simultaneous issue of summons for services by post in addition to personal service—.*(1)...
>
> (2) *When an acknowledgment purporting to be signed by the defendant or his agent is received by the Court or the postal article containing the summons is received back by the court with an endorsement purporting to have been made by a postal employee to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons, when tendered to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant:*
>
> Provided that where the summons was properly addressed, prepaid and duly sent by registered post, acknowledgment due, the declaration referred to in this sub-rule shall be made 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."
>
> (emphasis added)

1·5 *Hazards involved in a mandatory declaration.*—It is the mandatory declaration under Order V. Rule 19A (2) which has created difficulties and opened up the possibility of likely injustice by reason of fraud practised with the help of a dishonest postman or on account of a lapse or mistake on the part of an honest postman who might have tendered the article to a wrong person as will be elaborated in subsequent chapters.

1·6 *Hence this report is targeted at making appropriate recommendations to overcome the problems arising in this backdrop and foreclose likely injustice occasioned to unfortunate litigent as noticed in the cases discussed in Chapter IV.*

CHAPTER II

PRE-1976 DEVELOPMENTS

2·1 *Mode of service of summons under the Code.*—The scheme of the Code of Civil Procedure as contained in Order V. Rule 9 (as originally enacted), primarily contemplates personal service of summons on the defendant. Rules 5 to 16 of that Order mostly relate to personal service. Rule 17 provides that where the defendant refuses to receive a summons, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides, carries on business or personally works for gain. The serving officer shall then return the original summons to the court, with a report of the circumstances under which service could not be effected in the proper way. Rule 19 provides for a case where the summons is returned under the provisions of Rule 17. The court, after perusing the report of the serving officer and also, if necessary, after examining the serving officer, is empowered either to declare that the service was sufficient, or to order fresh summons being issued out.

2·2 *Service by registered post.*—Service by registered post as a permissible mode of service of summons came to be inserted initially by local amendments in Order V of the Code. In 1956 (Order V Rule 20A), such service was permitted by a Central Act, which amended the Code. But it was not made mandatory. Refusal to accept service by registered post did not (even under the 1956 amendment), lead to a mandatory declaration by the court, of the service being sufficient. It was in 1976 that the law, while directing service of summons by registered post, along with the issue of summons for personal service, *also directed the court to declare* the service by registered post as sufficient service, *inter alia*, where the "postal article" (i.e. the envelope containing the summons), came back to the court with an endorsement of refusal.

2·3 *Madras amendment in Order V. Rule 9.*—As mentioned above 2/1, local amendments in some States had made service by registered post a *permissible* mode of service. In Madras, for example, in 1951, the High Court introduced rule 9(3) to provide for sending of the first summons by registered post to the defendant. The sub-rule was as under;

> "(3) Where the defendant resides in India, whether within the jurisdiction of the court in which the suit is instituted or not, the court may direct the proper officer to cause a summons under this Order to be addressed to the defendant at the place where he ordinarily resides or carries on business or works for gain, and sent to him by registered post prepaid for acknowledgment, an acknowledgment purporting to be signed by the defendant shall be deemed to be sufficient proof of service of such summons".

2·4 *Effect of refusal (Madras amendment).*—The effect of a refusal to accept a summons sent by registered post under the Madras amendment 2/2 was considered in Madras case, Rule 9(3) of the Madras amendment was at issue. The referring Judge, Mr. Justice Ganapatia Pillai, was of the view that refusal to accept service had the same effect as refusal of such notice when tendered personally, One of the reasons which he put forth in support of his view was, that if such a contention was not to be accepted, then rule 9(3) (inserted by the Madras amendment) would be rendered nugatory. However, the Division Bench, to which the reference was made, did not accept this approach.2/3 It held that refusal on the part of the defendant to accept postal service (under the Madras amendment) could not be considered as equivalent to due service, so as to enable the court to pass an *ex-parte* decree on the strength thereof. The Division Bench specifically referred to the possibility that an indifferent or dishonest postman might return the registered letter as "refused", without going near the defendant and the court would have no effective sanction or control over him.

2·5 *Observations in a Madras case.*—The matter was considered at some length in the above Madras case and the court laid down the correct position in paragraph 7 of the judgment as under.2/4 (Where the court was concerned with the Madras amendment).

