

Order-05 Issue and Service of Summons

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1. Summons :-

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"(1) When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of summons on that defendant:

Provided that no such summons shall be issued when a defendant has appeared at the presentation of plaint and admitted the plaintiffs claim:

Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.";

(2) A defendant to whom a summons has been issued under sub-rule (1) may appear-

(a) in person, or

(b) by a pleader duly instructed and able to answer all material questions relating to the suits, or

(c) by a pleader accompanied by some person able to answer all such questions.

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court.

1. In Rule 1, Sub-Rule (1) Substituted by "THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 2002" in published in the Gazette of India, Extraordinary, Part II, Section No. 25 I, dated May 24, 2002.

2. Copy of plaint annexed to summons :-

1.-Every summon shall be accompanied by a copy of the plaint.

Bombay.-In its application to the State of Maharashtra in Order V for the existing rule 2 and its marginal note, the following rule shall be substituted as under: "2. Copy of plaint to accompany summons.-Every summons, except in the case of one issued by the City Civil Court, shall be accompanied by a copy of the plaint with annexures, or if so permitted, by concise statement."²

1. Substituted for " 2 [Rule-2] Copy or statement annexed to summons -Every summons shall be accompanied by a copy of the plaint or, if so permitted, by a concise statement. ", vide " Order-05 Issue and Service of Summons" Dt. December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

2. Vide High Court Notifn. No. P. 0102/77 (w.e.f. 1st October, 1983).

3. Court may order defendant or plaintiff to appear in person :-

(1) Where

(2) Where the Courts sees reasons to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.

4. No party to be ordered to appear in person unless resident within certain limits :-

No party shall be ordered to appear in person unless he resides-

(a) within the local limits of the Court's ordinary original jurisdiction, or

(b) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the court-house.

Bombay.-In its application to the State of Maharashtra in Order V for the existing rule 4, the following rules shall be substituted as under: "4. No party shall be ordered to appear in person unless he resides- (a) within the local limits of the Court's ordinary, original jurisdiction, or (b) without such limits but at a place less than 100 or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate), less than five hundred kilometres distance from the

Court-house."^ 5. Summons to be either to settle issue or for final disposal.-The Court shall determine, at the time of issuing the summons, whether it shall be for the settlements of issues only, or for the final disposal of the suits; and the summons shall contain a direction accordingly: Provided that in every suit heard by a court of small causes, the summons shall be for the final disposal of the suit. High Court Amendment Bombay.-In its application to the State of Maharashtra in Order V for the existing rule 5 and its marginal note, the following rule and marginal note shall be substituted as under:

5. Summons to be either to settle issues or for final disposal :-

"-The Court shall determine at the time of issuing the summons whether it shall be for the filing of written statement and the settlement of issues only, or for the final disposal of the suit, and the summons shall contain a direction accordingly : Provided that in every suit heard by a Court of Small Causes the summons shall be for final disposal of the suit".¹

1. Vide the High Court Notifn. No. P. 0102/77 (w.e.f. 1st October, 1983).

6. Fixing day for appearance of defendant :-

The day¹ ["under sub-rule (1) of rule 1"] shall be fixed with reference to the current business of the Court, the place of residence of the defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

1. Substituted for "for the appearance of the defendant ", vide " Order-05 Issue and Service of Summons" Dt.December30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

7. Summons to order defendant to produce documents relied on by him :-

The summons to appear and answer shall order the defendant to produce¹ ["all documents or copies thereof specified in rule 1A of Order VIII"] in his possession or power upon which he intends to rely in support of his case.

1. Substituted for "all documents ", vide " Order-05 Issue and Service of Summons" Dt.December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59,

dated December 30, 1999

8. On issue of summons for final disposal, defendant to be directed to produce his witnesses :-

Where the summons is for the final disposal of the suit, it shall also direct the defendant to produce, on the day fixed for his appearance, all witnesses upon whose evidence he intends to rely in support of his case.

9. Delivery of Summons by Court :-

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(1) Where the defendant resides within the jurisdiction of the court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent either to the proper officer to be served by him or one of his subordinates or to such courier services as are approved by the Court.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and where he is such an officer, the summons may be sent to him in such manner as the Court may direct.

