



IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

906 WRIT PETITION NO. 4223 OF 2025

Battenfeld Cincinnati Germany GMBH .....Petitioner

VERSUS

Jain Irrigation Systems Ltd .....Respondent

.....

Mr. S. B. Deshpande, Senior Counsel instructed by Mr. R. R. Totala,  
Advocate for the Petitioner.

Mr. V. D. Sapkal, Senior Counsel along with Adv. Mr. Ajinkya Reddy,  
instructed by Ms. K. K. Warma, Advocate for the Respondent.

**CORAM : R. M. JOSHI, J.**

RESERVED ON : 28<sup>th</sup> MARCH, 2025

PRONOUNCED ON : 7<sup>th</sup> APRIL, 2025.

PER COURT :

1. The issue involved in this petition is as to whether the appearance of the Defendant in the proceeding without service of summons would be considered as deemed service. So also the issue whether an advocate who has caused appearance can be directed to accept in all circumstances summons on behalf of party under Order 3 Rule 5 of Code of Civil Procedure (for short 'CPC').

2. Petitioner/original Defendant No. 1, is a company incorporated under the German Laws, having its registered office at Germany. Respondent/Plaintiff had filed Commercial Suit bearing

No. 1/2024 for seeking damages. There is no dispute about the fact that the service of notice of any foreign national/company shall be done in accordance with the Hague Service Convention, 1965. Article 10 of the said convention no doubt permits for sending of a summons through post or email but the same would not apply in case such country resists this procedure. Here admittedly, Germany has resisted such mode of service of summons. Thus, the service to the Petitioner/Defendant No. 1 cannot be effected by registered post or email etc. but as per Hague Service Convention and procedure laid down therefor.

3. Record indicates that Plaintiff had sent email to Defendant No. 1. In response to the said email, Defendant No. 1 had appeared through Advocate before the Trial Court for limited purpose of bringing to the notice of the court the fact that Defendant No. 1 had not been served by proper mode as contemplated by Hague Service Convention. It is after this objection is raised, Trial Court issued notice to Defendant No. 1 by adopting appropriate procedure laid down in this regard which is consistent with Hague Service Convention. The notice issued to Defendant No. 1 however, was returned to the Court by the Ministry of External Affairs with note

that for the purpose of effecting service of summons for appearance in the Court, the period must be minimum 4 to 5 months. It is after this, no further steps were taken for service of summons to Defendant No. 1. This pursis therefore in no uncertain terms indicates that said appearance was only for limited purpose to bring to the notice of the Court about non-service as per law. Defendant No. 1 through Advocate, filed application Exhibit 25 and sought declaration that the summons has not been duly served upon him. The Respondent No. 1 / original Plaintiff filed application Exhibit 57 seeking direction of service of summons on the Advocate for Defendant No. 1, under Order III Rule 5 of CPC. Application Exhibit 25 came to be rejected, whereas Exhibit 57 was allowed. Hence, this petition.

5. Learned Senior Counsel appearing on behalf of the Petitioner/Defendant No. 1 submits that since admittedly Defendant No. 1 is a company registered under the German laws having registered office in Germany, no service of summons on this Defendant can be effected save and except by following Hague Service Convention. It is his submission that infact the learned Commercial Court has proceeded to pass order of issuance of summons by

following the said procedure however, abruptly the said procedure has been aborted without any justification. By referring to the communication from the Ministry of External Affairs, it is his submission that when it was informed to the Court to give date of four to five months for the purpose of effecting service, the Court ought to have followed the said instructions and should have issued notice accordingly. It is his submission that mere appearance of the Petitioner before the Trial Court does not amount to acceptance of summons or submission of this Defendant to the jurisdiction of the Court.

6. To support his submissions that the service of notice on Defendant who is resident of foreign country and is not covered by Article 10 of the Hague Service Convention, service of notice upon such defendant not in conformity of the same is not valid service and Court cannot proceed to pass any order in absence thereof, he relied upon following judgments :-

(i) North East Organized Floritech Pvt. Ltd. vs. M.V. CMA CGM Cendrillon & Others, I.A. (L) No. 31803/2022 in Commercial Admiralty Suit No. 8/2022, dated 05.06.2023. (Bombay High Court) (Paragraph Nos. 24 to 29)