> "Service through registered post can be taken as due service only when the party responds to it or at least acknowledges receipt of the summons so served. There is sound reason behind restricting the efficacy of postal service to a case of acceptance of *service alone*. It cannot be ruled out as impossible that an indifferent or dishonest postman might, even without going near

the defendant return the registered letter as refused. The court will then *have no effective sanction or control over him.* For one thing, the person who can complain against the failure of the postman to deliver the letter being the defendant himself and *ex concessi* he would not be aware of the misconduct of the postman; there will be no other person who will be interested in complaining to the court, Secondly, the Court will have no effective supervision over the *service by the postman as it has* over its own process servers. Undue dependence on the efficacy of postal service might even encourage fraud in the service of process. The rule makes it obligatory that there should be an attempt at personal service before the procedure under R. 19 of O.V., C.P.C. is adopted. If the defendant does not accept service by post, the Court will have no alternative but to send summons through its process servers. This was the view taken by Panchapakesa Ayyar J. in 1958-2 Mad LJ 143; (AIR 1958 Mad 522), following the earlier decision of Rajamannar C.J. in 1956-2 Mad LJ 86".

2·6 *Amendment in Karnataka.*—In the State of Karnataka, the amendment was in the shape of a proviso added to Order V. Rule 10, CPC. Rule 10 provides that service of the summons shall be made by delivering or tendering a copy thereof, with an endorsement duly signed etc. by the Judge.

Karnataka amendment (effected in 1967) 2/5 added the following proviso to Rule 10—

> "Provided that, in any case the Court may either on its own motion or on the application of the plaintiff, either in the first instance or when summons last issued is returned unserved direct the service of summons by registered post pre-paid for acknowledgment, instead of the mode of service laid down in this rule. The postal acknowledgment purporting to contain the signature of the defendant may be deemed to be *prima facie* proof of sufficient service of the summons on the defendant on the day on which it purports to have been signed by him. If the postal cover is returned unserved, any endorsement purporting to have been made thereon by the delivery peon or either an employee or officer of the Postal Department shall be *prima facie* evidence of the statements contained therein."

2·7 *Rajasthan amendment.*—In Rajasthan, a proviso was added to Order 5, Rule 10, in the following terms, in 1954;

> "Provided that in any case the Court may in its discretion send the summons to the defendant by registered post in addition to the mode of service laid down in this rule. An acknowledgment purporting to be signed by the defendant or an endorsement by postal servant that the defendant refused to take the delivery *may be deemed by* the Court issuing the summons to be prima facie proof of service."2/6

Of course, these amendments lost their utility after the insertion of Orde 5, rule 19A by the Code of Civil Procedure (Amendment) Act, 1976 (a Central Act).

2·8 *Order V. Rule 20A.*—As mentioned above in Order V. Rule 20A was inserted in the Code in 1956 by a Central Act (amending the Code), giving a discretion to the court to order service of summons by post. The rule also did not make service by registered post mandatory, but left it to the discretion of the Court. Such service was to be resorted to, when, for any reason whatsoever, the summons was returned un-served.

2·9 *Effect of pre-1976 amendment.*—It is important to repeat that in none of the amendments made before 1976 (locally or other wise) regarding service by registered post of summons issued by the court, there was *any mandatory provision* directing the court to declare that the summons (issued by registered post and received back with an endorsement of refusal) had been duly served on the defendant. Even Rule 20A (now deleted in 1976, as a consequential amendment) did not make such a provision. It was the 1976 amendment which created such a position 2/8.

CHAPTER III

THE AMENDMENT OF 1976

3·1 *Law Commission recommendation.*—The provision in Order V, Rule 19A came into the Code as a result of the amendment Act of 1976 with effect from February 1, 1977. On a very important point, however, the amendment made in 1976 departs from the recommendation made by the Law Commission of India in its Report on the subject.

Insertion of the provision regarding service of summons by registered post was recommended by the Law Commission in its 54th Report on the Code of Civil Procedure (after a consideration of the recommendations made in the earlier reports of the Commission, being the 14th and 27th reports). But, what the Law Commission recommended in its 27th report, pages 46 and 47, were draft amendments on the following lines;—

> "19A. (1) The Court shall in addition to and simultaneously with the issue of summons for service in the manner provided in rules 9 to 19, also direct the summons to be served by registered post addressed to the defendant or his agent empowered to accept the service at the place where the defendant or his agent ordinarily resides or carries on business or personally works for gain ;
>
> Provided that nothing in this sub-rule shall require the Court to issue a summons for service by registered post, where, in the circumstances of the case, the Court regards it as unnecessary.
>
> (2) When an acknowledgment purporting to be signed by the defendant or the agent or an endorsement purporting to be made by a postal employee that the defendant or the agent refused to take delivery has been received, the Court issuing the summons *may* declare that there has been valid service."

