

CHAPTER 7

Processes—Civil Courts

Part
GENERAL

A

1. General provisions, regarding services of summons—The provisions regarding the service of summons on the parties, contained in Sections 27, 28, 29 and 143, Order V, Rules 9 to 30, Order XXVII, Rule 4, Order XXIX, Rule 2, Order XLVIII, Rules 1, 2 and 3, Order III. Rules 3, 5 and 6, Order XXVIII, Rules 3, Order XXX, Rule 3, and Order XLI, Rule 14 of the Civil Procedure Code as amended by the High Court should be strictly observed, as neglect of them may often render the service ineffectual, especially when person service cannot be made.

2. Rules regarding service in particular cases—Attention is drawn to the following rules regarding service in particular cases—

<i>Re</i> : Service on agents.	Order III, Rules 3 and 6, and Order V, Rules 12, 13 and 14.
<i>Re</i> : Service on pleaders.	Order III, Rule 5.
<i>Re</i> : Service on Corporation.	Order XXIX, Rule 2.
<i>Re</i> : Service on Firms.	Order XXX, Rule 3.
<i>Re</i> : Service in suits against the Government.	Order XXVII, Rule 4 and Chapter 8 of Volume I.
<i>Re</i> : Service in suits against Military or Naval men or Airmen.	Order XXVIII, Rule 3, Order V, Rules 28 and 29 and Chapter 7-D of this volume.
<i>Re</i> : Service by post.	Order V, Rule 10, as amended by the High Court and Rules 20-A, 21, 24 and 25.
<i>Re</i> : Service re : appeals.	Chapter 14-B, Volume I.
<i>Re</i> : Service re : execution.	Chapter 12-E, paragraph 11, Volume I.

3. Service in cantonments—Summonses for service on persons residing within the limits of cantonments should not be sent to Executive Officers of cantonments.

4. Service on witnesses—The general procedure of serving processes on witnesses is the same as in the case of defendants, (*see* Order XVI, Rule 8, and also Volume I, Chapter 5 “Witnesses—Civil Courts.”)

5. Service of orders and notices—All orders and notices issued under the Code are to be served in the manner provided for the service of summons (Order XLVIII, Rule 2).

6. Service of processes during trial, appeal and execution—In connection with the service of processes during the trial, attention is invited to Rules 19 to 25 of Order VII, Rules 11 and 12 of Order VIII and Order XLI (appeals), Rule 38 of the Code framed by the High Court under Section 122 of the Code of Civil Procedure. Under the new rules parties are required to file addresses for the purposes of serving notices on them during the trial. If the party concerned is not found at the address given, the procedure laid down in Order VII, Rule 22, should be followed, and if the party fails to appear on the date fixed notice should be sent to the address by registered post. Such service is then taken to be as effectual as personal service.

The new rules are intended to facilitate service of processes on parties throughout the trial including appeals and executions and should be carefully studied.

7. Form of processes—Forms of processes will be found in Appendix B to Schedule I of the Code of Civil Procedure. In the case of persons of distinction a letter may be substituted for a summons if the Court thinks fit (Order V, Rule 30).

8. Form for return of processes—The forms prescribed for the return of processes by process-servers (as amended by the High Court) should be followed as nearly as the circumstances of the case permit. These forms are reproduced in Appendix I to this Chapter.

9. Scale of process-fees—For the scale of process-fees *see* Chapter 5 of this Volume. For instructions as to the levy of fresh process-fees in certain cases and fees for substituted service *see* Part A of Chapter 5 of this Volume.

10. Processes sent by post—When processes are transmitted by post, they should be sent under service covers, and should ordinarily be registered. (Section 143, Civil Procedure Code.)

11. Employment of process-servers for execution of warrants of attachment, arrest and sale—Ordinarily bailiffs are to be employed for the execution of warrants of attachment, arrest and delivery of possession, etc., but process-servers may be employed for this purpose with the permission of the officer-in-charge of the Nazarrat where the value of property involved is not high. *Re* : execution of warrants of sale by process-servers *see* Rule 24 (iv) Chapter 12-L, Volume I.

(a) Mode of Service

1. Service by affixation not be made before the date fixed for scrutiny of service—(i) Every attempt should be made to effect personal service in the first instance and failing that service on an agent or a member of the family. The process-server should go again and again for this purpose, if there is time before the date fixed for scrutiny of service, *and obtain for each successive attempt at service, attestation of witnesses different from those who have attested reports of previous attempt(s)*. In other words service in any of the ways enumerated in Order V, Rules 12 to 16 of the Code of Civil Procedure, should be insisted upon and service by affixation as provided in Order V, Rule 17, Civil Procedure Code, should not be allowed till after the day fixed for scrutiny.

(ii) *Service by post*—As for service by post, Order V, Rule 10 of the Code as amended in Punjab, provides that where the plaintiff so wishes, the Court may serve the summons in the first instance by registered post (acknowledgement due) instead of in the mode of service laid down in that rule. Order V, Rule 20-A now enables the Court to direct the summons to be served by registered post after it has been returned unserved for any reason whatsoever.

COMMENTS

The Court should not proceed to hear a suit *ex parte* until it is proved to its satisfaction that summons has been duly served strictly in the manner provided in the High Court Rules and orders. The requirement of personal service has its roots in the fundamental rule of natural justice which demands that proceeding effecting men's rights should not continue in their absence without reasonably prior notice to them to present their case. Those whose interests may be directly affected by an order are entitled under the law to adequate opportunity to be heard. *Arjan Singh v. Hazara Smgh*, (1965)7 P.L.R. 643.

