

Ejectment Suit 02 of 2024.

[CNR No. WBPS01 -000002 -2024]

Before – Ashutosh Kumar Singh- Ld. Chief Judge.

Order No:-03.

26-02-2024.

Today is fixed for S/R, A/D and appearance.

Plaintiff files hazira.

Plaintiff also files a petition praying for accepting service of summons upon the defendant along with postal track report. Plaintiff also files original postal registration receipt and another copy of track report by phristy. Let the same be kept in the case record.

On call, plaintiff is present through his Ld. Advocate who moved the petition filed by the plaintiff today and submitted that from the postal track report filed by him today, it will reveal that the postal article containing summons came back from the suit premises as “Door locked” and “Intimation Served” but in spite of the same, the defendant did not turn up to contest the suit. It is further argued that in cases wherein postal endorsement are “not available in the house” or “housed locked” or “Shop closed” or “addressee not in station” etc , it tantamount to “Not-claimed” and due service has to be presumed. Relying upon a Judgement passed by the Hon’ble Supreme of India in Criminal Appeal No 455 of 2006, he prayed for accepting the service and proceed the matter ex-parte in respect of the original defendant as well as proforma defendant.

Heard submissions from the plaintiff. Perused the petition, service reports and materials on record.

Also perused the judgement cited by the Ld. Advocate for the plaintiff.

Considered.

So far service reports are concerned, bailiff report in respect of principal defendant Hrishikesh Giri dated 30-01-2024 goes to show that bailiff found door of the defendant closed under lock and key and since none could give any proper information , bailiff affixed summons on the front door of the defendant’s room and attach a photograph with the bailiff report. No signature of any witness was available with the bailiff report.

Regarding service report in respect proforma defendant Ramendra Das is concerned, bailiff report dt 30-01-2024 reveals that bailiff found door of the proforma defendant closed under lock and key and since none

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(contd.....)

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could give any proper information , bailiff affixed summons on the front door of the defendant's room and attach a photograph with the bailiff report. However, there is signature of one "Sukumar Rakshit" is available in the bailiff report.

Postal report reveals that one sealed envelope came back with postal endorsement "D/L and intimation /serve" in respect of the original defendant and another sealed envelope with respect to proforma defendant came back with endorsement I/S, A/B, I/S.

In this backdrop, by filing the instant petition, plaintiff has prayed for accepting the service of summons upon the principal defendant as well as proforma defendant.

Now, law is well settled that the term 'duly served' or "due service" means service of summons upon the defendant in a manner prescribed in law.

In fact, the purpose of sending summons to the defendant is to impart knowledge of the suit to the defendant , and when the summons has ably impart the same to the defendant or O.P or a person to whom it was intended to serve , that amounts to due service of summon. There is no any ambiguity on this matter rather.

Now, let me deal with the factual aspect of the matter.

Careful scrutiny of the instant petition of the plaintiff dated 26-02-2024 reveal that in paragraph-4, third line of the petition, plaintiff has stated on affidavit that, " the defendant along with his family members are residing at a new flat being Flat No 5, 2nd Floor, at premises no 559/1, Nagendra Nath Road, P.S- Dum Dum, Kolkata-700028." Therefore, it is crystal clear that the exact residential place and address of the defendant is within the knowledge to the plaintiff. Despite such fact, from the postal envelope and the process returned by the bailiff, it appears that the plaintiff took steps service of summons upon the defendant only at the address of the suit premises and not otherwise. The Cause Title of the plaint is also silent about the residential address of the defendant which the plaintiff stated on affidavit in his petition.

Therefore, considering such facts and circumstances, this Court finds no scope to accept service of summons upon the principal defendant.

Regarding service report upon proforma defendant is concerned, the same also failed to convince this Court as to the knowledge of the suit has been sufficiently imparted to the proforma defendant beyond reasonable doubt. It is also pertinent to mention here in paragraph-4, 5th line of the instant petition, the plaintiff has stated on affidavit that-“the proforma defendant no-2 has been made necessary party and relief has been claimed against him.”

The judgement cited by the plaintiff is not applicable in the present context as the facts are otherwise.

Accordingly,

it is

Ordered

that the petition filed by the plaintiff dt 26-02-2024 is considered and rejected .

Plaintiff is required to take steps for service of summons upon the defendant in accordance with law.

To..(**23-04-2024**)..for taking steps by the plaintiff in accordance with law.

Dictated & corrected

by me

Chief Judge.

Chief Judge

J.O .Code:- WB 01244.