Series -IV

Issue of Process under Civil Law

By Sangya Yaduvanshi (Addl.Civil Judge Jr. Div. Meerut)

What is the object of issuing process?

The main object of issue of process is to adhere to the idea of Principles of Natural Justice. The doctrine of audi alteram partem which implies that both the parties must be heard is an integral part of natural justice. The provisions under order 5 of CPC is to ensure presence of the defendant.

Provisions governing the process of summons under the Code of Civil Procedure, 1908 (CPC) — Sections 27 to 32, Order V and Order XVI.

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.

Modes of Service (O. 5, rule 9, 9-A, 10 CPC)

- (1) Process server
- (2) Special messenger
- (3) Amin 4
- (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

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
- 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

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

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.
- Case -. Munni vs. Kshetra Pal Singh, 2004 All.L.J. 3852
 (All) 2. Shiv Charan Singh vs. X ADJ, Aligarh, 2005

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.
- Case: Bhabia Devi versus Permanand Pd. Yadav, AIR
 1997 SC 19

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

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.

Presumption of service of registered postal article on endorsement Of Postman

If the postman has made any endorsements as noted below 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

- Unclaimed
- Not Met
- Not Available
- Premises Locked
- Party Not At Station
- Arrival Not Known

Presumption of service of registered postal article on refusal by addressee [O. 5, rule (9)(5) CPC & Sec. 27

• 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

Incomplete address

• Where the notice issued by the court was returned by the process server with the remark" incomplete address", it has been held by the Supreme Court that there was no service on the party.

Case: Ramdas Shivram Sattur Vs Rameshchandra Popat Lal Shah, AIR 2007 SC 3018

Publication of notice in news-paper or substituted service [O. 5. r. 20 CPC r/w. rule 141 G.R. (Civil)

• 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.

Case: Yallawwa vs. Shantavva, AIR 1997 SC 35

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

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.

Process to MPs & MLAs

• 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.

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.

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.

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
- (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

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• (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

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

National Service and Tracking of Electronic Processes (NSTEP)

- Given that huge amount of delays can be associated with the process of summons, the Supreme Court eCommittee has introduced National Service and Tracking of Electronic Processes (NSTEP) to handle the problem. NSTEP is an Android OS application developed for service and delivery of Court Processes.
- This application is intended to be used by the bailiffs of the courts for delivery of processes. It utilises the CIS system (Case Information System) that has already been deployed across all the courts in India. The bailiff utilises the application to document the delivery of summons. The application includes a feature to record the GPS co-ordinates at the time of delivery of summons and enables recording picture and on-screen signature of the person who has been served.

Continued..

- The system allocates 'processes' to bailiffs and process servers and provides for uploading onscreen signatures and photographs of person or locked premises while serving processes
- Case Information System (CIS) templates, which were developed for the electronic generation of processes and sending them via email

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Case: Central Electricity Regulatory Commission v National Hydroelectric Power Corporation Ltd 2010

Permitted email notice to be served along with the ordinary mode of serving notice. The court ruled that this practice should be followed in commercial litigations and in cases where urgent interim relief is sought in the Supreme Court.

AUTO-GENERATION OF SUMMONS

- Case Information System, CIS 3.0, provides for auto generation of summons. The system provides a template to be filled with the required case details such as case number, addressee's name and address along with their email id and phone number.
- The system also provides for a process of monitoring the service through process status, which include the name of bailiff or process messenger, delivery date, whether the process is served or unserved, and reasons for non-service of summons.

do-30 the officers of the officers भीजान भी उत्तय है ठ०४-11-19 की भीका तामिट पर गानार सम्मद र्नानाम व जारिया की तलाहा किया तो ओंके पर नहीं मिरी भीके पर मान में किरामिशर किरी। उन्होंने ज्यामी धतामा रेक्ट्रियर सन्ते व स्वादिक कारी वाहर काए हैं। जा कार का कार ते कार का का का वाहर के प्रति समन कार दिए। मिर्द कि ग्वामिर किस्ति किस्ति कि किस की SHROIEOD SILIS हिनीह थियाने अस्तुतही शतिन्द्र उगाज दिन वड-11-19 की मामिसकाता ने अपनी विषेष्ट करी भेरे सम्म (they onto mesile

3-115 16 10 2019. वा र लग्न माना का पाना राजा र ति २१००० न्या साहर ३-६ (३ फर्के ३-६ 314-11-213017 7-100 2ned 914-320 923 4-2 EHAIST के जिनिस्टी रन्डनीयोन्स आम (देना हार) 1012 व व हें की रणीत करी अपनी रियार मेर सम्पत्ता आहता अपात किया । प्र