3·2 *The Bill of* 1974.—The above recommendation in the 27th report of the Law Commission was reiterated in the 54th Report[3/1] page 124, para 5·7 (February 1973). The Code of Civil Procedure (Amendment) Bill, 1974 was introduced in the Parliament in April 1974. The Bill proposed insertion of rule 19A on the same lines as those recommended by the Law Commission. The amendment Bill of 1974 did not make presumption of service *mandatory*, because it had followed the recommendation made by the Law Commission of India, which had proposed to give a discretion to the court. Clause 53, sub-clause (iv) of the Bill was thus explained in the Notes on clauses appended with the Statement of Objects and Reasons;—

> "New rule 19A is being inserted to provide for the simultaneous issue of summons for service in the ordinary manner and by post."

3·3 *Joint Committee Report.*—When the Joint Committee examined the Bill, its comment was as under ;

> "*Clause* 55(*iii*)—The Committee are of the view that in order to establish that the summons has been duly served on the defendant, the simultaneous issue of summons for service by post should be done by registered post acknowledgment due. Sub-rule(1) of proposed new rule 19A has been amended accordingly"—S.O. R. (Gazette of India, 1-4-76, Pt. III, S. 2, Ext., p. 804/12) (Ref. The AIR Manual, 5th edition, p. 442).
>
> "*Clause* 55(*iv*)—The Committee also feel that in the case of issue of summons for service by registered post, if the defendant refuses to take delivery of the summons, when tendered to him, or the fact that the acknowledgment has been lost or mislaid or has bot been received back by the court for any other reason within thirty days from the date of issue of summons, the Court ***should be authorised*** to draw a presumption that the summons had been duly served on the defendant. Sub-rule (2) of the proposed new rule 19A has been amended accordingly." J.C.R. (Gazette of India, 1-4-76, Pt. II, S.2., Ext., P. B. 04/12) (Ref. The AIR Manual, 5th edition, p. 442).

On a proper reading of the recommendation of the Joint Committee, it appears that the intention was merely to give the court a power, rather than impose on it a duty, to declare the service to be

effective, in the situations dealt within rule 19A as proposed by the Joint Committee.

3·4 *Bill as reported.*—But the actual Bill, as annexed to the Report of the Committee, made such a declaration mandatory.

The Bill annexed to that Report further contained an additional proviso, clarifying that the above declaration shall be made, notwithstanding the fact that the acknowledgment, having been lost or mislaid or for any other reason has not been received by the court within 30 days from the date of issue of the summons. The Bill, as reported by the Joint Committee, also made certain other minor changes, which are not material for the present purpose.

3·5 *Case Law in Order V. Rule 19A.*—To revert to the amendment [3/2] as effected in 1976 by introducing Order V, Rule 19A, Civil Procedure Code, it is enough to state that the *court must now* draw the presumption. The High Court of Orissa [3/3] has held that once service under Order V, Rule19A(2) is made on the defendant, it shall be deemed to be sufficient and it is not necessary to prove personal service. In other words, though a summons for personal service has to be issued (as provided by the rule), it is not necessary that the service by the personal mode made should have been successful.

3·6 *Copy of plaint.*—The Calcutta High Court is of the view that a notice served by registered post A.D. should be accompanied by a concise statement of the plaint, if such notice is to be treated as summons.[3/4].

CHAPTER IV

HARDSHIP RESULTING FROM THE PRESENT LAW

4·1 *Hardship resulting from present provision.*—From a study of the case law on the subject, it appears that serious hardship has been caused, in practice, by reason of the mandatory and categorical provision in Order V, Rule 19A, which *requires* the court to declare the summons as having been duly served, in the situation mentioned in that rule. The case law on this point, collected as result of a sample survey, will be set out presently.[4/1] *Broadly speaking, the problem has arisen in cases where the registered cover containing the summons has come back with the endorsement of "refusal". An ex-parte decree is passed in such a case on the strength of the legal assumption. (i) that the postman did actually tender the envelope and (ii) that the addressee did refuse to accept it.* Later, the party (which is stated to have refused to receive the registered letter), applies to the court to set aside the *ex-parte* decree, and often does succeed in proving, to the full satisfaction of the court, that the cover had not actually been attempted to be delivered. *It is obvious, that if the court is directed to make a declaration of proper service in every case, irrespective of the peculiarities of the case, on the basis of an hardship may arise and injustice may be occasioned.*

