

Sl.37
28.07.2025
Court No.6
BP

C.O. 4160 of 2024

Smt. Basanti Sen & Anr.
-versus-
Smt. Gouri Roy & Ors.

Mr. Ratul Das
Mr. Shoham Sanyal
... for the petitioners

Affidavit of service filed in Court today is taken on record.

It has been stated in the said affidavit that the registered envelope addressed to the opposite party no.1 returned with the endorsement "left".

This application under Article 227 of the Constitution of India is at the instance of the plaintiffs and is directed against an order dated 19th September, 2024 passed by the learned Civil Judge (Senior Division), 4th Court at Alipore in Title Suit No. 150 of 2021.

By the order impugned the application filed by the petitioners praying for substituted service was rejected.

After going through the materials on record this Court finds that in spite of several attempts being made the summons of the suit as well as the copy of the civil revisional application could not be served upon the opposite party no.1 who is the defendant no.1 in Title Suit No. 150 of 2021.

Order 5 Rule 20 of the Code of Civil Procedure states that 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. Sub-rule 1(A) of Order 5 Rule 20 states that 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.

In the case on hand the suit property is a shop room and it is being alleged that the father of the defendant no.1 was using the same for commercial purpose.

To the mind of this Court, the defendant/opposite party is keeping out of the way for the purpose of avoiding service. The summons of the suit could not also be served in the ordinary way.

The petitioners have filed an application praying for permission of publication of the summons in the newspaper.

This Court is, therefore, of the considered view that an order should be passed directing service of summons by advertisement in daily newspaper.

Accordingly, the application praying for publication of the summons in daily newspaper stands allowed. The order impugned stands set aside. The learned Civil Judge (Senior Division), 4th Court at Alipore is directed to pass a consequential order in terms of this order.

With the above observations, C.O. 4160 of 2024 stands allowed.

There shall be, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)