

Title Suit – 103 / 2013 (C.I.S. 631 / 2014)
(C.N.R. WBHW07- 000 248 - 2014)

Order No. 60 dated 02.01.2023

Today is fixed for hearing in connection with the application under Order 5 Rule 20 C.P.C. filed by the plaintiff.

Both parties are present.

The instant application is accordingly taken up for hearing.

Heard the Ld. Advocate of the plaintiff who submitted that summons could not be served on defendant No. 4(Kha) Kakali Bera. Ld. Advocate further submitted that as per the report of the Process Server it is forthcoming that the said Kakali Bera has got married and that she is no longer residing at the address given in the summon. For this reason, summons could not be served upon her. Accordingly Ld. Advocate contended that the plaintiff was compelled to file the instant application so that the summons of this suit could be served on the said defendant by way of substituted service. Ld. Advocate further submitted that the A/D card of the summons concerning the said defendant is yet to be received back.

On the other hand, Ld. Advocate of the defendant strongly opposed the instant application on the ground that the said application is premature. Ld. Advocate contended that before recourse is taken to the provision contained in Order 5 Rule 20 C.P.C., it is mandatory that all the processes of regular service of summons should be exhausted. In the matter at hand, the summons addressed to the aforesaid defendant and sent through registered post is yet to be returned back. Ld. Advocate contended that till the fate of the summons sent through registered post is ascertained, it would be premature to allow the instant application of substituted service filed by the plaintiff.

This Court has given due consideration to the submissions made by the Ld. Advocates of the parties in connection with the instant application. It is the settled legal position that recourse to the provision made under Order 5 Rule 20 C.P.C. for substituted service can only be taken only after all the regular means for service of summons have been duly exhausted. In the matter at hand, the Process Server has submitted his report that he could not serve the summons on defendant No. 4(Kha) as she was found to no longer reside at the address given in the summon. It is pertinent to mention here that summons have been issued on the said defendant through registered post also as is evident from the original postal receipt filed by the plaintiff. It is significant to note that the summon sent through registered post and the A/D card relating to the same are yet to be received back. It is also significant to note that no postal track consignment report has been filed by the plaintiff from which the fate of the summon sent though registered post could be ascertained. Therefore, after taking all the aforesaid facts into account, this Court is of the considered view that the instant petition filed by the plaintiff is premature for which reason the same cannot be allowed at this stage. The instant petition stand accordingly disposed of in terms of the observations made in this order. However, liberty is given to the plaintiff to take necessary steps regarding defendant No. 4 (Kha) Kakali Bera for service of summons upon her by regular means before recourse is taken by the plaintiff to the provision contained in Order 5 Rule 20 C.P.C.

To 03.04.2023 for fresh steps by the plaintiff regarding defendant No.4 (Kha) Kakali Bera.

D/C by me

C. J. (Jr. Divn.)
Amta, Howrah
(JO Code WB 01195)

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