

Roshan Lal vs. Mahant Ram & anr.

RSA No. 142 of 2012

Reserved on : 5.6.2026

19.6.2026 :Present: Mr. Neeraj Gupta, Senior Advocate, with
Mr. Pranjal Munjal, Advocate, for the
appellant.

Mr G.R. Palsra, Advocate, for the respondents.

CMP No. 28828 of 2025

The appellant/applicant has filed the present application under Order 5 Rule 20 read with Section 151 of the Code of Civil Procedure for effecting service upon the unserved respondent No. 1(a) to 1(d) by way of affixation. It has been asserted that an application being CMP(M) No. 512 of 2025 was filed by the applicant, mentioning seven persons to be substituted on record as the legal representative of respondent No.1, Sh. Mahant Ram. Notices were sent to the proposed legal representatives, and the service could not be effected upon them. The applicant tried his best to ascertain the addresses of the unserved proposed respondents, but could not ascertain their addresses despite the exercise of due diligence. Mahant Ram was also a party in another suit filed by one Sh. Hitender Kumar Sharma, which is pending for adjudication before the learned Civil Judge, Senior Division, Sundernagar, District Mandi, H.P. The legal heirs

mentioned in the application were served at the same address, which has been mentioned in the present appeal. There is no other address available with the appellant/applicant. Hence, it was prayed that the unserved respondents be summoned by way of affixation.

2. I have heard Mr Neeraj Gupta, learned Senior Advocate, assisted by Mr Pranjal Munjal, learned counsel for the appellant/applicant, and Mr G.R. Palsra, learned counsel for the respondents.

3. Mr Neeraj Gupta, learned Senior Advocate for the appellant/applicant, submitted that the service could not be effected upon the proposed respondents despite the best efforts. The applicant does not have any other address available to him. The proposed respondents were also served in another suit filed by Mahant Ram at the address furnished in the present appeal. Therefore, he prayed that the present application be allowed and the service be effected upon the proposed respondents by way of affixation on the last known address.

4. Mr G.R. Palsra, learned counsel for the respondent, submitted that, as per the report of the Process Server, proposed respondents 1(a) to 1(d) are not residing at the addresses furnished by the applicant and

they cannot be served by way of affixation. Hence, he prayed that the present application be dismissed.

5. I have given a considerable thought to the submissions made at the bar and have gone through the records carefully.

6. Order 5 Rule 20 of the CPC provides that where the Court is satisfied that defendant is keeping out of the way for avoiding service or that for any other reason the summons cannot be served ordinarily, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court house and also upon some conspicuous place of the house, if any, in which the defendant is known to have last resided or in any other manner as it deems fit.

7. In the *Barkat Ullah v. Fazal-I-Maula*, 1920 SCC *OnLine Lah 99*, the plaintiff furnished the address of defendant No.1 as employed in the Police in the Northern range. It was pointed out that the address was incorrect, but no efforts were made to effect the service by furnishing a correct address. The summons was affixed to the homestead where defendant No.1 was stated to have last resided. The Lahore High Court held that the service was not proper. It was observed:

“4. In connection with the application for revision, it is necessary to give the exact facts regarding the so-called service effected on the defendants in the original case. Barkat Ullah, defendant, 1 was employed in the police in the Northern Range; his address was given by the plaintiff as employed in the Southern Division, and on the mistake being pointed out, no further efforts were made for personal service. His brother, Muhammad Eazal, was stated as residing with Barkat Ullah and in his case, also the summons for personal service had a similar fate. Defendant 3, Muhammad Sadiq, was employed at Simla, where the summons was sent, but here again, on account of an inaccuracy in the address, no personal service was effected. The Court at first passed an order for full particulars of the correct addresses to be given, but on the following date, apparently overlooking its previous order, directed that summonses should be given for service to the pleader of the plaintiff. They were not so given, but copies of the summonses were affixed on the house at Sialkot belonging to the defendants and occupied by tenants. It is clear that no legal service as contemplated by the Civil Procedure Code ever took place on the defendants, as no order was passed by the Court under O. 5, R. 20, for effecting substituted service, and the conditions to which O. 5, R. 17, relates did not exist in the case. It is therefore evident that upon a proper construction of law, the application for setting aside the ex parte decree, made as it was within 30 days, was bound to succeed. We have shown above why it failed, and it is for our consideration whether the decisions of the lower Courts on this point are correct.

8. In the present case, the summons issued to proposed respondent No.1(a) has been returned with the report that he is residing in Canada. The summons issued to respondents No.1(b) to 1(d) have been returned with a report that they are residing at Chandigarh. Thus, the

proposed respondents are not residing at the address where the summons is sought to be served by way of affixation. In view of the judgment of the Lahore High Court, this course is not permissible and cannot be adopted.

9. It was submitted that the proposed legal representatives were served in another suit at the same address. This submission will not help the appellant/applicant. The copy of the notices served in that suit has not been brought on record. The date of service of the notice has also not been mentioned, and it may be possible that they were available at the address furnished by the applicants at the time of their service in that suit. Therefore, not much advantage can be derived from the service in a different suit.

10. No other point was urged.

11. In view of the above, the present application fails and is dismissed.

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12. List for hearing in due course.

(Rakesh Kainthla)
Judge

19th June, 2026
(Chander)