2. Substituted service—Order V, Rule 20(1), of the Code of Civil Procedure, provides that when the Court is satisfied that the defendant is keeping out of the way for the purpose of avoiding service, or that, for any other sufficient reason the summons cannot be served in the ordinary way, service may be effected by affixing a copy of the summons in some conspicuous place in the Court house, and also in some conspicuous place 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*.

3. Plaintiff's duty before obtaining orders substituted service—It should be noted, in this connection, that it is the plaintiff's duty to use his best endeavours to discover the defendant's residence and to satisfy the Court that he has done so and that the defendant is evading service or for any other sufficient reason cannot be served in the ordinary way. It is only after all the other prescribed methods of effecting service have been tried and have failed that it is open to the Court to exercise the discretionary power conferred by the concluding words of Order V, Rule 20(1), of the Code.

COMMENTS

For the purpose of ensuring that every effort is made to effect personal service, the Court has a duty to pay personal attention to matters connected with the issue and service of processes and it may well be considered a dereliction of duty to leave this important function exclusively to the ministerial staff of the Court. *Punjab Oil Expellers Co. v. Madan Lal Nanda & Sons*, AIR 1967 Delhi 28.

Rule 3 also imposes a duty on the plaintiff to his best endeavour to discover the defendant's residence and satisfy the Court that the defendant is evading service and cannot be served in the ordinary way. The matter of service is thus of primary importance as it is one of the fundamentals rules of our law of procedure that parties should have a fair and reasonable notice of

legal proceedings against them which they are entitled to defend. *Punjab Oil Expellers Co. v. Madan Lal Nanda & Sons*, AIR 1967 Delhi 28.

4. Publication in newspaper—The discretionary power alluded to above is frequently exercised by Courts by publication in one or more newspapers of a notice calling upon the defendant to appear. But in many cases this method is quite unsuitable. When, for example, the defendant is illiterate or belongs to a class which cannot be expected to read newspapers such notice is obviously useless. In the case of educated persons likely to read newspapers it may be proper to resort to this method, but even in such cases the practice should only be adopted as a last resort.

5. Publication allowed in approved paper only—Whenever notice is to be published in a newspaper it should be published in newspaper approved by the High Court. A list of approved newspapers is circulated to subordinate Courts periodically.

6. Selection of paper to be made by the Presiding Officer—The object of effecting substituted service by advertisement in a newspaper is to inform the defendant that proceedings are pending against him and that he should appear in Court. This object can only be achieved by publication in a newspaper of wide circulation, which is likely to be read by the defendant or the class to which he belongs. The selection of newspapers in which it is proposed to advertise should, therefore, be made by the Presiding Officer himself and not by a clerk of his office.

7. Preference to vernacular papers printed in the district of the person to be notified—Care should also be taken that such notices are published as far as possible in vernacular papers, vernacular being the language of the subordinate Courts. They should only be published in papers printed in English if there is good reason to suppose that the persons concerned read English papers and are more likely to be reached in that way. Preference should be given to such papers as are printed in the District where the person notified resides; or if no news paper is printed in that District, to those printed in the District nearest to it, provided such papers have a good circulation and are likely to be read by the defendant or the class to which he belongs.

8. Duties of Manager of newspaper—In sending a judicial notice for publication in a newspaper, the Court should, in the Governing letter require the manager of the newspaper to send an intimation immediately after publication of notice to the Court and to send, under postal certificate, the copy of paper containing the notice to the party for whose perusal it is intended at the address given in the notice, marking the notice in question with red ink. He should also be required, as proof of compliance with this order, to attach the postal certificate to his bill when submitting the latter to the Court for payment.

9. Covering letter to be forwarded to the Director, Public Relations and action to be taken by him—This covering letter (for sending notice for publication) should be addressed to the Director, Public Relations, Punjab, and not to the Manager of the selected newspaper. The Director, Public Relations, will arrange for the publication of Court Notice in the newspaper indicated. If the publication charges are to the extent of the minimum amount fixed, he will direct the management of the newspaper to send the bill/bills for this publication direct to the Court concerned for payment. The bill/bills for publication charges above the minimum amount fixed will be received by the Director, Public Relations, Punjab. He will check and verify the publication charges and forward the bill to the Court concerned for payment. Court should pay the amount after checking the correctness of the Court notice published by the newspaper.”

10. Advertisements in papers not on the approved list—If it is proposed for any special reasons to advertise in any paper, not on the approved list whether published in the Punjab as elsewhere, a

reference should first be made to the High Court to ascertain whether there is any objection to the course proposed.

(b) Personal attention to service

1. General—It has been found by experience that delays in the disposal of civil suits are very often due to the failure of Presiding Officers to pay personal attention to matters connected with the issue and service of processes. The following instructions, must therefore, be strictly observed in future.

2. The Judge should watch process of service before date of hearing—Between the date of the issue of process and the date of hearing. Presiding Officers of Court must personally satisfy themselves that service is being effectually carried out and not content themselves with looking into the matter only on the date of hearing.