(3) The services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgment due, addressed to the defendant or his agent empowered to accept the service or by speed post or by such courier services as are approved by the High Court or by the Court referred to in sub-rule (1) or by any other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court:

Provided that the service of summons under this sub-rule shall be made at the expenses of the plaintiff.

(4) Notwithstanding anything contained in sub-rule (1), where a defendant resides outside the jurisdiction of the Court in which the suit is instituted, and the Court directs that the service of summons on that defendant may be made by such mode of service of summons as is referred to in sub-rule (3) (except by registered post acknowledgment due), the provisions of rule 21 shall not apply.

(5) When an acknowledgment or any other receipt purporting to be

signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or had refused to accept the summons by any other means specified in sub-rule (3) when tendered or transmitted to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant:

Provided that where the summons was properly addressed, pre-paid and duly sent by registered post acknowledgment due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgment having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of issue of summons.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of courier agencies for the purposes of sub-rule (1).

1. Rule 9 Substituted by "THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 2002. [22 of 2002] in published in the Gazette of India, Extraordinary, Part II, Section No. 25 I, dated May 24, 2002."

9A. Summons given to the Plaintiff for Service :-

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(1) The court may, in addition to the service of summons under rule 9, on the application of the plaintiff for the issue of a summons for the appearance of the defendant, permit such plaintiff to effect service of such summons on such defendant and shall, in such a case, deliver the summons to such plaintiff for service.

(2) The service of such summons shall be effected by or on behalf of such plaintiff by delivering or tendering to the defendant personally a copy thereof signed by the Judge or such officer of the Court as he may appoint in this behalf and sealed with the seal of the Court or by such mode of service as is referred to in sub-rule (3) of rule 9.

(3) The provisions of rules 16 and 18 shall apply to a summons personally served under this rule as if the person effecting service were a serving officer.

(4) If such summons, when tendered, is refused or if the person served refuses to sign an acknowledgment of service or for any reason such summons cannot be served personally, the Court shall, on the application of the party, re-issue such summons to be served by the Court in the same manner as a summons to a defendant."

1. Rule 9A Inserted by "THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 2002. [22 of 2002] in published in the Gazette of India, Extraordinary, Part II, Section No. 25 I, dated May 24, 2002."

10. Mode of service :-

Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

11. Service on several defendants :-

Save as otherwise prescribed, where there are more defendants than one, service of the summons shall be made on each defendant.

12. Service to be on defendant in person when practicable or on his agent :-

Whether it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service; in which case service on such agent shall be sufficient.

13. Service on agent by whom defendant carries on business :-

(1) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

(2) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or charterer.

14. Service on agents in charge in suits for immovable property :-

Where in a suit to obtain relief respecting, or compensation for wrong, immovable property, service cannot be made on the defendant in person, and the defendant has no agent empowered

to accept the service, it may be made on any agent of the defendant in charge of the property.

15. Where service may be on an adult member of defendants family :-

Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, service may be made on adult member of the family; whether male or female, who is residing with him. Bombay.-In its application to the State of Maharashtra in Order V for the existing rule 15 and its marginal note, the following rule and the marginal note shall be substituted as under: "15. Where service may be on male member of defendant's family-When the defendant cannot for any reason be personally served and has no agent empowered to accept service of the summons on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him.

16. Person served to sign acknowledgment :-

Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

17. Procedure when defendant refuses to accept service, or cannot be found :-

Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant ¹ [who is absent from residence at the time when service is sought to be effected on him at his residence and there is no likelihood his being found at the residence within a reasonable time] and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon

annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

1. Ins. by C.P.C. (Amendment) Act No. 104 of 1976, Sec. 55 (w.e.f. 1st February 1977)

18. Endorsement of time and manner of service :-

The serving officer shall, in all cases in which the summons has been served under rule 16, endorse or annex, or cause to be endorsed or annexed, on or to the original summons a return stating the time when and the manner in which the summons was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons.

