

## **ISSUE AND SERVICE OF SUMMONS: ORDER V**

### **Introduction:**

After the plaint is filed, the summon is issued by the court to appear in the court to defend it. The intimation which is sent to the other party (defendant) is called summons. The provision related to summons are given in Section 27-32 and Order V of CPC.

Summons is an authoritative call from the court to attend the court at a specified place and at a specified time. The summons as contemplated in Rule 1 is for the attendance of the defendant. It says that once a plaint is admitted the court is required to send the notice of such admission to the defendant and then for the purpose of his appearance and to answer (reply) the allegations made against him in the plaint. The summons are served on the defendant.

This appearance and answer (in the form of a Written Statement) must be made within 30 days from the date of service of summons (being duly received) and may be extended to further such period as may be granted by the court not beyond 90 days from such service. Therefore, further 60 days' extension may be granted, if the case requires.

This does not mean that no further extension may be granted after the period of 90 days is over, but it must be made only in exceptional circumstances, if the defendant satisfies the court of an exceptional cause for not appearing and that he was not negligent.

It is not necessary to issue summons when the defendant is in the court at the time of presentation of the plaint and admits the claim.

Generally, a summons must contain:

- i. Reason (Purpose) for sending it,
- ii. Signature of the Judge and seal of the court,
- iii. Specified date of appearance of the defendant,
- iv. Copy of plaint,
- v. Appropriate directions.

This order must be read with Section 27-32 of CPC, 1908.

### **Section 27: Summons to Defendants**

Section 27 of CPC stipulates that where a suit has been duly instituted by filing a plaint, the first duty of the court is to issue summons calling on the defendant to appear and answer the claim and such summons may be served in a manner prescribed in the rules mentioned in Order V of the first schedule and on such day not beyond 30 days from the date of the institution of the suit.

### **Section 28: Service of summons where defendant resides in another state**

Section 28 of CPC provides for a situation when the summons is to be sent to a defendant who is residing in a different state and also provides for the requirement to such process thereon. It simply says that the summons to be served in an another state must be sent for service through the court of that state and it will so be served according to the rules in force in the state in which it is sent to. The court to which it is sent must serve it as it is issued by that court and return it to the court issuing it along with the proceedings therein.

### **Section 29: Service of foreign summonses**

Section 29 provides for the situation when any of the following courts:

1. Civil or Revenue court to which Civil Procedure Code does not apply.
2. Civil or Revenue court established by the authority of Central Government outside India.
3. Civil or Revenue court outside India to which this section would apply.

has issued certain summons and is intended to be served in the territory to which Civil Procedure Code applies. It provides that it may be sent to the courts to which Civil Procedure Code applies and may be severed by them as if it was issued by such courts.

### **Section 30: Power to order discovery and the like.**

Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party,-

(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

- (b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;
- (c) order any fact to be proved by affidavit.

**Section 31: Summons to witness**

This provision provides that if a summon is to be sent not to a defendant to appear and answer the plaint but to any person including defendant for the purpose of giving evidence or to produce documents or other material objects, then such summons must be sent as according to Sections 27, 28, 29 and if the person does not comply with the direction provided in the summons, Section 32 shall apply.

**Section 32: Penalty for default-**

If the summons is sent under Section 30 by the court and the person to whom it is sent does not comply with the orders, the court may in consequence compel the attendance of the person to whom a summons has been issued under Section 30.

**Order V Rule 2** talks about that when summon is to be sent then it is necessary to annexed a copy of plaint with it.

**Order V Rule 3:** Court may order defendant or plaintiff to appear in person:

The Court shall order the defendant and the plaintiff to appear on the same day as specified, in person, if it is so required.

**Order V Rule 4:** No party to be ordered to appear in person unless resident within local limits

Q. When can a party be asked to appear personally?

No party will be ordered to appear personally unless

1. He resides within local limits of courts' jurisdiction.
2. Where he resides within 50 miles from the court-house, or
3. Beyond such jurisdiction but within 200 miles from the court and where 5/6<sup>th</sup> distance can be covered by Railways or steamers or other public conveyance.