3. Court to fix dates for furnishing talbana, etc., and date for return of process—In order to achieve this object the following procedure shall ordinarily be observed in respect of service of all processes for attendance of parties or their witnesses—

(a) A very-near date shall be fixed for payment of process-fees and for the giving of adequate details of the persons to be served. On this date, the Judge shall satisfy himself that the fees, diet money, etc., have been paid and that the name, address and other particulars of the person to be summoned are reasonably sufficient to secure service. If these conditions have been satisfied, process shall then issue and two dates shall be fixed, the first for the return of the process with a report of the process-serving agency, and the other for the hearing of the case. The interval between the dates of issue and return on the one hand and between the dates of return and hearing on the other, shall in each case leave adequate time for the service of the process. It is not to be left to the discretion of the process-server to decide whether he shall effect personal or substituted service.

(b) The date of the return should be clearly written on the summons and the Nazir should be warned to return the process before the said date.

(c) *Reader's note about service*—A printed slip showing the following particulars should be filled in by the Reader of the Court and pasted below each order for issuing a process against a party or a witness:—

- (1) The date when Talbana and address were put in.
- (2) The date on which the summonses were delivered by the Ahlmad to the Nazir.
- (3) The date on which the Nazir delivered the process to the process-server or sent it to any other agent.
- (4) The date of return by the process-server, or agent.
- (5) The date of return by the Nazir.
- (6) The name of the official who is to blame for non-service.

Note—If the interval between the date of return and hearing is sufficient, a second date for return may be fixed.

(d) *Parties and Judge's duty as to scrutiny of service on date of return*—Parties should be invited and encouraged to attend in person or by pleader on the date fixed for return of the summons. Whether they do so attend or not, the Presiding Officer should scrutinize the record and pass any order which may be required, such as an order for the issue of a fresh process. Parties should be encouraged throughout to take dasti summons to accompany the process-servers and to render all assistance in their power.

(e) *Judge to take into consideration party's conduct in deciding about adjournment*—In deciding whether to give a further adjournment when a process is not served, the Presiding Officer will be justified in taking into consideration whether the party asking for an adjournment had complied with the orders of the Court in paying process fees, diet money, etc., and in giving correctly and promptly the names and addresses of the persons to be served.

4. Process-server's affidavit *re* service of process—A form of affidavit of the process-server which should accompany the return of the summons has been prescribed by the High Court. See Appendix I to this Chapter. Before passing an *ex parte* order the Court should make it a point to see that this affidavit duly filled in, is with the report of the process-server.

COMMENTS

Rules 1 to 4, High Court Rules and Orders, Chapter 7-B(b) of Vol. IV contain important directions for the trial Court which deserve compliance. *Punjab Oil Expellers Co. v. Madan Lal Nanda & Sons*, AIR 1967 Delhi 28.

(c) Proof of Service

1. Court shall not proceed *ex parte*, if summons has not been duly served.—No Court can rightly proceed to hear a suit *ex parte* until it has been proved to the satisfaction of such Court that the summons to a defendant to appear has been duly served, that is, has been served strictly in such manner as the law provides.

2. Process-server's report to be proved by affidavit or examination in Court—Whenever it is necessary, in *ex parte* proceedings, under Order IX, Rule 6, of the Code of Civil Procedure, to have the report of service of summons proved by the affidavit or statement in Court of the process-server he should be ordered by the Court to appear before the proper officer or Court.

3. Nature of proof of service in different cases—The nature of the proof of service which the Court ought to require in each case, according as it falls under one or other of the various relevant provisions of the Code of Civil Procedure relating to service of summons, may be shortly stated as follows:—

(i) *Personal service*—When the summons or notice is served on the defendant or respondent personally, the service and the signature of the defendant or respondent on the back of the process should be proved.

(ii) *Service on agent*—If the service be made under Order V, Rule 12, on an agent, it should be proved that this person was empowered to accept service, under Order III, Rules 2, 5 or 6, or Order V, Rule 13, of the Code, as the case may be. The party causing the service to be effected must give proof to this effect. It is a matter of which, ordinarily speaking, the serving officer would have no knowledge.

(iii) *Service on incharge of property*—If the service be made under Order V, Rule 14, it should be proved in like manner that the summons or notice could not be served on the defendant or respondent in person, and that he had no agent empowered to accept the service and that the person to whom the process was delivered was an agent of the defendant or respondent in charge of the land or other immovable property forming the subject matter of the suit.

(iv) *Service on adult male member of the family*—If the service be made under Order V, Rule 15, it should be proved that the defendant could not be found or was absent from his residence and had no agent empowered to accept the service, and that the person to whom the process was delivered was an adult male member of his family, and was actually residing with him at the time of such service. It is to be noted that a servant is not a member of the family within the meaning of this rule.

(v) *Service by affixation under Order 5, Rule 17*—If the service be made under Order V, Rule 17, it should, in like manner, be proved according to the circumstances of the case, either that the persons to whom the summons or notice was tendered refused to sign the acknowledgement, though he was informed of the nature and contents of the document, or that the defendant could not be found or was absent from his residence, and that there was no agent empowered to accept service, nor any other person on whom the service could be made; and, in either case, that the house, on the outer door of which a copy of the process was affixed, was the ordinary residence or place of business of the defendant at the time when it was so affixed. It is the duty of the Court in such cases to satisfy itself after taking the process-server's affidavit or statement on solemn affirmation and after such further enquiry as may be necessary, that reasonable efforts were made without success to serve the defendant personally, and then declare whether the summons was 'duly served'. Without such a declaration under Order V, Rule 19, the summons cannot be held to be duly served.