4·2 *Some selected cases.*—It will be convenient to refer now to some of the comparatively recent cases, illustrative of the possibility of hardship, referred to above.[4/2]

4·3 *A Gauhati case.*—The first case to be noted is from Gauhati.[4/3] In this case, the summons had been stated to have been refused by the defendant. The postal peon deposed that he had tendered the envelope which was refused by the defendant (addressee). An *ex-parte* decree for ejectment was passed. The defendant, in the application to set aside the *ex-parte* decree, maintained that no summons was received by him, either by post or otherwise, and added that during the relevant time, he was away from Assam and was living in Bihar, at his permanent home, in order to attend to his ill father. The trial court, dealing with this application, found that the summons was not duly served and set aside the *ex-parte* decree. Revision against the trial court's judgment was dismissed by the High Court. Incidentally, in this case, there was a controversy as to whether the original plaintiff was bound to pray to the court for the opening of the envelope received back through post and to adduce evidence to the effect that the summons, as sent, actually related to the original suit itself. This not having been done, the High Court held that Order V, Rule 17A (2) had not been completely compiled with.

4·4 *A case from Karnataka.*—A Karnataka case,[4/4] though it seems to have arisen before the amendment of 1976, is also worth noting. The case related to a suit for the recovery of money. An *ex-parte* decree was passed on the basis of a summons sent by post under V, Rule 10 of the Code (as amended in Mysore), which permitted service by registered post in certain circumstances.[4/5]

4·5 *A case from Punjab and Haryana.*—A case form Punjab ahd Haryana[4/6] is also relevant, the mode of service ordered by the court having been by post. In this case, the husband had obtained against the wife an *ex-parte* decree for jusdicial separation under section 10 of the Hindu Marriage Act, 1955 on the basis of a summons sent by registered post and stated to have been refused by the wife. The wife moved to set aside the *ex-parte* decree. The trial court dismissed the wife's application to set aside the decree passed *ex-parte*. The trial court held that as the wife had refused to accept the summons (which seems to have been sent through post), she had been duly served by substituted service, by the publication of a notice in the newspapers. On appeal to the High Court, a single judge took the view that at times, a party can persuade a postman to make a false report (about refusal etc.). As regards substituted service, insertion of the notice of the date of hearing in an Urdu newspaper (as was done in this case) under Order V, Rule 20, could be of no avail, as young Hindu ladies did not read Urdu newspapers. On an appeal under the letters patent, the appellate bench agreed with the single judge of the High Court, and expressed itself as under :—

> "Once for valid reason, report of the postman is not considered reliable and is ruled out of consideration, then it would tantamount that there had not been any attempt to effect personal service on the

respondent. In the absence of an eflort on the part of the matrimonial court to effect personal service of the petition upon the respondent wife, the substituted service would be of no avail, more so in view of the reasons given by the learned single Judge."

4·6 *A case from Rajasthan.*—In a Rajasthan case, 4/7 the question arose in a proceeding under the Hindu Marriage Act, 1955. The husband had sought divorce on the ground of adultery of the wife. The summons (notice) was received unserved. The court then passed an order for service afresh, and also ordered that another set of notices be sent by registered post to the wife. The notices sent by registered post were returned with the report "refused". The High Court then ordered that the service was sufficient and, after recording evidence, passed an *ex parte* decree for divorce. The wife petitioned to set aside the *ex-parte* decree, alleging that the summons had not been served upon her and that the question of refusal of summons, sent at her Rattangarh address, did not arise, because at that time, she was at Delhi with her father's sister, After recording evidence and arguments with reference to the above point, the Court held that the summons had not been proved to have been duly served. In the instant case, the postal employee was not examined to find out whether either the wife or her agent, had refused to receive the envelope containing the notice sent by registered post. There was some suggestion that the refusal was by the father, but obviously, the father was not the wife's "agent". Hence the court held that the *ex-parte* decree should be set aside.

4·7 *A case from Madhya Pradesh.*—In a Madhya *Pradesh* case, 4/8 an *ex-parte* decree of divorce passed against the wife was sought to be set aside. It appears that there was some dispute as to whether the wife, who had moved to set aside the *ex-parte* decree, had refused to receive service by post at all. The High Court found that, apart from her allegation that she never refused to accept the envelope, there was the additional fact that even if she had actually refused to accept service, it was only after the expiry of the date of hearing. That being so, it could not be said that there was any service of the summons upon her. Hence the *ex parte* decree was set aside.

