

Order below Exh.43
(Passed on 27/04/2018)

- 1] This is an application for declaration of service of suit summons against defendant No. 4 under Order 5 Rule 9 (5)(Proviso) of the Code of Civil Procedure.
- 2] Read application. Heard, advocate Ku. M.K. Atmande for the plaintiffs. Perused record and proceeding of the case.
- 3] It is contended by the plaintiffs that they have taken various steps to serve the suit summons to defendant No.4 namely Niyoti Bhajan Saha, however, she has avoided the service of summons. Therefore, the plaintiffs have sought permission to serve suit summons to defendant No.4 by Registered Post with Acknowledgement Due. Accordingly, on 09/03/2018 the plaintiffs have issued suit summons by RPAD.
- 4] The plaintiffs further contended that they have sent suit summons by RPAD on proper address of defendant No.4. The Plaintiffs have filed postal receipt and tracking report of item booked bearing No.RM402221677IN at Post Office, Chamorshi. As per the said tracking report, the registered postal pocket is attempted to be served upon defendant No.4. Her residential house is also located by post authority. Intimation is also delivered to her by post authority. However, defendant No.4 has not collected the said pocket and she impliedly denied accepting the same. Therefore, it is necessary to declare that the summons has been duly served upon defendant No.4.
- 5] After hearing the plaintiffs, I have gone through the record. On perusal of plaint, it appears that defendant No.4 Niyoti Bhajan Saha is appears to be

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resident of Sonarpur, Distt. Chobispargana (Calcutta). As per order dated 18/04/2016 passed below Exh.1, my learned predecessor ordered to issue suit summons to the defendants. After service of suit summons, defendants No.1 to 3 appeared and filed their written statement below Exh.18. The suit is proceeded against defendant No.5 ex-parte vide order dated 15/12/2017 passed below Exh.1.

6] On perusal of record, it appears that the plaintiffs have made efforts to serve the defendant No.4 by different modes, but due service of suit summons is not yet to be brought on record. The plaintiffs have taken *Hamdast* vide order dated 18/10/2016 passed below Exh.20 and the suit summons was issued vide process No.618/2016 dated 19/10/2016. However, said postal envelope came back unserved with endorsement that “not known returned to sender” dated 02/11/2016. Then after, the plaintiffs have issued suit summons to defendant No.4 by speed post by taking *Hamdast* vide order dated 13/10/2017 passed below Exh.31. The said *Hamdast* was issued vide process No.882/2017, but said envelope came back with endorsement that “insufficient address”. Prior to that the plaintiffs have received *Hamdast* of suit summons for serving it on defendant No.4 by hand. The said *Hamdast* was issued by process No.595/2017 dated 05/08/2017. But neither delivery report is received nor the *Hamdast* came back. Therefore, the plaintiffs have again taken *Hamdast* of suit summons in the name of the Court of Civil Judge (Jr.Div.), Sonarpur to serve upon defendant No.4. The *Hamdast* was issued vide process No.1109/2017 dated 18/12/2017, but neither delivery report is received nor the suit summons came back.

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7] Then after, the plaintiffs have issued suit summons by RPAD to defendant No.4 vide order dated 27/02/2018 passed below Exh.39. Accordingly, *Hamdast* was issued vide order dated 27/02/2018 passed below Exh.41. But the sealed envelope of suit summons came back. On perusal said sealed envelope, there is postal endorsement of “not known” dated 14/03/2018, attempt of service dated 17/03/2018, 19/03/2018 and lastly, there is endorsement dated 21/03/2018 in which endorsement is marked on contents of rubber stamp. On perusal of said stamp the postal authority (✓) marked before two options. The contents of rubber stamp are illegible. Therefore, it can not read clearly and certainly.

8] However, on perusal of record, the same rubber stamp appears to be marked by the postal authority on envelope which was issued to defendant No.4 vide process No.882/2017 dated 25/10/2017. On perusal of contents of said stamp, it appears that the contents are “Addressee can not be located”, “Deceased”, “Insufficient Address”, “Missent”, “Refused”, “Unclaimed, “Addressee Moved”. On comparing the contents of rubber stamp of both envelopes, they are appears to be same. But where (✓) are marked on envelope process No.326/2018. It appears two (✓) are marked before the option “Deceased” and “Refused” in the same stamp. After taking into consideration, these two options, it is not clear that whether the defendant No.4 died or she refused the service of suit summons.

9] So also it is needed to state here that as per *proviso* of Order 5 Rule 9 of the CPC, it is responsibility of plaintiffs to establish that they have sent suit summons by RPAD to defendant No. 4 on her proper address. But on perusal of cause title of the plaint, it appears that the defendant No.4 is shown as

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resident of Sonarpur, Distt. Chobispargana, State-Calcutta. It is worth to mention here that place of Tahsil is not mentioned therein. So also Calcutta is mentioned as a State, but Calcutta is not a State and it is the capital of State of West Bengal. It clearly suggests that the plaintiffs have not provided proper address of defendant No.4 nor the plaintiffs have brought on record any document showing address of defendant No. 4 which is the same in cause title. Therefore, under such vague circumstances neither Court can believe on said report nor can pass any order against defendant No.4 about declaration of service of suit summons. Moreover, it would better to issue direction to the plaintiffs to take further necessary steps to serve suit summons upon defendant No.4 which would make clear service report. In view of above discussion, the application is liable to be rejected. Hence, I pass following order.

ORDER

- 1] The application Exh.43 is rejected.
- 2] The plaintiffs are directed to take necessary steps for due service of suit summons upon defendant No.4.

Sd/-

Date:- 27/04/2018
Place : Chamorshi

(Liladhar D.Korde)
Jt.Civil Judge (Jr.Div.)
Chamorshi.