

Ej Suit 201 of 2018
WBPS01-000655-2018

Before: Smt. Sudipa Banerjee, Ld. Judge, 3rd Bench

Order No: 33

Date: 03-05-2024

Today is fixed for awaiting A/D and consideration of service report.

Plaintiff files hazira.

It appears from the bailiff report that summons were unserved upon the defendant no 2(a) to 2(d) as the room of the said defendants was found closed under lock and key.

Four postal envelopes returned unserved with endorsement 'D/L and 'intimation served'.

Careful perusal of the postal registration receipts reveals that the same were sent to the correct postal address by registered post, as such, it can be presumed that summons were duly served upon the defendant no 2(a) to 2 (d) under the Section 28 of the Bengal General Clauses Act, 1899 irrespective of the postal endorsements on the returned postal articles.

Further, *the Hon'ble Supreme Court in the decision reported in (2021) SCC Online SC 828 (supra) in an appeal arising out of proceeding under Order IX Rule 13 of the Code of Civil Procedure while dealing with an issue regarding validity of the service of summons of the suit has held that, when a notice is sent by registered post and is returned with a postal endorsement "refused" or "not available in the house" or "house locked" or "shop closed" or "addressee not in station", due service has to be presumed under the relevant provision of the General Clauses Act, 1897. The decision of the Hon'ble Supreme Court reported in (1989) 1 Supreme Court Cases 264 (supra) lays down the similar proposition of law. The decision of the learned Single Judge of the Delhi High Court reported in 2011 SCC OnLine Del 2412 (supra) is apposite to the context wherein, it has been held that mere denial of service of*

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notice is not sufficient to rebut the presumption of due service of such notice under Section 27 of the General Clauses Act, 1897.

Considering the above mentioned decisions of the Hon'ble Apex Court, this Court finds that service upon the defendant no 2 (a) to 2(d) are found to be satisfactory and the same are accepted as due service.

On call neither defendants nor any one on their behalf appear to move before this Court. Since it is found that in spite of due service of summons, defendants did not turned up to contest the instant suit, let the same be proceed ex-parte against the defendant no 2 (a) to 2 (d).

Fix **20-06-2024** for steps by the plaintiff with regard to death of the defendant no 1.

Sudipa Banerjee
[J.O. Code: WB01148]
Judge, 3rd Bench
Presidency Small Cause Court,
Calcutta