- (ii) Ravin Infracore vs. Nexus Green Limited and another, Commercial Summary Suit No. 1281/2019, dated 09.02.2021. (Bombay High Court) (Paragraph Nos. 7 to 9)
- (iii) Kaustabha Gudi vs. The Management of M/s Trilogy E-Business Software India (P) Ltd. & others, W. P. No. 42874/2019 with W.P. no. 20306/2022, dated 07.03.2024. (Karnataka High Court) (Paragraph No. 16)
- (iv) Binay Kumar Singh vs. British Broadcasting Corporation & others, CS DJ 362/2023, dated 07.07.2023, (Rohini Court, Delhi)
- (v) Microsoft Corporation & another vs. tech Heracles OPC Private Limited & others, CS(COMM) 276/2021 and I.A. No. 7329/2021, dated 14.03.2022 (Delhi High Court)
- (vi) Mollykutty vs. Nicey Jacob,  
2018 SCC OnLine Ker 20657 (Paragraph Nos. 13 and 23)

According to him, the court cannot proceed to pass any order against the Defendant unless service is effected in accordance with law. It is his submission that the provisions of CPC cannot override the requirement of service of summons through Hague Service Convention. It is his submission that the appearance of Petitioner before the Trial Court was for extremely limited purpose in order to intimate to the Court about there being no valid service and

even filing of Vakalatnama would not dispense the Court from effective service as per law. To support this submission, he relied upon following judgments :-

- (i) Metro Ortem Ltd. vs. Maharashtra State Road Transport Corporation, (2023) 1 Bom.CR 424 (Paragraph no. 17)
- (ii) Sunil Gupta & others vs. Aset Reconstruction Company India Limited & others, 2022 SCC OnLine Bom 2159 (Paragraph No. 18)
- (iii) Tardeo Properties Pvt. Ltd. vs. Bank of Baroda (2007) 5 Bom CR 557 (Paragraph Nos. 12 and 13).

According to him, filing of application Exhibit 25 is in consequence of the said contention of this Defendant. It is his submission that mere filing of this application cannot be construed as submission to the jurisdiction of the Court. As far as service of summons through Advocate of Defendant No. 1 is concerned, it is his submission that the Vakalatnama filed by the Advocate is preceded by the instructions which can be seen from the pursis filed on record before the Trial Court that except for placing the fact about there being no valid service, the Advocate is not authorised to perform any other act. He has drawn attention of the Court to Order 3 Rule 4 of

the CPC in order to contend that the Advocate who has not been authorised to accept the summons cannot be compelled to do so and in any case, inspite of such order, service of summons cannot be held to be valid. He, therefore, seeks interference in the impugned common order passed below Exhibits 25 and 57.

7. Learned Senior Counsel appearing on behalf of the Respondent/Plaintiff supported the impugned order. It is his submission that it was not open for the Defendant to cause appearance before the Trial Court and then to say that he has not subjected himself to the jurisdiction of the Court. It is his submission that if any order was passed on the basis of service of summons which is not in accordance with law, it might be open for the such authority to take exception to the orders passed in such proceeding and not to raise objection to the notice by appearing before the Court. It is his submission that in any case appearance has been caused by the Advocate and in view of Order III Rule 5 of CPC, it is within the jurisdiction of the Civil Court to serve summons through an Advocate. According to him, this is not a case wherein the party has appeared not only in order to say that there is no valid summons issued but application Exhibit 25 filed on record indicates

that the order has been invited by the party meaning thereby it is submission to the jurisdiction of the Court. It is his submission that the Trial Court has rightly taken into consideration the provisions of Order III Rule 5 of CPC and the appearance caused by the Advocate on behalf of Defendant No. 1. Thus, in his view there is no error committed by directing service of summons on Defendant No. 1 through its Advocate and rejection of application Exhibit 25. He also placed reliance on following judgment :-

- (i) Suresh Daduram Abnave vs. Municipal Corporation of Greater Mumbai & others, 2014(1) ABR 93 (Paragraph Nos. 10 to 12)  
(This judgment is passed in the fact that summons of the suit was duly served on defendant, question was whether such service of summons is to be treated for all purposes)
- (ii) Charuvila Philippose Sundaran Pillai vs. P.N. Sivadasan  
AIROnline 2024 KER 554  
(case wherein Article 10 of Hague Service Convention is applicable)

8. Order V of CPC deals with issue and service of summons. A summons is issued to appear and file written statement in his defence, within 30 days, subject to further provisions in this regard. Rule 9 deals with service of summons, which can be served through an agent resident within jurisdiction of the Court. Other

provisions deal with the manner/mode of service of summons. Rules 25 and 26 deal with service where defendant resides out of India and has no agent. It would be relevant to take note of these provisions which read thus :-

**25. Service where defendant resides out of India and has no agent**— Where the defendant resides out of India and has no agent in India empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him by post, if there is postal communication between such place and the place where the Court is situate :

Proviso : x x x

Proviso : x x x

**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 dealing with foreign affairs, or in such other manner as may be specified by the Central Government for the purpose of being served upon the defendant : and, if the Political Agent or Court returns the summons with an endorsement purporting to have been made by such Political Agent or by the Judge or other officer of the Court to the effect that the summons has been served on the defendant in the manner hereinbefore directed, such endorsement shall be deemed to be evidence of service.