19. Examination of serving officer :-

Where a summons is returned under Rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer and may, if it has been so verified examine serving officer on oath or cause him to be so examined by another court, touching his proceedings, and may make such further inquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

19A. Simultaneous issue of summons for service by post in addition to personal service :-

****1 *]**

1. Omitted for " (1) The Court shall, in addition to, and simultaneously with, the issue of summons for service in the manner provided in rules 9 to 19 (both inclusive), also direct the summons to be served by registered post, acknowledgment due, addressed to the defendant, or his agent empowered to accept the service, at the place where the defendant, or his agent, actually and voluntarily resides or carries on business or personally works for gain: Provided that nothing in this sub-rule shall require the Court to issue a summons for service by registered post, where, in the circumstances of the case, the Court considers it unnecessary. Bombay.-In order V, in sub-rule (1) of rule 19-A,- (i) for the word "shall", the word "may" shall be substituted; (ii) the proviso shall be deleted. 3 (2) When an acknowledgment purporting to be signed by the defendant or his agent is received by the Court or the postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee to the effect that the defendant or his agent had

refused to take delivery of the postal article containing the summons, when rendered to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant: Provided that where the summons was properly addressed, prepaid and duly sent by registered post, acknowledgment due, the declaration referred to in this rule shall be made notwithstanding the fact that the acknowledgment having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of the issue of the summons.] ", vide " Order-05 Issue and Service of Summons" Dt.December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

20. Substituted service :-

(1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, 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 part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

¹ [(1A) Where the Court acting under sub-rule (1) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain.] Effect of substituted service.-(2) Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally. Where service substituted, time for appearance to be fixed.-(3) Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

1. Ins.by C.P.C. (Amendment) Act No. 104 of 1976, Sec. 55 (w.e.f. 1st February, 1977).

20A. 20-A :-

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21. Service of summons where defendant resides within jurisdiction of another court :-

A summons may be sent by the Court by which it is issued, whether

within or without the State, either by one of its officers ¹["or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court"]to any Court (not being the High Court) having jurisdiction in the place where the defendant resides. Punjab and Haryana.-In its application to the State of Punjab and Haryana for the existing rule 21 of Order V the following rule shall be substituted as under: "21. A summons may be sent by the Court by which it is issued whether within or without the State, either by one of its officer or by post to any Court (not being the High Court) having jurisdiction in the place where the defendant resides: Provided that where that the defendant resides within the State at a place not exceeding sixteen kilometres from the place where the Court is situate, a summons may be delivered or sent by the Court to one of its officers to be served by him or one of his subordinates".²

1. Substituted for "or by post ", vide " Order-05 Issue and Service of Summons" Dt.December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

2. Subs. by G. S. R. 99/CA 5/1908/5. 122/78,dated 12th September, 1978.

22. Service within Presidency-towns of summons issued by courts outside :-

Where a summons issued by any Court established beyond the limits of the towns of Calcutta, Madras ¹ [and Bombay] is to be served within any such limits, it shall be sent to the Court of Small Causes within whose jurisdiction it is to be served.

1. Subs. by the A. O.. 1937 for "Bombay and Rangoon".

23. Duty of Court to which summons is sent :-

The Court to which a summons is sent under rule 21 or rule 22 shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue, together with the record (if any) of its proceedings with regard thereto.

24. Service on defendant in prison :-

Where the defendant is confined in a prison the summons shall be delivered or sent ¹ ["or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic

Mail service or by any other means as may be provided by the rules made by the High Court"]to the officer-in- charge of the prison for service on the defendant.

1. Substituted for "by post or otherwise ", vide " Order-05 Issue and Service of Summons" Dt.December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

25. Service where defendant resides out of India and has no agent :-

Where the defendant resides out of ¹[India] and has no agent ¹[India] empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him ³["or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court"], if there is postal communication between such place and the place where the Court is situate: ⁴[Provided that where any such defendant resides in Bangladesh or Pakistani the summons, together with a copy thereof may be sent for service on the defendant, to any Court in that country (not being the High Court) having jurisdiction in the place where the defendant resides: Provided further that where any such defendant is a public officer ⁵ [in Bangladesh or Pakistan (not belonging to the Bangladesh or, as the case may be, Pakistan military, naval or air forces)] or is a servant of railway company or local authority in that country the summons together with a copy thereof may be sent for service on the defendant, to such officer or authority in that country as the Central Government may, by notification in the official Gazette, specify in this behalf.)

1. Subs. by Act 2 of 1951. Sec. 3, for "the States".

3. Substituted for "by post", vide " Order-05 Issue and Service of Summons" Dt.December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

4. Ins. by Act 19 of 1951, Sec. 2.

5. Subs. by C.P.C. (Amendment) Act No. 104 of 1976, Sec. 55. for the words and brackets "In Pakistan (not belonging to the Pakistan military, naval or air force)" (w.e.f. 1st February, 1977).