4·8 *Mulla's view.*—It would be desirable to point out that the editor of the fourteenth edition of Mulla's Code of Civil Procedure 4/9 has noticed the *hardship* resulting from the mandatory presumption in Order 5, Rule 19A, This is the comment in the fourteenth edition:—

"Under this sub-rule, a simple endorsement by a postal employee that registered packet was tendered to the defendant or his agent but was refused is made sufficient evidence of service, Further, if the summons has been properly addressed and sent by registered post A.D. the Court must make the declaration that the dependant has been served although the acknowledgment has been lost or mislaid or has not been received within 30 days from the date of the issue of the summons. *This part of the sub-rule is drastic for, if the postal employee makes a wrong endorsement, the onus of proving the negative that he was not served would be on the defendant.* No report of service by the postal employee is provided for as it is done in the sub-rule 17".

(Emphasis added)

4·9 *Bombay and Madras amendments.—It would appear that presumably because of the hardship felt by reason of the mandatory provision in Order V, Rule 19A, the Bombay and Madras High Courts have made certain amendments as under;*—4/10

"(Bombay)—In Order V, in sub-rule(1) of Rule 19-A:—

(i) for the word "shall" the word "may" be substituted:

(ii) the proviso shall be deleted (w.e.f. 1-10-1983)

(Madras)—In Rule 19A, as introduced by the Amendment Act 104 of 1976, the word "shall" in sub-rule (2) occurring between the words "the Court issuing the summons" and "declare that the summons had been..." be substituted by the word "may" and the proviso to sub-rule (2) shall stand repealed, (Vide R.O.C. N . 6454/77 (2-F) S.R.C. (43/80) dated 5-12-1980)."

4·10 *Ex parte decree in matrimonial cases.*—Incidentally, while dealing with the question of service by registered post. It may be proper to mention that there is a conflict of decisions on the question whether an *ex parte* decree passed in a matrimonial case, can be set aside by applying the provisions of Order 9, Rule 13 of the Code of Civil Procedure. Most of the High Courts have answered the question in the affirmative.4/11

However, the ruling of a single Judge in a Gauhati case has answered the question in the negative.4/12 It appears that in a Supreme Court case, it was assumed that Order 9, Rule 13, CPC will apply. But

some difficulty arose in that case because of an appeal having been filed. Once an appeal has been preferred against an *ex parte* decree, Order 9, Rule 13 cannot apply.4/13

The Mysore High Court has also applied the provisions of Order 9, Rule 13 to matrimonial proceedings.4/14

In a Karnataka case an *ex parte* decree obtained by the husband for divorce was sought to be set aside. The court held the application to be maintainable, even though the husband had died. The High Court pointed out that if the right is denied to the wife, then her status would be seriously affected and her property rights would also be seriously affected.4/15

CHAPTER V

DEFENDANT RESIDING OUTSIDE JURISDICTION

5·1 *Question of defendant residing outside the jurisdiction of the Court issuing summons.*—One of the matters of details which can be conveniently dealt with, relates to the situation of the defendant residing outside the jurisdiction of the court issuing the summons. At present, Order V. Rule 21 of the Code of Civil procedure makes a provision on the subject, as under :—

> "21. *Service of summons where defendant re-resides within jurisdiction of another court.*—A summons may be sent by the Court by which it is issued, whether within or without the State, either by one of its officers or by post to any Court (not being the High Court) having jurisdiction in the place where the defendant resides."

5·2 *Uncertainty regarding places outside jurisdiction—Recomendations.*—(a) The first point that arises is whether Order V, Rule 19A inserted in 1976 (which provides for the simultaneous issue of summons for service by post in addition to personal service)[5/1] can be invoked in a case where the defendant is outside jurisdiction, i.e. in the case dealt within Order V Rule 21. Order V, Rule 21, directs that the court to which the summons is sent under Rule 21 (or Rule 22) shall proceed, as if the summons had been issued by such court, and this would seem to attract Order V, Rules 9 to 19. But on this particular point a controversy can arise. It is desirable that an opportunity should be taken of making the position clear in this regard.