नमूना आदे शका वाहक समन तामीला रिपोर्ट

श्रीमान जी , आज दिनाँक को मैं माननीय न्यायालय के द्वारा निर्गत समन लेकर प्रतिवादी के पते (--- परे पते का ववरण दीजिये) पर गया । प्रतिवादी (नाम ल खये) घर पर मौजूद मला , प्रतिवादी की पहचान गवाहान (2 साक्षी का नाम जिसके द्वारा प्रतिवादी की पहचान करायी गयी हो) करायी गयी प्रतिवादी को समन की एक प्रति मय वादपत्र प्रदान कया गया । समन की अतर्वस्तु को प्रतिवादी को पढ़कर बताया व समझाया गया। प्रतिवादी ने समन पढ़कर / सुनकर उसकी की प्रति प्राप्त की , और समन की मूल प्रति पर अपने हस्ताक्षर बनाये । तामील रिपोर्ट मौक पर उपरोक्त गवाहान की उपस्थिति में तैयार करके उस पर प्रतिवादी (नाम) व गवाहान (नाम) के हस्ताक्षर कराये गये (या निशानी अगुठा लगवाया गया)। प्रतिवादी पर समन की वैयक्तिक तामील (तामीला खास) की गयी ।

(समन की मूल प्रति पर प्रतिवादी , गवाहान के हस्ताक्षर बनवाकर उसके नीचे) तामीला आख्या श्रीमान जी सेवा में सादर प्रेषत है ।

आदे शका वाहक तामीला के संबंध में नाजिर के समक्ष शपथपूर्वक तामीला आख्या देगा , और उसका ववरण समन की मूल प्रति पर दर्ज होगा प्रासेस सर्वर अपना नाम व हस्ताक्षर करेगा ,

नोट :- यह साक्षी प्रतिवादी के पड़ोसी गाँव / मोहल्ला के प्रतिष्ठित व्यक्ति , मुखया लेखपाल या चौकीदार यथास्थिति जो हो सकते हैं ; Gr .Civil rule 139 यहाँ पर यह ध्यान रखा जाना आवश्यक है क प्रतिवादी की पहचान करना तामीला वाहक का व्यक्तिगत उत्तर दायित्व है , वादी के द्वारा प्रतिवादी से पहचान कराने से बचना चाहिये ।

आदेश बाबत माने जाने तामीला समन

13-05-2023

पत्रावली पेश हुई | पुकार पर वादी उपस्थिति है | प्रतिवादी की ओर से कोई उपस्थिति नहीं है | प्रतिवादी को प्रे षत समन पर आदे शका वाहक की आख्या, प्राप्त है | आदे शका की आख्या के अनुसार समन की तामीला मय वादपत्र की नकल , शपथपत्र , प्रार्थनापत्र बाबत अस्थायी व्यादेश की प्रति व शपथपत्र की प्रति प्रतिवादी पर दो स्थानीय सा क्षयों की उपस्थिति में वैयुक्तिक रूप से कया गया है | आदे शका वाहक के द्वारा तामीला के संबंध में नाजिर के समक्ष शपथ पर बयान कया गया है | मामले में प्रतिवादी पर समन की तामीला पर्याप्त मानी जाती है | न्यायहित में प्रतिवादी को एक अवसर दिया जाता है , पत्रावली वास्ते ल खत कथन दिनाक 31-05-2023 को पेश हो |

दिनाँक 13-05-2023

न्यायालय अपर स वल जज (जू॰ ड॰) मेरठ

रजिस्ट्री से तामीला माने जाने का आदेश

दिनाँक 12-04-2023

पत्रावली पेश हुई पत्रावली पेश हुई । पुकार पर वादी उपस्थिति है । प्रतिवादी की ओर से कोई उपस्थिति नहीं है । प्रतिवादी को समन जिरये रजिस्ट्री मय A.D. दिनाक 12-03-2023 को उसके सही पते पर भेजा गया । रजिस्ट्री प्रेषण के दिनाक से 30 दिन से अधक अवध का अवसान हो चुका है । अदम तामीला रजिस्ट्री वापस प्राप्त नहीं है । प्रतिवादी पर समन का तामीला जिरये रजिस्ट्री पर्याप्त मानी जाती है । न्यायहित में प्रतिवादी को एक अवसर दिया जाता है , पत्रावली वास्ते लखत कथन दिनाक 12-05-2023 को पेश हो ।