There are certain provisions where there is an exemption from personal appearance, such as

1. Section 132, in case of certain women like Pardanashin lady,
2. Section 133, in case of other person like President, Vice-President, etc.

### **Order V Rule 5: Summons to be either to settle issues or for final disposal**

The summons may be issued for settlement of issues or for final disposal of the suit and the court shall at the time of issuing the summons specify for what purpose summons are being issued and it must contain a direction accordingly.

The Court of Small Causes shall issue summons for final disposal only.

### **Order V Rule 6: Fixing day for appearance of defendant**

The following factors should be looked into while fixing the date for appearance-

1. The current business of the court,
2. The place of residence of the defendant,
3. Time necessary for service of summons,
4. Sufficient time to enable defendant to prepare his defence.

### **Order V Rule 7: Summons to order defendant to produce documents relied on by him**

It shall be ordered to the defendant in the summons to produce all the document or copies thereof specified in Order VIII Rule 1 A to produce on which he intends to rely in his support.

### **Order V Rule 8: On issue of summons for final disposal, defendant to be directed to produce his witnesses**

In the summons for final disposal of the suit the defendant shall be directed to produce all the witness upon whose evidence he relies for his defence at the day fixed for appearance.

### **Mode of service of summons**

1. Service of court [Rule 9].
2. Service by plaintiff (Dasti Summons) [Rule 9A]
3. Personal or Direct Service [Rule 10-16, 18]
4. Substituted Service [Rule 17, 19-20]- (i) without the order of the court (ii) with the order of the court.
5. Service by Post.

**Order V Rule 9: Delivery of summons by Court-** This rule provides for the manner in which the summons must be served, that if the defendant or his agent is a resident within the jurisdiction of the court, such summons shall be served either by officer of the court known as process server or bailiff or by such courier services as are approved by the court.

Furthermore Sub-Rule 3 provides for the manner in which the summons may be served.

The service of summons may be made by delivering or transmitting a copy to the defendant or his duly authorised agent by:

- (a) Registered Post acknowledgement due, or
- (b) Speed Post or courier service approved by the High Court or the District Court, or
- (c) Any other means of transmission like fax message or electronic mail service, etc.

The service of summons under this sub-rule 3 shall be made on the expenses of the plaintiff.

If the defendant is residing out of the jurisdiction of the court sending summons then such summons shall be served according to sub-rule 3 except by registered post acknowledgement due and provisions of rule 21 does not apply.

Where the summons if returned back to the court with the endorsement that the defendant or his agent refused to accept the summons when tendered or transmitted to him, the court shall declare that the summons had been duly served on the defendant.

In the following cases the court may declare deemed service of summons-

- (a) The refusal or non-acceptance by the defendant,
- (b) Where the summons was properly addressed, prepared and duly sent by registered post or acknowledgement due and having been lost or mislaid and wasn't received by the court within 30 days from the date of issue of summons.

The High Court or the District Judge shall prepare the list of courier services.

#### **Rule 9A: Summons given to the plaintiff for service**

The types of summons provided under Rule 9A are issued by the court in addition to the manner provided under Rule 9. In this kind of summons, the plaintiff's is allowed to served the summons personally to the defendant. Such summons must be sealed and signed.

The plaintiff must take the acknowledgement from the defendant and shall endorse a return by stating the time and manner of service of original summons.

Such summons may be served by the court by a re-issue and in a normal manner.

These summon are known as Dasti Summons.

#### **Personal or Direct Service [Rule 10-16, 18]**

Rule 10 to 16 and 18 deals with the personal or direct service of summons upon the defendant. This is an ordinary mode of service of summons.

**Rule 10: Mode of Service:** Service of the summons shall be made by delivering or tendering a copy thereof signed by the judge or such officer as he appoints in this behalf, and sealed with the seal of the court.