These provisions therefore enable the service of summons on the defendants who voluntarily resides, carries on business of personally works for gain and prescribe procedure of service of summon on such defendants.

9. It would be apt at this stage to refer to the relevant terms of Hague Service Convention. This applies to service abroad of judicial and extrajudicial documents in civil or commercial matters.

Article 1 provides for applicability of the Convention. The suit in hand is a commercial suit and as such is covered by this Convention. Articles 2 to 9 make provisions about the manner of service of documents and prescribes model form. Article 15 indicates as to the circumstances in which judgment shall be given or not. Chapter III thereof states about general clauses, which essentially deal with procedural aspect. The Convention therefore mandates the service of summons as per the procedure adopted by Hague Service Convention. No doubt, Article 10 makes exception thereto. It would be relevant to reproduce the said Article, which read thus :-

**Article 10 :** Provided the State of destination does not object, the present Convention shall not interfere with -

- a) the freedom to send judicial documents, by postal channels, directly to persons abroad,
- b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination,
- c) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination.

This Article however would apply only in case the state of destination does not object. Here in this case, Germany has objected to this Article. Hence, it would not be open in the suit in hand to effect the service of summons by invoking Article 10 of the Convention. The Hague Service Convention, would override the provisions of the CPC in respect of service of summons on the defendant resident of foreign country.

10. Admittedly, Trial Court had issued summons by following due process of law and the authorities concerned have sought such summons to at least have 4-5 months period for actual appearance in the Court, to enable the completion of service of the same. In the instant case, however, Defendant No. 1 instructed Advocate to inform the Trial Court about receipt of the notice of proceeding by email and which not being the service in accordance with law.

11. Perusal of record and more particularly the pursis indicates that appearance of the Advocate was only for the purpose of placing before the Court the fact about there being no service of

notice as per law. It would be necessary to take note of the contents of this pursis which is reproduced below :-

**PURSHIS**

Battenfeld – Cincinnati Germany GMBH (Defendant No.

1) most humbly submits as under :-

1. On 24<sup>th</sup> April, 2024, Defendant No. 1 filed an Interim Application (“Interim Application”) before this Hon’ble Court. The said Interim Application came to be marked as Exhibit No. 25. Amongst others, it has been expressly mentioned by the Defendant No. 1 in the said Interim Application, including the Rejoinder, and the brief submissions thereto, that the same have been filed under protest, without prejudice to its rights and contentions and in no manner should these filings be construed or considered as the Defendant No. 1 waiving its rights to be duly served in accordance with the Hague Service Convention 1965 and/or submitting to the jurisdiction of this Hon’ble Court.

2. For ease of reference, the reliefs sought by the Defendant No. 1 in the said Application are reproduced under :-

a. This Hon’ble Court may be pleased to declare that any mode of service, not effected upon Defendant No. 1 in accordance with the Hague Service Convention 1965 and

the Office Memorandum dated 18<sup>th</sup> August 2011, is bad in law :

b. This Hon'ble Court be pleased to pass appropriate orders and/or directions that the captioned suit and interlocutory applications filed by the Plaintiff be adjourned sine die, till such time as the service is complete as per the Hague Service Convention 1965 and the Office Memorandum dated 18<sup>th</sup> August, 2011;

c. Pending the hearing, adjudication and final disposal of the present Application, and till such time as the service is completed as per the Hague Service Convention 1965 and the Office Memorandum dated 18<sup>th</sup> August 2011, this Hon'ble Court may be pleased to pass appropriate orders and/or directions to stay the captioned suit and interlocutory application filed by the Plaintiff and adjourn the same sine die;

d. Ad-interim reliefs in terms of prayer clause (c) above:

e. ...”

3. Arguments in relation to the objections raised in the said Interim Application as well as the hearing of the said Interim Application was held before this Hon'ble Court on 26<sup>th</sup> March 2024, 10<sup>th</sup> April, 2024; 24<sup>th</sup> April 2024; 2<sup>nd</sup> May 2024, 6<sup>th</sup> May 2024 and 9<sup>th</sup> May 2024. A separate compilation of judgements relevant for the purpose of adjudication of the said Interim Application

has also been filed by the Defendant No. 1 before this Hon'ble Court at the time of the hearing.

