

GAHC040004382021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WP(C)/130/2021

Pakjen Puchung and 2 Ors
S/o Late Tinpu Puchung, village Hiri, PO/PS Mechuka, District Shi Yomi, AP 2:
Taku Puchung

Age:

Occupation :

S/o Late Tajab Puchung

village Hiri

PO/PS Shi Yomi

District Shi Yomi

AP

3: Bojum Puchung

Age:

Occupation :

S/o Late Tatik Puchung

village Hiri

PO/PS Shi Yomi

District Shi Yomi

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VERSUS

THE STATE OF AP and 2 Ors
represented by the Secretary, General Administration, Govt. of AP, Itanagar
2:The Additional Deputy Commissioner

Age: 0

Occupation :

Mechuka

Shi Yomi District

AP

3:Tame Pupor

Age: 0

Occupation :

S/o Late Cadik Pupor

village Rapun

PO/PS Mechuka

District Shi Yomi

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Advocate for the Petitioner : T T Tara

Advocate for the Respondent : GA (AP)

BEFORE
HONBLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 22.05.2024

Heard Mr. J. Jini, learned counsel for the petitioner.

2. As regards service of notice on respondent no.3 by dasti mode, the learned counsel for the petitioner has referred to the order of this Court dated 08.11.2023, wherein this Court had accepted the affidavit of dasti service to be a good service on the respondent no.3.

3. The reasons for exercising the review jurisdiction under the extraordinary circumstance narrated below, the Court deems it appropriate that the said order dated 08.11.2023 be reviewed.

4. This Court by order dated 13.07.2022 had directed the petitioners to serve notice on respondent no.3 by way of dasti. The matter was directed to be listed after four weeks. Therefore, the period of four weeks would have expired on or around 12.08.2022. The office note dated 14.07.2022 indicates that the process for dasti was issued on 14.07.2022. However, the petitioners did not

make any effort to serve notice by dasti mode within four weeks' time from 13.07.2022. From contents of the affidavit of dasti service, it appears that the deponent who has sworn the affidavit on 26.09.2023, has stated in paragraph 4 that he is an advocate by profession has gone to the house of respondent no.3 on 09.09.2022, 11.10.2022, 15.12.2022 and 05.06.2023 to serve process.

5. The nature of process which was issued by the Registry for service of notice by dasti mode is not available on record nor it has been annexed to the affidavit filed by the advocate for petitioner. In the considered opinion of the Court, an attempt of service of notice on a party, after the returnable date, is no service at all because a person cannot be expected to appear before the Court on a back date. In this connection, the view of the Court finds support from the decision of the Supreme Court of India in the case of *M/s. Nahar Enterprises Vs. Hyderabad Allwyn Ltd., (2007) 9 SCC 466*.

6. In paragraph 4 of the affidavit of dasti service, the deponent has made a statement that he had visited the given address on several occasions. In this regard, we have already stated that the address in which the deponent had gone is not available on record. Be that as it may, the statement made in paragraph 4 of affidavit of dasti is not even verified in the affidavit as to whether it is true to the knowledge or true to the information received. In the affidavit, it is not stated that who had identified the house of the respondent no.3 and there is no indication that any person had witnessed the refusal to accept process by the respondent no.3. Therefore, the statement made in paragraph 4 of affidavit of dasti filed on 26.09.2023 cannot be accepted as good reason to presume that the notice upon respondent no.3 is presumed to be served on refusal of respondent no.3 to accept the process.

7. It is left open to the Bar Council of India to examine whether an

advocate can be engaged to act and/ or render service as a Postman and whether it is befitting for an advocate to do so.

8. As there is no office note regarding re-issuance of the dasti process returnable on the date when the service was sought to be made, the Court is of the considered opinion that this is a fit case to review the order dated 08.11.2023 regarding acceptance of service of dasti mode on respondent no.3. The said order is therefore, reviewed and recalled.

9. Accordingly, the petitioners are directed to take fresh steps within 3 working days for service of notice on respondent no.3 by registered post with A/D as well as by usual process to be served by process server of the jurisdictional Civil Court. The concerned Court shall return the service report prior to the next date of listing.

10. Notice is made returnable on 27.06.2024.

11. Liberty is granted to the learned counsel for the petitioners to collect the postal receipt number from the Registry and track service through the postal website and the track report shall be filed before the Registry prior to the next date fixed.

12. List on 27.06.2024.

JUDGE

Comparing Assistant