**Rule 11:** Service on several defendants- Where there are two or more defendants, service shall be made on each of them.

**Rule 12:** Service to be on defendant in person when practicable, or on his agent- The summons must be served to the defendant in person or to his authorised agent.

**Rule 13:** Service on agent by whom defendant carries on business- When the suit relates to any business or work and is against a person not resident within the jurisdiction of the court issuing summons, such summons may be served upon any manager or agent who personally carries on such business or work and is within the local limits of the court.

**Rule 14:** Service on agent in charge in suits for immovable property- In a suit to obtain a relief with respect to an immovable property or for suit for compensation over such property, it would be sufficient that the summons is served upon the agent who is in charge of the property.

**Rule 15:** Where service may be on an adult member of defendant's family- In cases where the summons cannot be served due to absence of defendant for a reasonable time and the agent also is not available to receive summons, then such service may be made to an adult member residing with the defendant. It can be served both on male or female but only on adult member of the family. In such cases a servant is not considered the family member of the defendant. Also when adult female members of defendants refused to receive suit summons, a conclusion can be drawn that summons are served on defendants in view of Order V Rule 15, CPC.

**Rule 16:** Person served to sign acknowledgement- The serving officer shall require the signature of the person accepting the summons to an acknowledgement of the service endorsed on the original summons.

**Rule 18:** Endorsement of time and manner of service- The serving officer in all cases where the summons has been served under Rule 16, shall endorse or annex on the original a return

stating the time and manner of service and name or address of the person identifying the person or witnessing the delivery.

### **Substituted Service [Rule 17, 19-20]**

Substituted service means the service of summons by a mode which is substituted for the ordinary mode of service of summons.

For ordering substituted service as per Order 5 Rule 20, CPC it must be shown that the respondent/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<sup>1</sup>.

Publication of notice in Newspaper:- When service of notice is intended by an advertisement in a newspaper, the Newspaper shall be a daily Newspaper circulating in the locality in which the respondent/defendant is last known to have actually and voluntarily resided or carried on business or personally worked for gain<sup>2</sup>.

There are two modes of substituted service of summons:

(a) Service without the order of the court

(b) Service with the order of the court

Service without the order of the court- Order V Rule 17 lays down following circumstance when substituted service can be made on the defendant without the order of the court:

(i) Refusal of acknowledgement- Where the defendant or his agent refuses to sign the acknowledgement.

(ii) Absence of defendant- Where the serving officer, after due and reasonable diligence, cannot find the defendant who is absent from his residence at the time of service of summons and cannot be found within a reasonable time and there is no authorized agent nor any other person on whom such service can be made. When one of the above two circumstance exist, the service of summons can be made by affixing a copy on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain.

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<sup>1</sup> See. Maganti Krishna Durga Vs. Maganti Anil Kumar – 2015 (5) ALT 346 (D.B.)

<sup>2</sup> Id.

Procedure after such service: After affixing such copy of summons as stated above, the serving officer shall then return the original to the court issuing summons with a report endorsed thereon stating

- (a) The fact about affixing the copy;
- (b) The circumstances under which he did so;
- (c) The name and address of the person, if any, by whom the house was identified and in whose presence the copy was affixed.

**Order V Rule 19** further provides that if the court is satisfied, either on affidavit or examination on oath of serving officer, that the summon is duly served, it may either declare the summons has been duly served or may make such inquiry as it thinks fit. If provisions of Rule 19 are not complied with, service of summons cannot be said to be in accordance with law<sup>3</sup>.

In other words, Rule 19 provides that where a summons is returned under r. 17, the court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further enquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit<sup>4</sup>.

**Service with the order of the court-** Order V Rule 20 provides the mode of service of summons with the order of the court. If the court is satisfied that there is reason to believe that defendant avoids service or for any other reasons, the summons cannot be served in the ordinary way, in such case, the service may be affected in the following manner:

- (i) By affixing a copy of summons in some conspicuous place in the court house, and in the house in which the defendant is known to have last resided, carried on business or personally worked for gain, or
- (ii) In such other manner as it thinks fit.

