

MACC 84/22 (CIS 84/22)

Order dated 27.11.2024

Today is fixed for S/R in respect of service of notice upon the OP No. 2 and appearance.

Both the petitioner and OP No 1 files memo of appearance through their Ld counsel.

The OP no 1 filed first legal appearance on 27.02.2023. Thereafter the WS was filed on 06.06.2023. Thus OP no. 1 filed WS within the statutory period. Thus WS filed by OP no 1 is accepted.

No SR of notice issued upon OP no 2 is received. The petitioner has filed an affidavit pointing out that notice was issued upon the OP No 2 through registered post. The notice was served upon the OP No. 2 through India Post as it appears from the track consignment report.

In view of the above facts it would be of profit to refer to the observations of the Hon'ble Apex Court in Salem Advocate Bar Association V Union of India (2005) 6SCC 344 with respect to amendment of order 5 rule 9 CPC. The said order provides for service of summons by delivering or transmitting a copy thereof by registered post acknowledgment due, addressed to the defendant or his agent empowered to accept the service. However the Hon'ble Apex Court had observed in the aforementioned case :

There is, however, a danger of false reports of service. It is required to be adequately guarded against. The courts shall have to be very careful while dealing with a case where orders for deemed service are required to be made on the basis of endorsement of such service or refusal. The High Courts can make appropriate rules and regulations or issue practice direction to ensure that such provisions of service are not abused so as to obtain false endorsements. In this regard, the High Courts can consider making a provision for filing of affidavit setting out details of events at the time of refusal of service. For instance, it can be provided that the affidavit of the person effecting service shall state as to who all were present at that time and also that the affidavit shall be in the language known to the deponent.

In this instant case there is an affidavit filed by the petitioner regarding service of the notice upon the OP No. 2 reliance being placed upon the track consignment report of the registered post.

In view of the discussion above, this court is inclined to allow the prayer of the petitioner. Notice served upon the OP No. 12 is considered to be good service

The OP No. 2 did not appear after receipt of notice. Let the suit be proceeded exparte against the OP No. 2.

Fixing 16.01.2025 for framing of issues.

Dictated & Corrected by me,

Addl. Dist. & Sessions Judge,
FTC-I, Alipurduar.

Additional Dist. & Sessions Judge,
1st Fast Track Court, Alipurduar.