

**In the Court of the Additional District & Sessions Judge, 2nd Court,
Bongaon, Dist.- North 24 Parganas**

Before

Shri Pradip Kumar Adhikary, WBJS,
J O Code (UID No.) - WB916,
Additional District & Sessions Judge, 2nd Court,
Bongaon, Dist.- North 24 Parganas.

CNR NO.- WBNP 0600 1316 2024
Mat. Suit No.- 418 of 2024

Beauti Barui
v.
Ujjal Barui

Order No.- 05
14/02/2025

The plaintiff/petitioner is present by filing hazira.

The case record is taken up for hearing of the application under order 05, rule 20 CPC filed by the plaintiff/petitioner on 20/01/2025.

In the said application the plaintiff/petitioner has stated that the notice issued by the Court is returned with report that the addressee moved. It is alleged that the respondent/defendant in order to harass the plaintiff/petitioner wilfully refused to receive the notice and as such the plaintiff/petitioner has prayed for substituted service of summons by an advertisement in a daily newspaper.

Heard.

Considered the materials on record.

Order 05, rule 20 of the Code of Civil Procedure, 1908 provides for substituted service. It is not service in the ordinary sense of the word. It is a service in an artificial sense proceeding upon a fiction imported by necessity.

From the materials on record it appears that the summons issued through post is returned unserved with a report that "Addressee Moved".

So, there is no dispute that there is no allegation that the defendant was at any point of time keeping out of the way for avoiding service of summons.

Mere because of summon issued through post has been returned unserved, does not authorise substituted service of summons.

Here in this case the plaintiff/petitioner has failed to bring on record that personal service upon the defendant/respondent is not possible. There is no materials on record that to show that the defendant/respondent refused the summons and any effort on the part of the postal authority to deliver the summons to any of the defendant's relations at the given address.

The plaintiff/petitioner has failed to satisfy the Court that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service or that for any other reasons summons cannot be served in the ordinary way.

Hence, keeping in mind that personal service in ordinary way is the rule and substituted service is the exception and since satisfaction of all the conditions is absent, substituted service of summons under order 05, rule 20 CPC cannot be ordered at this stage and consequently, the petition is rejected.

The plaintiff/petitioner is directed to deposit the requisite / process fee for service of summons in the ordinary way and also to pay charges for service of summons by registered post on the defendant/respondent.

To 07/05/2025 for depositing the requisite / process fee by the plaintiff/petitioner for service of summons in the ordinary way and also for payment of charges for service of summons by registered post on the defendant/respondent.

Typed by me

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