The court may order service of summon by advertisement in a daily newspaper circulating in the locality in which the defendant is last known to have resided or carried on business or personally worked for gain [Rule 20 A]

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<sup>3</sup> State of J&K v. H.W. Mohammed, AIR 1972 SC 2538

<sup>4</sup> See. Dr. K.C. Verma vs Asstt. Cit, (2004) 89 TTJ Del 129.



Effect of substituted service of summons- Order V Rule 20(2) provides that the substituted service is as effective as personal service, and such defendant shall be deemed to be duly served in accordance with law. The court shall fix a time for the appearance of defendant and give him reasonable opportunity to appear before court.

Such summons affixed is as effective as the service in the manner provided under the Rule.

In *Satish Corporation Company v. Allahabad Bank*<sup>5</sup>, it was observed that while passing order under Order V Rule 20 the court is required to record its satisfaction that there were reasons to believe that the defendant was keeping out of the way for the purpose of avoiding service or in the alternative it is required to record its satisfaction that for any other reasons the summons could not be served in the ordinary way.

In *Sunil Poddar v. Union Bank of India*<sup>6</sup>, the Court held that where summons was served by newspaper publication, then the plea that the person sought to be served does not read such newspaper is not open to the party.

**Substitute service is not due service:-** As per Explanation to Article 123 of Limitation Act, 1963, substitute service under Rule 20 of Order 5, CPC shall not be deemed to be a due service. It was held in *Maganti Krishna Durga Vs. Maganti Anil Kumar – 2015 (5) ALT 346 (D.B.)*.

Publication made by plaintiff in a news paper other than the one ordered by Court:- In *Basant Singh and another v. Roman Catholic Mission*<sup>7</sup>, it was held that its publication made by plaintiff in a news paper other than the one ordered by Court. However, both the said papers are local dailies having wide circulation in the area. Such a publication in the circumstances of the case is a mere irregularity in service of summons. It would not invalidate the effect of substituted service.

**Non-Service of summons:-** It was held in *Maganti Krishna Durga's case* that second proviso to Order 9 Rule 13, CPC makes it obligatory on the appellate court not to interfere with ex parte decree unless it meets the statutory requirements, showing non-service of summons or where there is sufficient cause for the wife not appearing before the Court.

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<sup>5</sup> AIR 1999 MP 21

<sup>6</sup> AIR 2008 SC 1006,

<sup>7</sup> 2003 (1) ALT(SC) 1

**Service of summons in Rent Control cases:-** In *Bansilal Yadav v. Suraj Chand Bhagat and others*<sup>8</sup>, it was observed that under rule 22 (4) of rent control rules, making affixture of summons on the last known place of abode or business without making efforts to tender service in person or to serve the same on adult member of their family or to send the same by registered post is not legal.(2) Order of injunction by Rent Controller.

**Permission to defend suit:-** In summary suits for recovery of money under Order 37, CPC, period of ten days to file application by defendant seeking permission to defend the suit be computed from the date of service of summons for judgment and not from the date of service of suit summons<sup>9</sup>.

**Order V is applicable to Execution proceedings:-** It is not in dispute that the procedure contemplated for service of notice under Order 5 is made applicable for service of notice in the execution proceedings also<sup>10</sup>.

### **Service by Post**

Where the summons was properly addressed, prepaid and duly sent by registered post and acknowledgement is lost or not received by the court within 30 days from the date of issue of summons, the court shall declare that the summons has been duly served.

Thus, the court may adopt any of these modes accordingly for serving summons on the defendant so that he is ensured fair trial and there is no delay in the progress of the suit.

### **Irregularity in service of summons**

It has been held that procedural irregularity in the service of notice would not be bad in law and consequential action would be sustained unless the defendant is able to show that substantial prejudice was caused due to procedural lapse in making service to him [**Prabhun Ram Pukhan v. State of Assam (2015) 2 SCC (Civ) 331**].