दिनाँक 12-04-2023

न्यायालय अपर स वल जज (जू॰ ड॰) मेरठ

समन की तामीला इंकारी रजिस्ट्री

दिनाँक 13-04-2023

पत्रावली पेश हुई पत्रावली पेश हुई | पुकार पर वादी उपस्थिति है | प्रतिवादी की ओर से कोई उपस्थिति नहीं है | प्रतिवादी को प्रे षत समन जिरये रिजस्ट्री मय A.D. डा कये की लेने से इंकार की टिप्पणी के साथ वापस प्राप्त हुई है | प्रतिवादी पर समन का तामीला जिरये इंकारी रिजस्ट्री पर्याप्त मानी जाती है | न्यायहित में प्रतिवादी को एक अवसर दिया जाता है , पत्रावली वास्ते ल खत कथन दिनाँक 12-05-2023 को पेश हो |

दिनाँक 13-3-2023 न्यायालय अपर स वल जज (जू॰ ड॰) मेरठ

प्रकाशन हेतु आदेश

14-02-2020

पत्रावली आज प्रस्तुत हुई । वादी की ओर से प्रार्थनापत्र कागज संख्या 16 ग इस आशय का कथन करते हुये प्रस्तुत कया गया है क मेकदमा उपरोक्त में दिनाक 12-03-2020 की तारीख नियत है। वादी ने प्रतिवादी संख्या 1/1 लगायत 1/2 को जिरए समन व जिरए रजिस्ट्री डाक के समन की तामीला हेत पैरवी कर दिया है। प्रतिवादी संख्या 1/1 लगायत 1/2 अपने मकान पर ही रहते हैं कन्तु समन लेने से इनकार कर देते हैं। प्रतिवादी संख्या 1/1 लगायत 1/2 पर समन की तामीला हेत जिरए प्रकाशन कराये जाने का आदेश दिया जाना न्याय हित में आवश्यक है। निवदन है कया गया है क प्रतिवादी संख्या 1/1 लगायत 1/2 पर जिरए प्रकाशन समन की तामीला कराने का आदेश दिया जाय।

पत्रावली के अवलोकन से यह स्पष्ट होता है क मृत प्रतिवादी / वपक्षी संख्या 1 नग्ग के मृतक प्रतिनि धगण पर रिजस्ट्री से पैरवी कया गया है । रिजस्ट्री 2 कता पर इस आशय की आख्या प्राप्त हुई , प्रे षती के यहां बार बार जाने पर मृलाकात नहीं हुई । प्रतिवादी / वपक्षी संख्या 1 नग्ग के मृतक प्रतिनि धगण पर समान्य तरीके से नोटिस का तामीला संभव नहीं हो पा रहा है , अतः जिरये प्रकाशन तामीला कराये जाने की अनुमित दिया जाना न्यायसंगत प्रतीत होता है । प्रार्थनापत्र कागज संख्या 16 ग स्वीकार कर्य जाने योग्य है ।

आदेश

प्रार्थी प्रार्थनापत्र कागज संख्या 16 ग स्वीकार कया जाता है । प्रार्थी प्रतिवादी / वपक्षी संख्या 1 नग्ग के मृतक प्रतिनि धगण पर नोटिस की तामीला हेतू प्रतिवादी / वपक्षी संख्या 1 नग्ग के मृतक प्रतिनि धगण के निर्वास स्थान पर व्यापक रूप से परिचा लत राष्ट्रीय दैनिक समाचारपत्र में कराये । पत्रावली नियत ति थ दिनांक 12-03-2020 को पेश हो ।

दिनांक 14-02-2020

अपर जिला एवं सत्र न्यायाधीश फास्ट ट्रैक कोर्ट संख्या 2

आदेश तामीला जरिये प्रकाशन

दिनाँक 21-09-19

पत्रावली प्रस्तृत हुई । पकार पर वादीगण के वदवान अधवक्तागण उपस्थित हैं , प्रतिवादीगण अनुपस्थित हैं । इस वाद में वादीगण के दवारा प्रतिवादीगण पर समन तथा रजिस्ट्री से पैरवी की गयी , प्रतिवादीगण पर तामीला प्रभावी न होने पर प्रकाशन कराया गया । प्रकाशन कागज संख्या 31घ दैनिक समाचारपत्र दैनिक जागरण 4 सतंबर 19 पत्रावली में सलग्न है । जिसके पृष्ठ संख्या 2 पर नोटिस/समन का प्रकाशन कया गया है । मामले में प्रतिवादीगण पर नोटिस/समन का तामीला पर्याप्त माने जाने का आधार पर्याप्त है ।

आदेश

प्रतिवादीगण संख्या 1ता 3 पर समन का तामीला जिरये प्रकाशन कागज संख्या 31क पर्याप्त माना जाता है । न्यायहित में वपक्षीगण को एक अवसर दिया जाता है । पत्रावली वास्ते ल खत कथन / वर चत कये जाने ववाद्यक दिनाक 05-10-19को पेश हो।

दिनाँक 21-09-19

अपर स वल जज (जू॰ ड॰) मेरठ

Thanking You