

(1921) 12 PAT CK 0001
In the Patna High Court

Nagendra Nath Ghosh

APPELLANT

Vs

Sambhu Nath Pande and Others

RESPONDENT

Date of Decision : 01-12-1921

Acts Referred:

Citation : 65 Ind. Cas. 49

Hon'ble Judges : Ross, J;Jwala Prasad, J

Bench : Division Bench

Judgement

1. This matter has been placed before us for orders on account of the notice of the appeal not having been served on the respondent NO. 10. On the first occasion the serving peon returned the notice unserved on the 22nd of July 1921, with a report saying "since the Parwana was made over to me no identifier came (to me)" But apparently the peon did not make any effort to find out the respondent and it appears that he did not even go to the village where the respondent resides. On the second occasion, however, the peon did go to the village and reports that he searched for the identifier, but could not find him; and as he did not know either the respondent or his residence, he was unable to serve the Parwana. The address of the respondent was given in the notice and it is the same as was given in the summons when the respondent in question was a defendant in the Trial Court and that summons was served upon him in accordance with that address. The peon does not state that he made any effort to find out the respondent at the given address of the respondent. Perhaps he would easily have found out the respondent (the address being correct), if he had taken the least pain to enquire from the witnesses whom he names in the service return as being present at the time when he went to the village. It is note worthy that he does not say that the witnesses did not know the respondent or his residence.

2. Under the law no obligation is cast upon the appellant to supply an identifier. Order V, Rules 10 to 17, lays down the modes in which service of summons upon defendants has to be effected, Rule 18 says that "when a summons has been

served under Rule 16 (that is, by delivering or tendering a copy of the summons to the defendant personally, etc.) the serving peon shall endorse, etc., 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," The identifier referred to herein need not necessarily be one supplied by the party. He may be a person in the village knowing the defendant. Even if any identifier was required for the service of a summons upon a defendant, no identifier is certainly required now for a service of a notice upon a respondent in an appeal pending in the High Court. Rule 14, Chapter I, of the General Rules and Circular Orders, originally required the affidavit of the person (if any) identifying the defendant or respondent served with a process of the Court; but as early as March 1917, the word "respondent" in that rule was deleted, so that no longer any affidavit of an identifier is required in case of a service of processes upon respondents. Rule 25, Chapter I, bearing upon the point was also omitted from the General Rules and Circular Orders, Under Order XLI. Rule 18, an appeal against the respondent can only be dismissed on the failure of the appellant to deposit, within the period fixed, the sum required to defray the cost of serving the notice. There is no rule to dismiss the appeal on account of the failure of the appellant to give an identifier. Under Order IX, Rule 5, a suit may, be dismissed on account of the plaintiff, who applies for the issue of fresh summons, failing; to satisfy the Court that he used his best endeavours to discover the residence of the defendant who was not served. In the present case that rule does not apply, as the appellant has supplied address in which the residence of the defendant has been given.

3. The appeal, therefore, at this stage cannot be dismissed and it must proceed. The appellant is ready to deposit fresh talbana and the learned Vakil appearing on his behalf has also expressed his desire-to take necessary steps to have the notice served upon the respondent. We direct that the necessary cost be deposited by the appellant by to-morrow. The Court below is directed to see that every effort is made by the peon of that Court to serve the notice upon the respondent. The appellant will assist the peon in this respect. It is unlikely that in this important case the respondent, who has succeeded in the Court below, will ignore the notice and will allow the appeal to go ex parte.