COMMENTS

Rule 3(v) is directly in point which imposes an obligation on the Court to satisfy itself after taking the process-server's affidavit or statement on solemn affirmation and after further inquiry as may be necessary, that reasonable efforts were made without success to serve the defendant personally and then declare whether the summons was duly served. *Punjab Oil Expellers Co. v. Madan Lal Nanda & Sons*, AIR 1967 Delhi 28.

(vi) *Substituted service under Order 5, Rule 20*—If the service be made under Order V, Rule 20, it should, in like manner, be proved that the house upon the door of which a copy of the process was affixed, was the house in which the defendant last resided or carried on business or personally worked for gain, and that the service was made in all respects in conformity with the order for substituted service which should accompany the process.

(vii) *Service by registered post under Order 5, Rule 20 A*—If the service has been effected by registered post under Order V, Rule 20 A, an acknowledgement purporting to be signed by the defendant or his agent or an endorsement by a postal employee that the defendant or the agent refused to take delivery may be deemed by the Court issuing the summons to be *prima facie* proof of service.

(viii) *Service at address given by parties*—If service has been effected under Order 8, Rule 12, read with Order 7, Rule 22 (as framed by the High Court), it should be proved that the defendant was not found at the address given by him for service, that there was no agent or adult male member of his family on whom service would be made, that a copy of the summons or notice was affixed on the outer door of his house, and that on his failure to appear on the fixed date, summons or notice was sent to the registered address by registered post for the next date.

(ix) *Service on a firm*—If the service be made under Order XXX, Rule 3, it should be proved that the summons or notice was served upon any one or more of the partners of the firm concerned, or at the

principal place at which the partnership business is carried on within India, on any persons having, at the time of service, the control or management of the partnership business there. In the case of a partnership which has been dissolved, the summons shall be served on every person within India, whom it is sought to make liable.

4. Proof of service is imperative—The Court should in all cases obtain the proof which is above described as requisite by the verified statement, recorded in writing, of the person by whom the service was effected, or, if deemed necessary, by the examination in Court, as witnesses, of such persons as the Court may think fit to examine.

Part

C

ISSUE OF SUMMONS OR OTHER PROCESS FOR SERVICE ON A PERSON EMPLOYED IN THE PUBLIC SERVICE

1. Service of summons on public officers or servant of local or railway company—In regard to the service of summons upon the party or witness who is a public officer (not belonging to the Indian Military, Naval or Air Forces) or is the servant of a railway company or local authority it is open to the Court as provided under Order V, Rule 27 of the Code of Civil Procedure to serve the summons through the head of the office in which the said party or witness is employed if this course is considered more convenient. Ordinarily the summons should be served on the defendant or witness in the ordinary way and a copy sent to the head¹ of the office or department at least 15 days (10 days in the case of local officers) before the date fixed for the hearing.

The method of effecting service through the head of the office will probably be found the most convenient in the case of defendants or witnesses employed in large administrative offices. In all cases where the summons is ordered to be served through the head of the office, an endorsement should be attached to, or written in the body of the summons, conspicuously in red ink, quoting the exact words of sub-rules 1 and 2 of Rule 29, Order V, Civil Procedure Code, which (in the case of witnesses read with Order XVI, Rule 8, Civil Procedure Code) imposes a duty on the head of the office to serve the summons on the subordinate to whom it relates if possible and to return it under his signature with the written acknowledgment of the defendant or witness; or if service is not possible, to return the summons to the Court with a full statement of the reasons for non-service.

Note—The case of Patwaris forms an exception to the above rule, and is governed by the rules in Chapter 5-B of Volume I. It should be noted that in such cases the summons should be forwarded to the Tahsildar for service, and should not be served direct or through the Deputy Commissioner.

2. Service of summons in suits against railway companies—In the case of suits against railway companies, in addition to service in the usual way, a copy of the summons should be sent by post under Order XXIX, Rule 2(b): provided that if the summons is sent by registered post, service in the usual way may be dispensed with.

3. Sufficient time to be allowed for the official superior to arrange for relief of the person summoned—A reasonable time should be allowed for the attendance of the person summoned, in order that his official superior may be able to make suitable arrangements for the conduct of his duties during his absence.

4. Vernacular Robkars—Vernacular robkars may be sent to a Kanungo or any other official subordinate to a Deputy Commissioner, to give evidence. Robkars should not be addressed to the heads of

public offices and departments in which business is transacted in English. A covering letter or docket in English should be used.

Part D
ISSUE OR SUMMONS OR OTHER PROCESS FOR SERVICE ON PERSONS IN THE
ARMY, NAVY OR AIR FORCE

1. Service of processes on employees in the Army, Navy and Air Forces—(1) Order V, Rules 28 and 29, of the Code of Civil Procedure, provide for the service of processes on soldiers, sailors or airmen other than commissioned officers. Such processes should invariably be transmitted for service to the proper military authority.

(2) *Sufficient time to be allowed in fixing dates*—There is no special provision in the Code for the service of processes on officers as distinct from soldiers; and such processes should ordinarily be served personally by the European Bailiff of the Court. If there is no European Bailiff attached to the Court, it will be convenient to send the process to the commanding officer or the officer concerned for service in the manner indicated in Order V, Rules 28 and 29.

