

Ejectment Suit 112 of 2023.

[CNR No WBPS 01 000234 2023]

Before – Ashutosh Kumar Singh- Ld. Chief Judge.

Order No:-04.

08-08-2023.

Today is fixed for consideration of service report.

Plaintiff files hazira. On call, plaintiff is found present through his Ld. Advocate.

Ld. Advocate for the plaintiff submitted that after filing of the suit against the defendant, plaintiff has caused service of summons upon the defendant through Court as well as through postal mode but the same has been returned as “Not-claimed. It is further argued that “Not-claimed” is tantamount good service in the eyes of law. Therefore, he has prayed for accepting the service and fix the matter for ex-parte hearing.

In support of such contentions, plaintiff has relied upon decisions reported in 2021(4) Indian Civil Cases 368 (S.C) and 2022(3) I.C.C page 371.

Heard Ld. Advocate for the plaintiff. Perused the service reports, materials on record.

Also perused the citations relied by the plaintiff.

Considered.

Record reveals that after filing the suit, summons have been sent to the defendant for once only.

So far service reports are concerned, record reveals that it is specifically mentioned in the bailiff report dt 12-05-2023, that the bailiff reported “room of the defendant was closed under lock and key and upon enquiry from some persons of the said place, none could give me any proper

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information about the defendant”.

Regarding postal service, two envelopes came back with postal endorsement “ Addressee cannot located/ Returned to Sender.” The postal track report filed by the plaintiff also corroborates with the same.

Now, let me consider what is considered as “ due service” in legal parlance.

The term ‘duly served’ or “due service” means service of summons upon the defendant in a manner prescribed under the law.

It means that 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. Mere sending of notice through post with a/d will not serve the purpose of law and particularly the jurisprudence of natural justice which promotes the principle of “Áudi Alteram Partem”

Without giving proper opportunity to the defendant / O.P for hearing, the determination of any issue may cause frustration of natural justice.

Here in the present case, the above stated service reports failed to convince this Court as to the fact that knowledge imparted to the defendant as to filing of this suit.

So far the citations relied upon the plaintiff are concerned , this Court is not in disagreement or hold any different view with the observations of the Hon’ble Court but here the facts and circumstances are not similar to the fact and circumstances of the present case because here it is not the case that the postal article has been returned from the plaintiff with remarks “refused” or “not available in the house” or “house locked” or “shop closed” or “addressee not in station” etc. Here the “addressee cannot be located” has been endorsed by the postal authority.

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Thus the ratios are not applicable in this case at this stage of the suit.

Therefore, in the above view of the matter, service of summons upon the defendant is found to be unsatisfactory and cannot be accepted and accordingly plaintiff is directed to take steps for service of summons upon the defendant as per provisions of Order 5 Rule 20 of C.P Code .

To (**22-09-2023**) for taking steps by the plaintiff.

Dictated & corrected

by me

Chief Judge.

J.O .Code:- WB 01244.