For example, A obtained by false representation an order for substituted service by giving court to understand that B had been avoiding service. In such a case, substituted service shall be deemed to have effect of personal service upon the defendant and will be valid unless he shows any prejudice caused to him due to such service.

### **OTHER PROVISION RELATED TO SUMMONS:**

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<sup>8</sup> 2007 (2) ALT 491

<sup>9</sup> See. *Panduga Veera Reddy v. Bandaru Damodar Reddy and another* – 2005 (3) ALT 417. L.

<sup>10</sup> *Pappasani Narayana Reddy v. Mandem Reddappa Reddy*, 2004 (5) ALT 226.

**Rule 21: Service of summons where defendant resides within jurisdiction of another court-** The service of summons outside the jurisdiction of the court issuing, may be made in any of the aforesaid manner provided under the rule, to the court other than the High Court in whose jurisdiction defendant resides.

**Rule 22: Service within presidency-town of summons issued by courts outside-** Where a summons issued by any court established beyond the limits of town of Calcutta, Madras and Bombay is to be served within any such limits, it shall be sent to the Court of Small Causes within whose jurisdiction it is to be served.

**Rule 23: Duty of Court to which summons is sent-** The Court to which a summons is sent under rule 21 and rule 22 shall, upon receipt thereof, proceed as if it had been issued by such court and shall return the summons to the court of issue, together with the record (if any) of its proceedings with regard thereto.

**Rule 24: Service on defendant in prison-** The service of summons to a person confined in prison shall be served to the officer in charge of prison for service on the defendant either by post or by courier service or by any other mode of communication.

**Rule 25: Service where defendant resides out of India and has no agent-** if the suit is instituted against a defendant residing outside India and he has no agent in India, then the summon shall be sent to the defendant at the place where he is residing i.e. in any foreign country.

The summons may be sent either by post or by courier service or by fax or by electronic mail service or any other means provided by the High Court.

A defendant residing in Bangladesh and Pakistan may be served with the summons through the court of that country except the High Court.

**Rule 26: Service in foreign country through Political Agent or Court-**

Where the defendant is residing in a foreign country;

The summons may be sent through the Ministry of Foreign Affairs of that Foreign Country to such political agent or court, appointed or established by Central Government or to any court situated in that country and not established or continued by Central Government, for being served upon the defendant by post or otherwise.

When such political agent or court returns the summons with an endorsement to the effect that summons has been served, such endorsement shall be deemed to be the evidence of the service.

**Rule 26A- Summonses to be sent to officers of foreign countries-**

The summons to be served on defendants residing or carrying on business or working for gain in the foreign country shall be sent to an officer of the foreign country specified by Central Government through Ministry of Foreign Affairs of India.

The endorsement returned by that officer shall be deemed to be the evidence of the service.

**Rule 27: Service on civil public officer or on servant of Railway Company or local authority-**

The service of summons on the defendant who is a public servant (except mentioned in rule 28) or the servant of a railway company or local authority may be served to the head of the office in which he is employed, together with a copy of it to be retained by the defendant.

**Rule 28: Service on soldiers, sailor or airmen-** Where the defendant is a soldier, sailor or airman, the court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant.

**Rule 29: Duty of person to whom summons is delivered or sent for service-**

(1) Where a summons is delivered or sent to any person for service under rule 24, rule 27 or rule 28, such person shall be bound to serve it if possible, and to return it under his signature, with the written acknowledgement of the defendant, and such signature shall be deemed to be evidence of service.

(2) Where from any cause service is impossible, the summons shall be returned to the court with a full statement of such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non-service.

**Rule 30: Substitution of letter for summons-** This rule provides situation when serving of summons does not seem to be proper, and in such situation the court sends a letter to the defendant, who is entitled to this form of calling due to the rank of such defendant requiring such mark of consideration or respect. However, this does not mean that all the particulars required in summons will not be mentioned in such letter as it will be treated in all respects, as a summons.

This letter may be sent by post or by special messenger.