2. Fresh date should be given if time allowed proves insufficient—In fixing dates for the attendance of persons in the Army, Navy or Air Force, the Courts should be careful to allow sufficient time. It should be remembered that in fixing a date for the appearance of the defendant in such cases, the time necessary for the transmission of the summons, through the usual channels, for service on the defendant must be taken into consideration, as well as the time which the defendant may, after service, reasonably require to make arrangements for obtaining leave and appearing in person or for appointing and giving instructions to an agent to represent him in the case.

3. On the day fixed for hearing, if it appear that from any cause the summons was not served in sufficient time to enable the defendant to make the necessary arrangements for appearing in person, or by agent, a fresh date must be fixed and notice given to the defendant, but this will seldom be necessary if Courts are careful in the first instance to allow sufficient time, as required by Order V, Rule 6, of the Code of Civil Procedure, and explained in the above remarks.

4. Service on agent or pleader—It may be noted that when an officer, soldier, sailor or airman has authorised any person under Order XXVIII, Rule 1, to sue or defend in his stead processes may be served on such agent or upon any pleader appointed by such agent (Order XXVIII, Rule 3).

Part E
ISSUE OF SUMMONS OR OTHER PROCESSES FOR SERVICE ON A PERSON RESIDING
WITHIN THE JURISDICTION OF ANOTHER COURT IN THE SAME OR ANOTHER
STATE OR TERRITORY WHO HAS NO AGENT TO ACCEPT SERVICE WITHIN THE
JURISDICTION OF THE COURT ISSUING THE PROCESS. SERVICE OF PROCESSES
ISSUING TO OR FROM OTHER STATES AND TERRITORIES

General

1. Different modes of service—When the person to be served resides within the jurisdiction of another Court the Judge must decide how service is to be effected, and pass orders accordingly.

If the process has to be served within the jurisdiction of another Court but within the same district, the agencies located at tahsils will be employed, the processes being transmitted by post from one agency to another. If the process has to be served in another district, but within the State or Union territory it should be transmitted by post to the Senior Sub-Judge for service and return. But no Court should refuse to serve any process received for service within its jurisdiction from a Court in another district or State, or Union territory merely by reason of the process not having been sent through the senior Subordinate Judge. Processes issued to districts in other States or Union territories should be forwarded for execution to the District Judge of the district in which service of such process is desired, except where they are to be served within one of the Presidency towns (Order V, Rule 22, Civil Procedure Code), when they should be transmitted for service to the Judge of the Court of Small Causes.

The Government of Bengal have decided that in the case of all warrants or other processes which are required to be executed or served by the Court of Small Causes, Calcutta, on or after the 1st June, 1942, conveyance charges at the rate of Rs. 1.50 nP. per warrant and annas 4 per copy of summons or other process shall be realised and paid in Court-fee stamps in advance and that before warrants or other processes are transmitted to that Court for execution of service, a certificate of realisation of the charge should be endorsed on the warrants or other processes, as the case may be, for the information of the Court of Small Causes, Calcutta, in the absence of which certificate it will not be possible for that Court to execute or serve warrants or processes—General Letter No. 4 (Civil) of 1942, from the Registrar of the High Court of Judicature at Fort William in Bengal, Appellate Side, copy endorsed to all District and Sessions Judges in the Punjab and Delhi with High Court endorsement No. 7391-R/XIX-F-2, dated the 4th August, 1942.

2. Full description to be give of person summoned—In issuing processes for service in other States or Union territories the presiding officer of the Court issuing the process should personally satisfy himself that such full particulars of the description of the person summoned are entered in the process as will render it unlikely that the serving officer should mistake the identity of the person summoned. The name, occupation and address should be recorded in the summons, together with any further particulars which, in the opinion of the Court, will facilitate service of the process. The issue of the process should be delayed until such particulars are satisfactorily furnished by the person applying therefor. The same should be taken in regarding to all processes which are to be served outside the jurisdiction of the Court issuing the process.

3. Processes should bear the seal and signature of the Court and show the name of the Court and District—All processes should set forth distinctly both the Court from which the process issues and the name of the district. They should bear the seal of the Court and should be signed legibly.

4. Cases where in processes should be accompanied by translation in English—All processes sent for service to any district, the vernacular of which differs from that in which, the process is written, should be in duplicate and accompanied by a translation in English.

All reports made on the processes received for service from any district or State or Union territory the vernacular of which differs from that of the district in which the report is written, shall be translated into English, which translation shall accompany the process when returned to the Court issuing it.

5. Note on the Process that proper fee has been levied—In every case in which application is made for the issue of a process to a place in India, but beyond the limits of the jurisdiction of the Court, the stamp requisite for the issue of such process, under the rules in force in the Punjab will be levied and affixed to the diary of process fees; and a note will be made on the process to the effect that the proper fee has been paid. A process issued by any Court in the Punjab will be served or executed free of charge in

any other part of India, if it be certified on the process that the proper fee has been levied under the rules in force in the Punjab (*see* also Chapter 5).

6. Process issued to or by any Court in India to be served free charge—Process issued by any Courts in India will be served free of charge by the Punjab Courts under the same conditions as are mentioned in the proceeding paragraph, *i.e.*, if it be certified on the process that the proper fee has been levied under the rules in force in that state or territory.

