

05.09.2018 Present: Ms. Tim Saran, Advocate, for the appellant.

Mr. Basant Thakur, Advocate, for respondent No.2(i).

Ms. Ambika Kotwal, Advocate, for respondent No.2(vii).

CMP No. 2301 of 2018

By medium of this application, the appellant/applicant has sought permission for effecting service upon respondent No.2 (iii) Raj Pal and 2 (vi) Gauri Shankar by way of affixation. It is averred that the summons issued to these respondents pursuant to the directions passed by this Court on 22.4.2016, were received back with the report that they are not residing in the addresses as given in the process fee and memo of parties. Thereafter, again fresh summons were issued to these respondents. However, on 6.12.2017 it was reported that both these respondents are residing in Dubai.

It is averred that on 28.2.2018 this Court had issued dasti summons for the service of these respondents. However, this time, their wives refused to take the summons, even though, they are residing with the other family members of unserved respondents in the same house. Not only this, the children of these unserved respondents are also residing and studying in the school in the same village. It is averred that the wives of these unserved respondents are majors and yet are not

accepting service of summons, therefore, these respondents be served by way of affixation.

I have heard learned counsel for the appellant and have gone through the records of the case.

It is more than settled that before service of summons on the defendant/respondent can be effected on an adult member of the family, the following conditions must be fulfilled:

- (i) The defendant must be absent from his residence at the time when summons is sought to be served on him;
- (ii) there is no likelihood of his return within a reasonable time; and
- (iii) he has no agent empowered to accept service of summons on his behalf.

Thus, if it is found that the respondent is absent from his residence and there is no likelihood of his return within a reasonable time and he has no agent empowered to accept the service of summons on his behalf, the service can be effected on any adult member of the family, whether male or female. Therefore, the service of summons on son, wife or husband of the defendant or upon a family member of defendant is good and sufficient service under Rule 15 of Order 5 provide of course the person accepting the service of summons is not a minor or

otherwise disqualified from accepting service under any law, for the time being.

Equally settled is the legal position before this mode of service is resorted to, the serving officer must use all due and reasonable diligence to effect personal service under Rule 10 of Order 5. However, in the present case, it has been duly proved on record that the appellant-applicant has resorted to all modes of service of summons, therefore, this is a fit case where the prayer made by the applicant for effecting service on respondent No. 2(iii) Raj Pal and 2(vi) Gauri Shankar by way of affixation are to be allowed.

Accordingly, the present application is allowed and the respondent No. 2(iii) Raj Pal and 2(vi) Gauri Shankar are permitted to be served by way of affixation on the address as given in the memo of parties. Issue notice accordingly, returnable on **31.10.2018**.

5th September, 2018.
(GR)

(Tarlok Singh Chauhan)
Judge