(b) Besides this, it will also be convenient if places near the border of a court's jurisdiction are brought under rule 9 itself. If Court 'A' wishes to serve a summons on a person in village 'X' which is in the jurisdiction of cuourt 'B' but is very near the border of court 'A,s' jurisdiction, it is more convenient to allow service by the staff of Court 'A' than to leave the service to Court 'B'.

(c) We, therefore, recommend that order V Rule 21 CPC should be suitably revised to incorporate the points mentioned in sub-paragraphs (a) and (b) of this paragraph.

CHAPTER VI

RECOMMENDATIONS

6.1 *Possible solution.*—We are aware that it is not easy to evolve a perfect solution to the problem considered in this report and it is possible that any solution which might be thought of by way of substitution for the present law, may create its own controversies. *Nevertheless, we cannot overlook the fairly large number of reported cases in which injustice might have resulted by reason of a fraud practised with the help of a dishonest postman or a lapse on the part of an honest postman in tendering the article to a wrong person, but for the redress granted by the High Courts, and there might be many more similar cases, which are not reported, because they did not reach the High Court or did not raise any question of law.* In our view, it is desirable that an amendment should be thought of. And it appears to us that the *best course would be to substitute in place of the mandatory provision contained at present in Order 5 Rule 19A. a provision that leaves it to the discretion of the Court to declare whether refusal should be deemed to be an equivalent of service.*

It is true that even if the court is given a discretion in the matter i.e. a discretion to draw or not to draw a presumption of service on the defendant, (on the basis of refusal to accept service as recorded by the postal employee), hardship may still arise. But one should not overlook the fact, that if the drawing of the presumption is mandatory (as at present), then the chances of hardship arising are magnified.

6.2 *Recommendations.*—In the light of what has been stated above, we recommend certain amendments in the Code of Civil Procedure, 1908 as detailed in the next few paragraphs.

6.3 *Order 5 Rule 19A to be amended.*—our first recommendation is that order 5, Rule 19A of the code of Civil Procedure, 1908 *should be amended by making the declaration regarding service by registered post discretionary, instead of its being mandatory as at present in order that a litigant is insulated against injustice on account of either a lapse or mistake or on account of a fraud practised with the help of a dishonest postman motivated to make an endorsement regarding refusal.* The rule, as so revised, will read as under;—

"19A. (1) The court shall, in addition to and simultaneously with the issue of summons for service in the manner provided in Rules 9 to 19, also direct the summons to be served by registered post addressed to the defendant or his agent empowered to accept service at the place where the defendant or his agent ordinarily resides or carries on business or personally works for gain;

Provided that nothing in this sub-rule shall require the Court to issue a summons for service by registered post, where, in the circumstances of the case, the Court regards it as unnecessary.

(2) When an acknowledgement purporting to be signed by the defendant or the agent or an endorsement purporting to be made by a postal employee that the defendants or the agent refused to take delivery has been received, the Court issuing the summons may declare that there has been valid service, *bearing in mind the possibility of fraud or mistake on the part of the postman who might have tendered the article to a wrong person whilst in the making of the endorsement regarding refusal."*

6.4 *Order 5 Rule 21 to be amended.*—Our second recommendation is that for Order 5, Rule 21, of the Code, a revised rule as is being indicated hereafter for the reasons specified in para 5·2, of Chapter V, namely :—*Uncertainty regarding places outside jurisdiction—Recommendations.*—

(a) The first point that arises is whether Order 5, Rule 19A inserted in 1976 (which provides for the simultaneous issue of summons for service by post in addition to personal service) can be invoked in a case where the defendant is outside jurisdiction, i.e. in the case dealt within Order 5 Rule 21. Order 5, Rule 21, directs that the court to which the summons is sent under Rule 21 (or Rule 22) shall proceed, as if the summons had been issued by such court, and this would seem to attract Order 5, Rules 9 to 19. But on this particular point a controversy can arise. It is desirable that an opportunity should be taken of making the position clear in this regard.

(b) Besides this, it will also be convenient if places near the border of court's jurisdiction are brought under Rule 9 itself. If Court 'A' wishes to serve a summons on a person in village 'X' which is in the jurisdiction of Court 'B' but is very near the borders of Court 'A's jurisdiction, it is more convenient to allow service by the staff of Court 'A' than to leave the service to Court 'B'.

(c) We, therefore, recommend that Order 5 Rule 21 CPC should be suitably revised to incorporate the points mentioned in sub-paragraphs (a) and (b) of this paragraph.