7. Summons to defendant but of India to be sent by post—Summonses issued for service on a defendant residing out of India who has no agent in India empowered to accept service, shall be addressed to him at the place in which he is residing and sent by post in accordance with Order V, Rule 25 of the Code of Civil Procedure.

8. Correspondence with Courts in other States etc.—All correspondence between judicial officers in Punjab and the Courts in other States and territories should be conducted in the English language.

9. Service of processes received from other districts should be watched by the presiding officer—Complaints are frequently received that the processes sent for service to other district are not properly attended to. All processes received from other district should be shown regularly in the register "*Tamil Zilla Ghair*" and the disposal of the process should be watched by the presiding officer of the Court from time to time.

10. Duty of Court receiving summons from another Court for service—If a summons is issued under the provision of Order V, Rule 21, of the Code of Civil Procedure, it is the duty of the Court serving the summons (a) to proceed as if it had been issued by such Court, (b) to return the summons to the Court of issue together with the record (if any) of its proceedings with regard thereto, and (c) to make the declaration referred to in Order V, Rule 19.

In returning the summons from 10 of Schedule I, Appendix B of the Civil Procedure Code, should be used and should be duly signed and sealed.

11. Service in territories in India to which the Code does not extend—Attention is invited to Section 28 of the Code which provides that such summonses and processes may be sent for service in another State to such Court as may be prescribed by rule in force in that State. The word 'State' in this Section is to be construed according to the definitions contained in Section 3(58) and (41) of the General Clauses Act, 1897 (X of 1897). So construed, the provisions of the Section apply to service in territories forming part of India to which the Code does not extend as such territories are either included in or form a 'State.'

(Government of India Letter No. F-80(49)/55-G, dated the 29th February, 1956).

Part

F

SERVICE OF THE PROCESSES OF THE COURTS IN INDIA IN PLACES BEYOND INDIA
AND VICE VERSA

1. Service of summonses by post—Order V, Rule 25, of the Code of Civil Procedure provides, generally, that if the defendant resides out of India, and has no agent in India empowered to accept the

service, the summons shall be addressed to the defendant at the place where he is residing, and forwarded to him by post, if there be postal communication between such place and the place where the Court is situate. In practice, all summonses so sent should, where possible, be sent by registered post, and should be “registered acknowledgement due.”

The letter containing the summons which should always be sent in an envelope, should be properly and fully addressed and prepaid. A copy of the address on the letter should also kept on the judicial record and care should be taken that the certificate given by the Postal authorities also contains the full address on the letter.

2. Service under Order V, Rule 26—If it is not possible to effect service under Order V, Rule 25, advantage may be taken of the provisions of Order V, Rule 26. As regards clause (a) of this rule, no Political Agent has, so far, been appointed or a Court established with power to serve in any foreign country in which the defendant resides, a summons issued by a Court in India under the provisions of the Code. It is for the State Government to take the necessary action under clause (b) of this rule.

3. Service under Order V, Rule 20—Where service by post has been tried and has failed and the mode of service, if any, provided by Order V, Rule 26 have been availed of, action may be taken under Order V, Rule 20 of the Code of Civil Procedure.

4. Instruction *re* : service under Order 5, Rule 26 Cr. P.C.—In cases where service is desired to be effected under Order V, Rule 26, the following instructions should be followed:

(a) *Channel of correspondence*—The summons should be forwarded in an envelope through the District Judge, with a covering letter to the High Court for transmission to the State Government, duly certified that service by post has been tried and failed and in what manner it has failed. The channel of communication within India of summonses for service in foreign countries is the State Government and the Government of India, Ministry of External Affairs. The summons should never be sent direct. An exception is made in the case of certain countries, *viz.*, the Federation of Malaya, Iraq and Nepal to which processes may be forwarded direct by the Indian Court.

(b) *Date of returns of Summonses*—In no case should be precise date be fixed in the summons or forwarding letter for the return of the service. It is impossible for a Court in India to order a date before which a foreign judicial authority must execute a request which the foreign judicial authority is under no obligation to execute at all.

A sufficiently long date, however, (in any case not less than four months) may be fixed for the appearance of the parties before the Court in expectation or the return of the service after making allowance (a) for the time which is bound to be taken by the various channels through which the documents have to pass, and (b) the time which should be given to the person on whom service is effected to prepare his case and attend the Court.

(c) *Duplicate copies and translation*—The covering letter, both copies of the summonses and all other documents should be prepared in duplicate and translated in English and type-written and must be checked and legibly signed by the presiding officer of the Court and should bear the seal of the Court. Where it is not possible to type them in English they should be neatly and legibly written by the presiding officer in his own hand writing. All translations should be certified to be correct.

(d) *Names and addresses and translation in foreign language*—The names and addresses of the persons on whom service of summonses is desired should be neatly and legibly written and should also be

given in the forwarding letter. The name and address of the Court should be legible, and its seal should also be legible and properly affixed. Summonses, notices, copies of plaint and other judicial documents should be accompanied by translation in duplicate in the language of the country in which service is to be effected, at the expense of the party at whose instance summonses, etc., are issued. Where the party concerned is unable to prepare such translation a request should be made that translation be arranged by the Foreign Office.

The approximate charges for translation into certain foreign language are the same as given in paragraph 27 of Chapter 10-D, Volume I.

Similarly, request should be made that the executing officer should cause translations of all the documents sent by him to be made in English and money for this purpose should be recovered in advance from the party concerned.

