

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**901 APPLICATION IN ELECTION PETITION NO.19 OF 2021
IN EP/17/2019**

RAMESH LAXMAN GAIKWAD
VERSUS
SANJAY PANDURANG SHIRSAT

...
Advocate for Petitioner : Mr. Palodkar Devdatt P.
...

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 30-08-2021.

ORDER :

1. Present application has been filed for the reissue of summons to the respondent. Earlier summons issued to the respondent has been received with a report that it has been served on the servant which is not a good service in view of explanation to Order V Rule 15 of the Code of Civil Procedure and, therefore, it has been prayed that the learned Civil Judge, Senior Division, Aurangabad be kindly directed to instruct the concern Bailiff to serve the summons on the respondent or any other adult member of the family.

2. Order V Rule 15 runs thus : -

"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 any adult member of the family, whether male or female, who is residing with him.”

The service can be on the adult member of the family whether male or female and the explanation is specifically given that a servant is not a member of the family within the meaning of this rule. The basic knowledge about how to effect the service of the summons should be possessed by the serving officer (Bailiff). The duty is cast on the Bailiff to serve the notices and/or summons to the concerned persons as per the provisions of law. The provisions of the law are in the Code of Civil Procedure, Civil Manual and also the Bailiff Manual. None of the provisions is contradictory to each other and, therefore, there ought not to have been any confusion regarding the procedure to be adopted for serving a summons to the serving officer. In spite of this, the Bailiff who had gone to serve the summons to the respondent has stated that when he came to know that the respondent is at the house then he visited there. The servant of the respondent came out and asked him about the work.

When he told about the work and that the servant should call the master, the servant went inside and came again outside and told the Bailiff that his master is resting and he cannot wake him up, but he has been asked to collect the notice and then the Bailiff had given the summons/notice to the servant. The contradiction or the hidden part in the report is that if the master was sleeping then who directed the servant to accept the notice, is a question. Secondly, in spite of having knowledge about the procedure, why the Bailiff had given the copy of the notice/summons to the servant, is also another question. The present application is the outcome of the inaction on the part of the Bailiff or in another way it can be said that because of the said act of Bailiff which was not legal, the present application was required to be filed and unnecessarily the time of the Court is spent in getting the notices served properly. At least when the summonses and notices issued from the High Court are required to be served by taking due care and it should be as per the procedure only.

3. Another fact that is also required to be noted is that while returning the notice, the learned Civil Judge Senior Division has also not seen as to whether the notice has been served properly or not.

He cannot simply sign on any document. If we see the place of the signature then it has two options basically, one is, "By affixing upon his refusal to accept service has been duly affirmed. It was effected," and second is, "By affixing in his absence, no agent or adult member being present by." The report of the Bailiff is also only signed by Assistant Superintendent attached to Civil Judge, Senior Division, Aurangabad and he has also not applied his mind to see whether the summons has been properly served or not, therefore, there are procedural lapses in this case.

4. It will not be out of place to observe here that in spite of giving repeated directions by this Court regarding the procedure to be adopted by Bailiffs and even the workshops those were directed to be held by the Principal District Judges, such reports are forwarded. In *Vithal Sambhaji Shivane vs. Baliram Shankar Ulmule and Others, Second Appeal No.550 of 2017 with CA/10770/2017 And CA/524/2018, dated 19-01-2018*, following are the observations : -

"4. I find it quite disturbing that in several matters, wherein notices have been issued, the remark of the Bailiff is that the respondent is served through another respondent. For example, as like in this case, respondent Nos.8, 10, 11 and 12 are served through

respondent No.9. However, the Bailiff fails to write in his report that all these respondents are residing together. Only if such remark is posted by the Bailiff, it can be presumed legally that service is complete. I am coming across such cases in plentiful numbers on every day.

5. Considering the above, all the learned Principal District Judges in the State of Maharashtra are directed to ensure that every Bailiff of each Court within their respective jurisdiction, should be made to study the Rules applicable in order to ensure proper service reports. If required, they may be trained by proper counselling and instructions as to the manner in which the Bailiff reports are to be prepared in cases of service as well as in cases of refusal to accept the summons.

6. The learned Registrar (Judicial) is directed to transmit a copy of this order to every learned Principal District Judge in the State of Maharashtra for necessary compliance."

Thereafter, once again by referring to the order dated 19-01-2018 in Second Appeal No.550 of 2017, this Court in *Vishal Balbhim Ghadge vs. Balbhim Sambhaji Ghadge and Others*, Civil Application No.2776 of 2018 in SA/161/2018, passed order on 25-11-2019 as under :-

"4. In view of casual approach in sending service

report, the Registrar (Judicial) is directed to call report from the Principal District Judges falling within the jurisdiction of this Bench in respect of steps taken pursuant to the order dated 19-01-2018 passed by this Court and communicated vide letters dated 23rd January, 2018 and 17th July, 2019.”

Now, once again the same step is required to be taken in this case also. There should be periodical workshops/training of the Bailiffs in each District Courts. If proper training is given, the possibility of incomplete and/or wrong reports such as in the present case can be avoided. Hence, following order.

ORDER

- 1) Reissue notice to the respondent, returnable on 27-09-2021.
- 2) Learned Civil Judge, Senior Division, Aurangabad is directed to appoint a proper Bailiff and get the summons served as per the procedure.
- 3) All the learned Principal District Judges in the State of Maharashtra are directed once again to comply with the directions given by this Court in *Vithal Sambhaji Shivane vs. Baliram Shankar Ulmule and Others (Supra)* and hold the training/workshop of the Bailiffs. Such training or workshop can be held

periodically and through competent Judicial Officers.

4) Learned Principal District Judge, Aurangabad to call the explanations of concern Bailiff, concern Assistant Superintendent of Civil Court, Senior Division, Aurangabad.

5) Inquiry of the concern Bailiff, if any, to be conducted within one (01) month either by learned Principal District Judge himself or any other officer assigned by him and the copy of the report be submitted to this Court. If at all, any action is required to be taken, it is left to the discretion of learned Principal District Judge, Aurangabad to take.

6) Learned Registrar (Judicial) is directed to transmit copy of this order to all the Principal District Judges in the State of Maharashtra for necessary compliance.

7) Application stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-

GAWADE
VIRENDRA
J

Digitally signed
by GAWADE
VIRENDRA J
Date: 2021.09.02
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