26. Service in foreign territory through Political Agent or Court :-

Where-

(a) in the exercise of any foreign jurisdiction vested in the Central Government, a Political Agent has been appointed, or a court has been established or continued, with power to serve a summons, issued by a court under this Code in any foreign territory in which the defendant actually and voluntarily resides, carries on business or personally works for gain, or

(b) the Central Government has, by notification in the official Gazette, declared, in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service by such Court of any summons issued by a court under this Code shall be deemed to be valid service; the summons may be sent to such Political Agent or Court, by post, or otherwise, or if so directed by the Central Government, through the Ministry of that Government

26A. Summonses to be sent to officers of foreign countries

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Where the Central Government has, by notification in the official Gazette, declared in respect of any foreign territory that summonses to be served on defendants actually and voluntarily residing or carrying on business or personally working for gain in that foreign territory may be sent to an officer of the Government of the foreign territory specified by the Central Government, the summonses may be sent to such officer, through the Ministry of the Government of India dealing with foreign affairs or in such other manner as may be specified by the Central Government; and if such officer returns any such summons with an endorsement purporting to have been made by him that the summons has been served on the defendant, such endorsement shall be deemed to be evidence of service.]

27. Service on civil public officer or on servant of railway company or local authority :-

Where the defendant is a public officer (not belonging to ¹[the Indian] military, ²[naval or air] ³[* * *]), or is the servant of a railway company or local authority, the Court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant. Bombay.-In its application to the State of Maharashtra in Order V

for the existing rule 27 and its marginal note, the following rule and its marginal note shall be substituted, as under: 27. Service on Civil Public Officer or on servant of railway company or local authority.- Where the defendant is a public officer not belonging to the Indian Military, Naval or Air Forces, or is the servant of a railway company or local authority, the Court may, if it appears to it that the summons may be most conveniently so served, send it by registered post prepaid for acknowledgement for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant." ⁴

1. Subs. by the A.O., 1950, for "His Majesty".

2. Subs. by Act 10 of 1927, Sec. 2 and Sch. I, for "or naval".

3. The words "or His Majesty's Indian Marine Service' omitted by Act 35 of 1931, Sec. 2 and Schedule.

4. Ins. by C.P.C. (Amendment) Act No. 104 of 1976, Sec. 55 (w.e.f. 1st February", 1977).

28. Service on soldiers, sailors or airmen :-

Where the defendant is a soldier, ¹[sailor] ²[or airman], the Court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant. Bombay.-In its application to the State of Maharashtra in Order V for the existing rule 28 and its marginal note, the following rule and its marginal note shall be substituted as under: "28. Service on soldiers, sailors or airman.-Where the defendant is a soldier, sailor, or airman the Court shall send by registered post pre-paid for acknowledgment and summons for service to his commanding officer together with a copy to be retained by the defendant".³

1. Subs. by the A.O., 1950, for "His Majesty".

2. Subs. by Act 10 of 1927, Sec. 2 and Sch. I, for "or naval".

3. The words "or His Majesty's Indian Marine Service' omitted by Act 35 of 1931, Sec. 2 and Schedule.

29. Duty of person to whom summons is delivered or sent for service :-

(1) Where a summons is delivered or sent to any person (or service under rule 24, rule 27 or rule 28, such person shall be bound to serve it, if possible, and to return it under his signature, with the written acknowledgment of the defendant, and such signature shall be deemed to be evidence of service.

(2) Where from any cause service is impossible, the summons shall be returned to the Court with a full statement of such cause and of

the steps taken to procure service, and such statement shall be deemed to be evidence of non-service.

30. Substitution of letter for summons :-

(1) The Court may, notwithstanding anything hereinbefore contained, substitute for a summons a letter signed by the Judge or such officer as he may appoint in this behalf, where the defendant is, in the opinion of the Court, of a rank entitling him to such mark of consideration.

(2) A letter substituted under sub-rule (1) shall contain all the particulars required to be stated in a summons, and, subject to the provisions of sub-rule (3), shall be treated in all respects as a summons.

(3) A letter so substituted may be sent to the defendant by post or by a special messenger selected by the Court or in any other manner which the Court thinks fit ; and, where the defendant has an agent empowered to accept service, the letter may be delivered or sent to such agent.