(e) *Cost of translation and service*—An amount equal to 50 per cent more than the estimated cost of effecting service and translation should be recovered from the party concerned in advance and deposited. This amount need not be sent along with the process as heretofore but should be sent when a demand is made to that effect.

(f) *Presiding officer responsible for completion of the documents*—The preparation of summonses must not be left to clerks. The presiding officer of the issuing Court primarily be held responsible for its accuracy and completeness in every respect before transmission to the High Court and it is the duty of the Superintendent to the District Judge to examine the summonses and its accompaniments carefully and to see that all instructions have been complied with.

(g) *Index and schedule of documents sent*—The forwarding letter should either at the foot thereof contain a schedule of all the documents sent alongwith it or be followed immediately by an index of such documents. The first document should be a concise narrative of the action of the parties thereto and of the course to be pursued. The documents should be numbered or lettered so as to correspond with the schedule or index mentioned above.

(h) *Copies to be certified*—All copies should be certified by an official of the Court that they have been examined and are true copies. Such certified copies should also bear the seal of the Court.

(i) *Stitching of papers sent*—The forwarding letter and all its accompaniments should be on strong paper and sewn together in a parchment paper cover down the left hand side, the end of the silk, tape or thread with which they are sewn being brought out on the front cover and the ends sealed down and the binding signed and sealed by the Judge so that there is no possibility of the removal substitution or addition of any sheet without breaking the seal.

(j) *Directions to be given in forwarding letter*—The forwarding letter or the first annexed document should indicate clearly (a) which is the actual document (or documents) to be served, and (b) if any special method of service is desired (as opposed to a case where any method usually employed by the Courts of the foreign country in question will suffice) the method of service desired : (*viz.*, that one copy of the documents to be served should be left with the intended recipient; that a certificate of service by the process-server should be written on the copy of the documents to be served; that the recipient should be asked to sign a copy of the document served, etc., as the case may be).

(k) *Address*—The letter to a Foreign Court, where the proper description of the Foreign Judicial Authority in question is not known, should be addressed to the competent Judicial Authority in (Name of the country concerned).

5. Service in the State of Punjab of processes of Courts outside India—Summonses and other processes issued by Civil or Revenue Courts outside India may be sent to the Courts in the territories to which Code of Civil Procedure extends and may be served as if they were summonses issued by such Courts in accordance with the provisions of Section 29 of the Code.

Clause (a) of the Section refers to Courts in territories specified in clauses (a) to (d) of Section 1(3) of the Code.

As regards clause (b), Civil and Revenue Courts in the State of Pondicherry are only Courts outside India which are continued by the authority of the Central Government outside India, vide clause (4) of the French Establishments (Administration, Order, 1954, issued under the Foreign Jurisdiction Act, 1947) {see Chapter 15}.

With reference to clause (c) the provisions of Section 29 have been applied to Courts in the following countries :—

Sl. No.	Name of country	Number and date of notification	Courts in respect of which notification has been issued
1.	Singapore	S.R.O. 1233, dated 29th May, 1956	All Civil Courts
2.	Ceylone	No. 247, dated 16-2-1909	Ditto
3.	France	No. 852-C, dated 3-2-1913	Civil Courts
4.	Spain	No. 852-C, dated 3-2-1913	Ditto
5.	Belgium	No. 852-C, dated 3-2-1913	Ditto
6.	Russia	No. 852-C, dated 3-2-1913	Ditto
7.	Portugal	No. 852-C, dated 3-2-1913	Ditto
8.	Iraq	No. F. 209-23, dated 6-6-1923	Civil and Revenue Courts
9.	Kenya	No. F. 811-23, dated 4-6-1924	Civil Courts
10.	Egypt	No. 369, dated 31-5-1938	Mixed Courts
11.	Japan	No. 1924, dated 25-11-1920	Civil Courts
12.	Sweden	No. F. 12/17/35, dated 20-1-1936	Ditto
13.	Persia	No. F. 840/25, dated 3-5-1928	Ditto

14.	Nepal	No. F. 576/24, dated 15-8-1925	Courts specified in the Schedule to the Notification
15.	Pakistan	No. S.R.O. 1340, dated 1-9-1951	Civil and Revenue Courts
16.	Federation of Malaya	No. S.R.O. 223, dated 1-9-1956	All Civil Courts
17.	Sikkim	No. S.R.O. 63, dated 6-1-1956	High Court of Sikkim in the exercise of its civil jurisdiction. All Civil and Revenue Courts

6. Special procedure in regard to some particular foreign countries is given below :

(i) Afghanistan

Procedure with regard to particular foreign country—There is no agency in Afghanistan for the service of summonses on witnesses issued by the Punjab Courts. It is, therefore, useless to issue such summonses.

Defendants can only be summoned under Rule 25 of Order V of the Civil Procedure Code : in other words by issue of a summons direct to them by post and not through any agency.

If action under Rule 25 of Order V, fails Order V, Rule 26 does not apply for the service of such summonses in Afghanistan.

The Punjab Courts should in so case, address Afghanistan Courts or officials or the authorities in Kabul direct.

Violation of these instructions by Subordinate Judges, Magistrates and members of their staff, concerned with the despatch of summonses cause much embarrassment to the Government of India.

It will be impossible to treat breaches of them with leniency even though they may have been the result of mere carelessness.

