

SUPR EME COUR T OF I ND I A  
RECORD OF PROCEEDINGS

BEFORE THE REGISTRAR S.G. SHAH

Petition(s) for Special Leave to Appeal (Civil) No(s).24765/2004

(From the judgement and order dated 13/04/2004 in LPA No. 342/1995  
of The HIGH COURT OF PATNA)

BHIKHARI MAHTO Petitioner(s)

VERSUS

CHITRANJAN PRASAD SINGH & ORS. Respondent(s)  
(With prayer for interim relief and office report )

WITH SLP(C) NO. 28724 of 2009  
(With office report)

Date: 25/07/2011 This matter was called on for hearing today.

For Petitioner(s)  
Mr. Rameshwar Prasad Goyal,Adv.

For Respondent(s)  
Mr. Gopal Singh, Adv.  
Ms. Ramita Guha, Adv.  
Ms. S. Chandra, Adv.  
Mr. Akhilesh Kumar Pandey,Adv.

UPON hearing counsel the Court made the following  
ORDER

It is unfortunate that advocates appearing before this court  
are not aware about their own cases, they are unable to help the court.

It is unfortunate that though repeatedly disclosed in open  
court and though several orders passed in several matters regarding  
process to be followed in case of refusal of dasti notice, wherein notices  
are to be affixed at the given address by the process server in presence of  
two independent witnesses and process server has to file an affidavit as  
described in the CPC,

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repeatedly, it is found that parties are filing an affidavit stating on oath  
that other side has refused to accept the notice. In the present case an  
affidavit has been filed stating that respondent no. 2 has refused to  
accept the notice with a copy of notice wherein there is no endorsement  
as to who has refused and in whose presence except an endorsement of  
refusal without signature of anyone. Such service and affidavit cannot  
be considered as proper proof of service. The surprising fact is that by  
an order dated 16 March, 2007 in this case itself wherein the procedure  
is described in detail by disclosing the performa of affidavit to be filed in  
such cases as prescribed under the CPC.

This is a disturbing position on record when petitioner does  
not follow the procedural law and even specific observations and  
directions of the court to confirm the service upon the respondent, for  
which matter is being unnecessarily adjourned and listed for almost 7  
years. Therefore, it would be appropriate to recollect the position on  
record before any conclusion. The fact remains as under:

The Hon'ble Court has passed an order to issue notice on 22  
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November, 2004. Thereafter office report dated 22 May, 2006 confirms that dasti service was given to the counsel for the petitioner as per

Registrar' order dated 2 August, 2005 and petitioner had filed an

affidavit of service on 26 November, 2005 disclosing that several respondents have refused to accept notice whereas respondent nos. 5, 10, 11, 12 and 24 were reported to be dead and, therefore, petitioner filed an application for substituting their legal heirs. However, such application was not proper inasmuch as there is no disclosure of date of death and therefore, Registry could not verify whether such

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applications are filed within limitation or not. Applications to condone delay in bringing legal heirs are also not filed. One another application for deleting respondent no. 5 was also noted to be filed. Thereafter by

an order dated 27 November, 2006, time was granted to the petitioner

to cure the defects in his application. On 6 February, 2007, learned counsel for the petitioner had sought time to verify as to which respondents have refused to accept the notice and to verify the provision so as to confirm whether it can be treated as deemed service

or not. Accordingly time up 1 March, 2007 was granted. Matter was

considered in detail on 1 March, 2007 and adjourned on 16 March, 2007 for passing detailed reasoned order.

A detailed order with reasons was passed on 16 March, 2007

which runs into 15 pages wherein provision of CPC and previous judgments by the Madras High Court and the Supreme Court [AIR 1970 Madras 271, AIR 2002 SC 2370 and AIR 1972 SC 2538] were taken into consideration.

With such order Form No. 11 regarding Affidavit of Process Server in a return of summons or notice as prescribed in Appendix B of the CPC, 1908 was reproduced and annexed to the order so as to enable the advocates for the petitioners to understand and realise the legal provision and procedure.

With such detailed order, petitioner's request to consider the unserved respondents as duly served only because of their affidavit regarding refusal of notice by such respondents was not accepted and such request was rejected.

Such order is appealable as per Supreme Court Rules. No appeal has been preferred till date. In the same order direction was given to issue fresh notice by Registered Post A.D.

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Unfortunately, thereafter petitioner has not paid process fee and failed to supply spare copies for issuance of fresh notices and,

therefore, by an order dated 24 April, 2007 time was granted to take appropriate steps till 8 May, 2007.

However, petitioner again failed to pay process fee and spare

copies till 8 May, 2007 and by order dated 8.5.2007 again time was granted up to 15 May, 2007, as last chance.

Thereupon petitioner had paid process fee only on 15 May, 2007 i.e. last date for filing the process fee. Thereupon notices were issued. However, though some respondents were served by Registered Post A.D., several respondents remain unserved, for which repeatedly time was granted to the petitioner to confirm service by dasti mode.

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Thereafter by an order dated 13 September, 2007 matter was ordered to be listed before the Hon'ble Judge in Chambers because petitioner had failed to serve unserved respondents even after sufficient time was granted.

By an order dated 8<sup>th</sup> May, 2008 Hon'ble Chamber Judge had allowed I.A. Nos. 3 and 4 for deleting some of the unserved respondents.

But as confirmed by an order dated 29<sup>th</sup> May, 2008 by the Registrar Court, respondent no. 2 still remained unserved. It seems that Registry

has thereafter addressed a letter on 19<sup>th</sup> July, 2008 to the petitioner to take steps for confirming service upon unserved respondent no. 2, but

no steps have been taken by the petitioner till 14<sup>th</sup> May, 2009 i.e. for more than a year when my predecessor had passed an order to issue notice with additional dasti service.

