

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

BEFORE THE REGISTRAR S.G. SHAH

Petition(s) for Special Leave to Appeal (Civil) No(s).26406/2011

RAMA CHATTERJEE

Petitioner(s)

VERSUS

SANTIMOYEE MANNA & ORS.

Respondent(s)

(With prayer for interim relief and office report)

Date: 18/07/2012 This Petition was called on for hearing today.

For Petitioner(s)

Mr. Yadunandan Bansal, Adv.
Mr. Rauf Rahim, Adv.

For Respondent(s)

Ms. Puja Bahuguna, Adv.
Mr. Siddhartha Chowdhury, Adv.

UPON hearing counsel the Court made the following

O R D E R

Registry has to enquire from the 2nd Civil Judge (Jr.Division), Alipore, District 24 Parganas (South) that why notices of this matter have not been served upon the parties, who are present before that court in Title Suit No.233/2004.

Call for such information through the concerned High Court.

The learned counsel for the petitioner is complaining about the Department for not taking action when notices are forwarded through registered post, A.D. and when acknowledgments are not received. It is known to all that

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postal services are being managed by the Government not by the Court. It is the primary duty of the litigants to chase the process of notice and to select appropriate mode of service, as prescribed under the law. Though petitioner has filed an affidavit of service on 3.7.2012, no acknowledgments are produced with such affidavit. It is clear that notice can be treated as duly served only after proper acknowledgment are there and if notices are served, as per rules and as per provision of the Code of Civil Procedure and not otherwise. It is the say of learned counsel for the petitioner that he cannot continue to pay process fee repeatedly and he is suffering because of the non-service of the notice upon the respondent who are otherwise residing together and though some of them have appeared before this court, adding that rest of the respondents are intentionally not accepting the notice though the same has been forwarded through the Civil Court also. The fact remains that notices were sent through the concerned Civil Judge, where original suit is pending. That Court is asked to confirm that what happened to those notices.

By an order date 12.3.2012, dasti notices were permitted to be served through the nearest Civil Court or Trial Court. By order dated 27.4.2012, Registry was advised to follow the directions of the Circular dated 19.1.2012.

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thereby to address the concerned Court to help the petitioner to confirm service even by affixing the notice at the given address, if it could not be served in due course. In general, whenever dasti notice was issued, practically it is to be served by the litigant directly to the other side, though after amendment in Code of Civil Procedure in the year 2002, dasti notices are permitted to be served by registered post also. However

petitioner has not taken steps to see that notices are served by affixing at the given address of the respondents, more particularly and specifically when there is specific order to that effect that the petitioner has to take help of the nearest Civil court or Trial Court.

In the present case as it has been seen that some litigation is pending before the Trial Court, practically present petitioner is also present before the Trial Court and, therefore, it would be very easy for him to ask his Advocate to take necessary steps to confirm service as directed in the previous orders. A copy of the Trial Court's Suit No.20/1994 at Annexure P-III confirms that the present petitioner is plaintiff in that case. Therefore, he must be aware that whether unserved respondents herein, who are also defendants in the original suit are served in the suit or not.

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In view of the above facts, it would be better if petitioner takes appropriate steps to confirm service through such Trial Court as per previous orders. Registry is also directed to enquire from the Trial Court.

In view of the complaint by the petitioner, Registry is further directed to enquire from the postal authorities that what happened to the registered letters addressed earlier to some of the respondents.

Since learned counsel for the petitioner is complaining about non-action on the part of the Registry, it would be necessary to recollect here that in fact petitioner has filed one affidavit of service dated 22.6.2012, which is sworn by one Debasis Das, who is working as Advocate's Clerk and residing at Calcutta, wherein he has made a statement on oath that he has tried to confirm service upon respondent Nos.2 to 6 but they have refused to accept such notice and, therefore, he has sent notice by registered post, A.D. Postal receipts for sending such notice by registered post, A.D. is annexed with such affidavit.

If petitioner is keen to know what happened to the registered letters, sent by the Registry then they should also verify what happened to the registered letters forwarded by them to the respondents when acknowledgment of such registered

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letters are not produced as proof of service. The fact also remains that law specifically provides that what steps are to be taken in case of refusal of notice. A detailed order is also passed in SLP(C) No.24765/2004 on 16.3.2007 explaining the entire procedure which specifically confirms that if any litigant refuses to accept notice, petitioner can certainly take help of the nearest Civil Court or Trial Court to get the notice served even by affixing the same. In the present case, if the Advocate's Clerk has tried to confirm service, naturally he has been advised by his Advocate to serve notice personally by dasti mode and, therefore, it cannot be believed that the concerned Advocate is not aware about the procedure of Code of Civil Procedure. Therefore, it is the duty of the petitioner to see that notices are served as per Law.

Petitioner as well as Registry has to follow the above directions. Proof of service is to be filed on or before 28.8.2012.

(S.G. SHAH)
REGISTRAR

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