Revised Order 5, Rule 21 as is being recommended

21. *Service of summons when defendant resides within the jurisdiction of another court.* If the defendant does not reside within the jurisdiction of the court in which the suit is instituted and has no agent residing within that jurisdiction who is empowered to accept the service of the summons, but resides or has such an agent within the jurisdiction of another court, whether within or without the State, the provisions of Rule 19A of this Order shall, as far as may be, apply, subject to the modification that the summons intended to be served by an officer of court may be sent, by the court by which it is issued, to the court within whose jurisdiction the defendant resides or has such an agent and the court to which it is so sent shall then proceed as provided in Rule 23 of this Order.

Provided that where the defendant resides or has such an agent within the State at a place not exceeding twenty-five kilometres from the place where the Court issuing the summons is situated, or at a place within ten kilometres of the outer limits of the jurisdiction of the Court, the sumons may, instead of following the procedure provided in this rule, be delivered or sent by the court issuing it to the proper offiicer, to be served by him or one of his subordinates in the manner laid down in Rules 9 to 19 (both inclusive) of this Order.

We recommend accordingly.

(M. P. THAKKAR)
CHAIRMAN

(Y. V. ANJANEYULU)
MEMBER

(P. M. BAKSHI)
MEMBER

(MAHESH CHANDRA)
MEMBER

(G.V.G. KRISHNAMURTY)
MEMBER SECRETARY

New Delhi, Dated the April 19, 1991.

NOTE AND REFERENCES

Chapter II

2/1. Paragraph 2·2, *supra.*

2/2. Paragraph 2·3, *supra.*

2/3. Pichai Ammal v. Vellayya Thevar, AIR 1963 Madras 198 (DB) (Ramachandra Iyer CJ and Anantanarayanan J).

2/4. Pichai Ammal v. Vellayya Thevar, AIR 1963 Madras 198, 200 para 7 (Division Bench).

2/5. Cf. para 4·4, *infra.*

2/6. Similar amendment was made by Patna High Court.

2/7. Paragraph 2·2, *supra.*

2/8. Chapter III, *infra.*

Chapter III

3/1. Law Commission of India, 54th Report, Page 124, para 5·7, (February 1973).

3/2. For the text of Order 5 rule 19A, see para 1·4, *supra.*

3/3. Samir Snigdha Chandra v. Pranaya Bhushan Chandra, AIR 1989 Orissa 185.

3/4. Dr. Madhusudan Poddar v. Arabinda Poddar, AIR 1978 Cal 195.

Chapter IV

4/1. Paragraph 4·2, *infra.*

4/2. Paragraph 4·1, *supra.*

4/3. Gopal Ch. Kalita v. Chiddi Sau, AIR 1982 Gauhati 61, 62, paragraph 4 (S.M. Ali J).

4/4. B. Padmavathi Rai v. Parvathiamma, AIR 1976 Karnataka 97 (K. Jagnnatha Shetty J).

4/5. Order V, Rule 10 amended in Mysore (later Karnataka), Cf. Paragraph 2·6, *supra.*

4/6. Mangat Rai v. Shanti Devi, (1983) HLR 437, 438 paragraph 4 (Punjab & Haryana) (Sandhawalia CJ and Tewatia J).

4/7. Chandrakala v. Banshidhar, (1984) HLR 225, 233, Para 18 (Raj) (Dwarka Prasad J).

4/8. Shakuntala v. Devi Prasad Sharma, (1984) HLR 358, 359 (MP).

4/9. Mulla, CPC (Fourteenth Edition revised by J. M. Shelat), (1984), Vol. 2, page 954.

4/10. S. K. Mukherjee, code of Civil Procedure, Vol. I, (1987), page 990.

4/11. Dr. Mithilesh Kumar Srivastava v. Saroj Kumari Srivastava, (1987) 1 HLR 378 (Allahabad) (reviews case law).

4/12. Anjan Kumar Kataki v. Meenakshi Sarma, AIR 1985 Gauhati 44.

4/13. Rani Choudhury v. Lt. Col Surajjit Choudhury, AIR 1982 SC 1397.

4/14. Tirukappa v. Kamlamma, AIR 1966 Mysore 1.

4/15. Iravva v. Sivappa, (1987) 2 HLR 312, 317, 318, paras 12 to 14, (Karnataka).

Chapter V

5/1. Chapter III, *supra.*

MGIPF—514 Law & Justice/93—23-3-94—300.