

17.08.2023

Plfs:- Sri. G.N. Adv.,
For orders on I.A.No.2

ORDERS ON IA-II

The plaintiff has filed I.A.No.II U/O.5 Rule 20 of C.P.C. The brief averments of the affidavit filed in support of the application are as follows:

The plaintiff has filed suit against the defendants for the relief of specific performance of

contract. Plaintiff has taken steps against defendants through court and also through RPAD. The defendants even though residing in the same address not taken the summons intentionally and avoiding the service of summons. Hence, it is just and proper to order of substitute service of summons by way of paper publication. Hence, prays to issue summons through paper publication.

Heard plaintiff counsel.

The points that arise for my consideration are as follows:

- 1. Whether the plaintiff proves that, the application filed by him deserves to be allowed ?**
- 2. What order ?**

I answer the above points as follows:-

Point No.1 :- In the Negative.

Point No.2 :- As per final order, for the following;

REASONS

Point No.1:- The plaintiff has filed the suit against the defendants for the relief of specific performance of contract. After filing of suit, the summons was issued through court as well as RPAD to the defendants and summons/ RPAD returned as insufficient address. The plaintiff without taking steps by furnishing fresh address or correct address has filed present application. I have carefully gone through the application. However, the plaintiff filed the present application contending that the defendants intentionally avoiding the service of summons.

At this Juncture it is necessary to rely the decision of Hon'ble High Court

Karnataka reported in 2019 (2) KCCR 1504. The Hon'ble High Court held at Para No. 11.

11. A bare reading of sub-rule(1) of Rule 20 CPC would clearly disclose that it is satisfaction of the Court which is paramount for ordering issuance of notice by substituted service, Court must record its reasons or satisfaction before directing substituted service of notice. Where summons or notice issued through process of Court or through process of postal authorities were to be returned for the reason that notice is not available at the address at the time of effecting service of notice, Court cannot infer that notice is attempting to avoid service of notice . In other words, Court has to apply its mind by ascertaining present address of the defendant and call upon the petitioner or plaintiff as the case may be, to give correct address and then direct issue of summons to such new address.

Therefore, the plaintiff should be furnished fresh address of the defendants. When the very address mentioned in the plaint itself insufficient, question of avoiding the summons does not arise at all. Hence, I answer the above point in the Negative.

Point No.2 :- For the above reasons I proceed to the pass the following :-

ORDER

I.A.II filed by the plaintiff U/O.5 Rule 20 of C.P.C., is hereby dismissed.

In the facts and circumstances of the case no order as to cost.

Reissue summons to defendants through RPAD if PF paid and RPAD furnished with correct address.

Call on 26-09-2023.

**Prl. Civil Judge & JMFC,
Magadi.**