

(2017) 04 RAJ CK 0146
In the Rajasthan High Court
Case No : 2321 of 2015

Bhagwati Lal

APPELLANT

Vs

Smt. Sangeeta

RESPONDENT

Date of Decision : 13-04-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 5 Rule 20](#)

Citation : (2017) 04 RAJ CK 0146

Hon'ble Judges : Govind Mathur, Vinit Kumar Mathur

Bench : DIVISION BENCH

Advocate : A.K. Babel

Judgement

1. This appeal was admitted on 11.5.2016. On 21.11.2016 a peremptory order was passed to take steps for issuance of fresh notice to the respondent on the present and correct address of the respondent. The appellant instead of filing fresh notice preferred an application for substitute service as per Order 5 Rule 20 CPC. The application came to be accepted on 14.12.2016 by the Registrar (Admn.) of this Court.

2. On publication of notice in a daily newspaper circulating in the locality, in which the defendant last resided, the service was treated complete and the matter is listed before us today for hearing. None is present on behalf of the respondent.

3. The instant one is an appeal under 19 of the Family Courts Act, 1984. Such an appeal is required to be adjudicated by High Court on facts and on law. The Bench hearing such appeal is required to be consisting of two or more Judges.

4. An application under Order V Rule XX Code of Civil Procedure can be examined and adjudicated only by a "Court". An order to effect service by adopting the mode given under Order V Rule XX CPC can be given where the Court is satisfied that there is a 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 ordinary way. No order upon such an application can be passed except by the "Court" adjudicating the appeal. The order dated 14.12.2016 is apparently without jurisdiction, being passed by Registrar (Admn.) of this Court and not by the "Court".

5. We would also like to state the mode of service under Order V Rule XX CPC is an exceptional mode and that can be adopted only in exceptional circumstance by recording satisfaction of the Court to the effect that the defendant is keeping out of the way for the purpose of avoiding service, or for other reason the summons cannot be served in ordinary way. The order dated 14.12.2016 lacks such satisfaction. The sole reason given by the Registrar (Admn.) is that "Perusal of the record shows that the notices issued earlier received for want of fresh address with report that the respondent has vacated her rented house and her present whereabouts is not known." The appropriate course in such circumstance is not to invoke the mode given under Order V Rule XX CPC but to direct the appellant to make more efforts to have current address of the party concern. The Court before invoking the powers under Order V Rule XX CPC is required to record its satisfaction and that means that no other way is available to serve notice except adopting the exceptional method.

6. In view of whatever stated above, the order passed by the Registrar (Admn.) dated 14.12.2016 is nonest and no cognizance of that can be taken for satisfying service of notice upon the respondent.

7. We have examined the application preferred by the applicant under Order 5 Rule 20 CPC, the averments of that reads as follows :- "2. That in pursuance to the said direction, the appellant has made endeavour to trace out present address of the respondent, however, he could not find out the same.

3. That it is submitted that the address of the respondent as mentioned in the cause title of the present appeal is her last known address to the appellant and before the learned trial Court below also, notices of the divorce petition were served upon the respondent on the same address. It is, thus, clear that the respondent is avoiding service and in this view of the matter as also in the interest of justice, it is necessary to permit the humble appellant to get the notices served upon the unserved respondent through substituted service i.e., by way of publication of notices in a daily newspaper having wide circulation in the District-Bhilwara (Rajasthan) where the respondent was known to have last resided."

8. The reason given to invoke mode of service as per Order V Rule XX CPC is that the appellant failed to trace out present address of the respondent.

9. We would like to state that as a matter of fact the entire application nowhere disclose any effort on the part of the appellant to trace out present address of the respondent. No material is available to satisfy ourselves at this stage to arrive at the conclusion 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 ordinary way. The application under Order V Rule XX CPC, thus, is dismissed.

10. Issue fresh notice to the respondent, which is required to be filed by the appellant within a period of one month from today after availing current address of the respondent. The notice if filed, be given "dasti" with liberty to the appellant or his counsel to send the same through registered post acknowledgment due. The appellant if fails to have current address of the respondent within

the period of one month, then he is required to make a statement in the form of an Additional Affidavit about the efforts made by him to obtain current address of the respondent.

11. Put up for orders in the second week of July, 2017.