Thereafter, Office Report dated 27<sup>th</sup> July, 2009 says that notice was issued upon respondent no. 2 on 4<sup>th</sup> June, 2009 through courier as well as by dasti and service of Show Cause

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Notice is complete. However, it seems that, considering the experience of the Registry, it is necessary to confirm proof of such service. Registry is directed to flag and show such proof of service to the undersigned within a week after its receipt in the Registry. Such direction is

necessary because of the proof of service filed by the petitioner on 27<sup>th</sup> July, 2009 with affidavit was relied upon by my predecessor. On verification of such proof of service it has been noticed that even after a

detailed order on 16<sup>th</sup> March, 2007 petitioner has again failed to file appropriate proof of service and filed an affidavit that respondent no. 2 has refused to accept the notice. Such affidavit does not confirm that on refusal of notice by respondent no. 2 the same was affixed at the given address in presence of two witnesses. However, my predecessor has in

order dated 28<sup>th</sup> July, 2009 noted that service of notice is complete by way of dasti as well as courier and that there is no appearance for such respondent no. 2 and directed to list the matter before the Hon'ble Court

as per rules. However, thereafter again in Office Report dated 19<sup>th</sup> August, 2009, Registry has confirmed that respondent no. 2 was served by courier and by dasti mode, though the proof of service is not proper.

Thereafter matter was listed before main Court on 21<sup>st</sup> August, 2009 when Hon'ble Court granted two weeks' time to file counter affidavit and two weeks' time thereafter for filing rejoinder affidavit with direction to list the matter thereafter. It seems that

counter affidavit filed by some of the respondents had already been on record and petitioner filed rejoinder affidavit on 24<sup>th</sup> October, 2009 i.e. after 2 months. Matter was thereafter listed before the Hon'ble Court

on 30<sup>th</sup> October, 2009 when the Hon'ble Court passed an order to issue notice on the

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Item No. 5 application for condonation of delay as also on Special Leave Petition returnable within one month. Practically such order is in SLP having CC No. 1295 of 2005 and not in SLP(C) No. 24765 of 2004. It seems that such SLP (C) ..... CC No. 1295 of 2005 was ordered to be tagged and

posted with SLP(C) No. 24765 of 2004 by an order dated 9<sup>th</sup> January,

2006. It seems that SLP (C) ..... CC No. 1295 of 2005 was ordered to be  
tagged and posted with SLP(C) No. 24765 of 2004 by an order dated 9  
January, 2006. It seems that SLP (C) ..... CC No. 1295 of 2005 was then  
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numbered as SLP(C) No. 28724 of 2009, wherein on 23 February, 2011  
Hon'ble the Chamber Judge has allowed I.A. Nos. 3 and 5 subject to  
payment of cost of Rs.3000/-. On verification it has been found that  
respondent no. 2 is common in both the petitions and now petitioner has  
to confirm service in SLP(C) No. 28724 of 2009.

Therefore, though there is an order to consider the notice of  
respondent no. 2 as duly served, even in absence of proper proof of  
service as per law, at present we are now concerned with SLP(C) No.  
28724 of 2009 wherein the position remains the same which is again  
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disturbing. In such SLP the fact remains same that on 30 October, 2009  
court has passed an order to issue notice upon all unserved respondents  
The disturbing position is such that for respondent nos. 2 and 7 the  
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Registry has received an endorsement on courier receipt issued on 14  
November, 2009 that "could not locate". The petitioner has at least for  
respondent no. 2 which is common in both the petitions has filed an  
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affidavit in connected SLP on 27 July, 2009 that notice is refused by  
respondent. Even courier has confirmed the service though the  
endorsement of courier receipt is found to be  
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not acceptable. However, since my predecessor has considered it as  
proof of service duly served, matter was listed accordingly before the  
court. But the fact in second SLP remains that though courier receipt  
has been received back with remarks that "could not locate" the  
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petitioner has filed an affidavit on 20 September, 2010 that respondent  
no. 2 has refused to accept notice and that thereupon he has affixed the  
notice at the given address and got endorsement of two persons as  
witness for such activity.

In view of above facts and circumstances today matter was  
again listed before this court for consideration of notice as duly served.

Considering the typical situation on record, where at least  
for the first SLP, petitioner has failed to follow the proper procedure  
and law and in second SLP though petitioner has made an attempt to  
show that notices were affixed in presence of two witnesses, I am of the  
considered opinion that in view of the report by the courier agency-  
"court not locate"- for the same respondent it would be appropriate for  
the petitioner to follow the law as confirmed under the CPC and  
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reiterated in order dated 16 March, 2007 whereby affixing of notice in  
case of refusal is to be done by Process Server i.e. by a public servant,  
otherwise it would be very easy for a litigant to file an affidavit that  
somebody has refused to accept the notice. The detailed and reasoned  
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order on such issue is passed in first SLP on 16 March, 2007 which shall  
be considered as part of this order.

However, considering the typical situation on record when in  
one matter respondent is considered as duly served it  
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would be appropriate to list such matter before the Hon'ble Judge in  
Chambers for appropriate directions.

Meanwhile petitioner is permitted to confirm service through  
Process Server of the nearest Civil Court.

List the matter before Hon'ble Judge in Chambers with  
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proper Office Report and with copy of order dated 16 March, 2007.

(S.G. Shah)  
Registrar

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