4. Pursuant to these hearings, this Hon'ble Court has reserved the said Interim Application for orders and the same is pending before this Hon'ble Court since April 2024.

5. Objections as raised by the Defendant No. 1 in the Interim Application have also been raised prior to its filing. In this regard, on 26<sup>th</sup> March 2024 and amongst other things, without prejudice to its rights and contentions, under protest and without submitting to the jurisdiction of this Hon'ble Court, Defendant No. 1 through its Advocates, has also filed a purshis along with a compilation of documents (Exhibit C to the Defendant No. 1's Interim Application) before this Hon'ble Court inter alia placing on record the Defendant No. 1's objections to the manner of service of summons and notice issued through mail. Subsequently, on the oral directions passed by the Hon'ble Court, the Defendant No. 1 filed its vakalatnama before this Hon'ble Court under protest and without prejudice to the rights and contentions of the Defendant No. 1 under contract, equity, and law and without submitting to the jurisdiction of this Hon'ble Court.

6. During the hearings held before this Hon'ble Court, the Advocate representing the Defendant No. 1 has, at all times, expressly clarified that the filing of the vakalatnama cannot be construed or implied or deemed as the Defendant No. 1 having waived the service of the summons/notice upon it in accordance with the Hague Service Convention and the Office Memorandum. The Advocate for the Defendant No. 1 has only been orally instructed to appear on behalf of the Defendant No. 1 under protest, for the limited purpose of raising objections to the improper service upon the Defendant no. 1 due to the same not being in accordance with the Hague Service Convention 1965. It has also been made clear that the Advocate for the Defendant No. 1 has not been authorized to accept or waive service on behalf of the Defendant No. 1.

7. In view of the above the Hon'ble Court is requested to pass the necessary orders/directions as sought for it in the Interim Application. Hence, this purshis.

8. It is also expressly clarified that the present purshis is being filed under protest and without prejudice to the rights and contentions of the Defendant No. 1 under contract, equity, and law and without submitting to the jurisdiction of this Hon'ble Court.

The contents of the said pursis therefore clearly indicate the purpose of appearance of an Advocate on behalf of the Defendant No. 1. Even if it is accepted for the sake of argument that no such application could have been made or could have been entertained by the Court, as a matter of fact, Defendant No. 1 never admits the service of summons on it as per Hague Service Convention.

12. There cannot be doubt with regard to the right of any defendant to appear suo moto in the suit or other proceedings. Such appearance however must be voluntary and in conscious waiver of the formal notice to such party. The pursis filed by the Defendant No. 1, as noted above, clearly indicates no such intention to cause appearance by waiver of formal notice. Thus, once there is no such conscious waiver of notice, in the instant case, the service of notice to Defendant No. 1 become imperative by following procedure which is laid in consonance with Hague Service Convention. It is therefore held that mere causing of appearance through Advocate to bring to the notice of Court about improper service, would not lead to the presumption that the Defendant No. 1 has suo moto caused appearance and voluntarily waived formal notice which is to be served as per law.

13. The next issue that would arise for consideration is the relevance of proper notice of service of defendant as provided by law. Perusal of the provisions of CPC, indicate that the service of notice on defendant is to be effected as per the procedure laid down therein. The service of notice by any other mode than provided by Code is not good service. Consequently, the Court cannot proceed to pass any order against such defendant, unless satisfaction is recorded with regard to the service of summons on the Defendant in accordance with law. Now dealing with the issue sought to be raised by original Plaintiff about service of summon whether could be effected on Advocate/Pleader who has caused appearance before Trial Court on behalf of Petitioner/Defendant No. 1, it would be relevant to take into consideration provisions of Order III Rules 2, 3, 4 and 5 of CPC which read as under :-

### **ORDER III- RECOGNIZED AGENTS AND PLEADERS**

**2. Recognized agent**— The recognized agent of parties by whom such appearances, applications and acts may be made or done are—

(a) persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.

**3. Service of process on recognized agent—** (1) Process served on the recognized agent of a party shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs.

(2) The provisions for the service of process on a party to a suit shall apply to the service of process on his recognized agent.

**4. Appointment of pleader—** (1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorized by or under a power-of-attorney to make such appointment.

(2) Every such appointment shall be [120][filed in Court and shall, for the purposes of sub-rule(1), be] deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the

pleader dies, or until all proceedings in the suit are ended so far as regards the client.

[Explanation.—For the purposes of this sub-rule, the following shall be deemed to be proceedings in the suit,—

(a) an application for the review of decree or order in the suit,

(b) an application under section 144 or under section 152 of this Code, in relation to any decree or order made in the suit,

(c) an appeal from any decree or order in the suit, and

(d) any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of moneys paid into the Court in connection with the suit.]

[(3) Nothing in sub-rule (2) shall be construed—

(a) as extending, as between the pleader and his client, the duration for which the pleader is engaged, or

(b) as authorising service on the pleader of any notice or document issued by any Court other than the Court for which the pleader was engaged, except where such service was expressly agreed to by the client in the document referred to in sub-rule (1)].

(4) The High Court may, by general order, direct that, where the person by whom a pleader is appointed is unable to write his name, his mark upon the document

appointing the pleader shall be attested by such person and in such manner as may be specified by the order.

(5) No pleader who has been engaged for the purpose of pleading only shall plead on behalf of any party, unless he has filed in Court a memorandum of appearance signed by himself and stating—

- (a) the names of the parties to the suit,
- (b) the name of the party for whom he appears, and
- (c) the name of the person by whom he is authorized to appear :

Provided that nothing in this sub-rule shall apply to any pleader engaged to plead on behalf of any party by any other pleader who has been duly appointed to act in Court on behalf of such party.

**5. Service of process on pleader—** [Any process served on the pleader who has been duly appointed to act in Court for any party] or left at the office or ordinary residence of such pleader, and whether the same is for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and, unless the Court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person.

These provisions deal with recognized agents and pleaders. Rules 2 and 3 provide as to the person who can receive notice on behalf of Defendant or upon whom such process can be served. Here in this case, there is no recognized agent of Defendant No. 1 within jurisdiction of the Court and as such application of rule 2 read with 3 of this order to case in hand is ruled out. Rule 4 deals with the appointment of pleader and sub rule 1 contemplates that such pleader appointed can act for the purpose of his appointment and not otherwise. In a given case, a pleader would be entitled to perform act like entering pleadings, giving concession or even admission etc, but the same cannot be allowed by a pleader when there is a specific embargo created by the client against his Advocate in that regard. In present case, filing of Vakalatnama is preceded by a pursis which without doubt restricts the authority of the Advocate to perform any other act than the one permitted in the Vakalatnama. Thus, it cannot be said that Advocate was authorised to accept notice/summons/process on behalf of Defendant No. 1.

14. Now coming to provision of Rule 5 Order III CPC, as quoted above, which provides for deemed service on the party, when a process is served on pleader who has been duly appointed to act in

Court for any party, unless otherwise directs, shall be effectual for all purposes as if the same had been given or served on the party in person. This provision cannot be considered in isolation and must be read conjointly with Rule 4. the embargo created by Rule 4(1) that pleader can act for the purpose appointed would certainly apply to Rule 5 too and consequently the pleader who has been prohibited from accepting summon/process, cannot be directed even by Court to accept the same. Apart from this, reading of Rule 5, as a whole, further indicates that service of summons or pleader would not be treated as service for all purposes, as it is open for the Court to direct otherwise means to restrict the implication of such service to limited extent. Thus, this provision is not absolute/mandatory but directory. In given case the Court in its discretion may permit service of notice with restrictive consequence and in appropriate case may cause the service of notice effected through pleader. The exercise of such discretion would depend upon facts of each case and no straight jacket formula in this regard can be adopted.

15. Suffice it to say that since in the case in hand an embargo is created by Defendant No. 1 on his advocate to do anything else but to place on record the factum of the improper service,

Advocate cannot be said to have been authorised to accept service of summons on behalf of party. The authority to act on his behalf would be restricted to the placing of objection on record. Consequently, for want of specific authority to plead, in the peculiar facts of the case, it was not open for the Advocate to file Exhibit 25 under his signature. Moreover, for want of subjecting itself to the jurisdiction of the Trial Court, no application could have been moved nor any order could have been solicited from the Court. The Trial Court therefore ought not to have entertained any application filed by such Defendant, who does not suo moto submit itself to the jurisdiction of Court or duly served as per law. The rejection of application exhibit 25 therefore, needs no interference.

16. Finally dealing with submission of the Senior Counsel for Plaintiff that filing of an application would amount to submitting to jurisdiction of Court is concerned, the application has not been filed by Defendant No. 1 but by his Advocate under his own signature. It could be an error on the part of Advocate to file such application but in absence of his authority to do so, it cannot be concluded that Defendant No. 1 had submitted itself/himself to the jurisdiction of Trial Court.

17. As a result of above discussion, Petition is partly allowed. Order rejecting Exhibit 25 is maintained. Order below Exhibit 57 stands set aside. Application Exhibit 57 stands dismissed. Trial Court to proceed with the trial after effecting service of summons on Defendant No. 1 as per procedure applicable to the case in hand and in accordance with law.

( R. M. JOSHI)  
Judge

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