In cases of any further contravention, disciplinary action will be taken by way of stopping the increments of the official or officials concerned or otherwise as may be considered suitable.

(ii) Mauritius

Every process for service in the town of Mauritius shall be accompanied by a remittance of Rs. 3 per person to be served. If the process is to be served in the country, a further sum at the rate of 75 cents or about two rupees per mile (to and from) should be remitted. When documents are written in the vernacular, a sum of Rs. 10 should be remitted as translation charges. But in all cases an English translation should be sent.

(iii) United State of America

Service in this country is normally done by appointing a local lawyer acting as agent for the parties. Where desired Indian Consular Officer will recommend suitable firm of local lawyers.

(iv) Kenya

Processes for service should be sent in duplicate; the copies to be identified “original” and “duplicate” and should be sealed with the Court’s Seal. A Postal Order of 10 Shillings for expenses of service should accompany the process.

(v) Union of South Africa

Summonses and the processes should not be sent direct to that country but should be sent as mentioned in Rule 4(a).

The returnable date of the summonses or other processes should be at least six months.

The charges for service should be sent along with the summonses or other processes.

The fees ordinarily charged by the Courts in the various provinces of the Union of South Africa for the service of summonses issued by Courts in India are given as under:

Province	Fees for service	Travelling allowance (per mile or, fraction of a mile)	Radius (from Deputy Sheriff’s office) within which no transport allowance allowed
			Miles
Cape	5	Civil Matters 1/6d Criminal I.	3
Orange Free State	6/3	1/3d	1
Natal	5	2 (for outward journey only)	1
Transval	7	1/3d	3

For procedure for service in Japan, Thailand, Netherland, East Indies, Iran, Nepal, Federated Malaya States, Iraq, etc. *see* Chapter 10-F, Volume I.

(vi) Pakistan

1. Service Pakistan—It is provided by the proviso, to Rule 25 of Order V, of the Code that where a defendant resides in Pakistan, the summons, together with a copy thereof, may be sent for service on the defendant to any Court in that country (not being the High Court) having jurisdiction in the place where the defendant resides; and further that where any such defendant is a public officer in Pakistan (not belonging to the Pakistan Military, Naval or Air Forces) or is a servant of a railway company or local

authority in that Country, the summons, together with a copy thereof, may be sent for service on the defendants, to such officer or authority in that country as the Central Government may, by notification in the Official Gazette, specify in this behalf.

2. Notification under second provisions to Order V, Rule 25—The Central Government has issued the following notification under the second proviso to Order V, Rule 26 of the Code—

S.R.O. 1342, dated 1st September, 1951—In pursuance of the second proviso to Rule 26 or Order V in the First Schedule to the Code of Civil Procedure, 1908 (V of 1908), the Central Government hereby specifies the following officers in Pakistan to whom summons may be sent for service on defendant who is a public officer in Pakistan (not belonging to the Pakistan Military, Naval or Air Forces), namely—

(a) Where the defendant is a public officer serving in connection with the affairs of the Dominion of Pakistan or is a servant of a Railway in Pakistan, to the Secretary to the Government of Pakistan in the Ministry of the Interior.

(b) Where such defendant is serving in connection with the affairs of any other Government in Pakistan or under any local authority in Pakistan, to the Home Secretary to that Government or, as the case may be, to the Home Secretary to the Government within whose territory the local authority has its jurisdiction.

3. Whenever a summons issued by a Court in Pakistan is served on a person in India and the report of the service is made in a language other than English the report should also be translated into English and the translation sent with the summons to the issuing Court. The Government of Pakistan have also agreed to offer similar facilities in such matters. (Government of India, Ministry of Home Affairs, Letter No. D-3105/J/II/56, dated the 1st September, 1956 and Punjab Government Endorsement No. 9360-J-56/76708-A, dated the 17th October, 1956).

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ASSISTANCE BY VILLAGE OFFICERS IN PROCESS-SERVING

1. The Financial Commissioners have invited the attention of all the Collectors in the Punjab to the necessity of impressing upon the *Lambardars* that as one of their duties under Rule 20 of the Land Revenue Rules, is to assist all officers of the Government in the execution of their public duties, they are expected to assist the process-servers in serving processes in Civil and Criminal cases and that the more care they devote to this branch of the administration, the more expeditiously will the suits be decided. It was further pointed out that it was obviously to the benefit of the village that the *Lambardar* should do his best to assist in the service of the processes. Subordinate Courts should bring to the notice of the Collectors case of wilful negligence of duty in this direction on the part of *Lambardars* and should not hesitate to move the High Court through the proper channel if matters do not improve even then.

2. In order to reduce the possibility of false reports being made on notices of sale, which are not uncommon, it has been decided that the process-server's report on a notice of sale should be attested by a *Lambardar* and, whenever possible, also by the village patwari or school master. The Financial Commissioner, Revenue, and the Director of Public Instruction have respectively instructed patwaris and school masters to attest such reports when asked. The absence of attestation by a patwari or school master should not necessarily be regarded as proof that the process-server's report is false.

COST OF POSTAGE AND REGISTRATION ON PROCESSES FORWARDED BY POST,
HOW TO BE DEFRAIDED

1. Service stamps to be used. Party not required to pay postal charges except under Order 5, Rules 10 and 20-A C.P.C.—Postal charges on all processes, notices, and other such documents, issued from any Court and transmitted by post, are to be paid by means of service postage stamps, without any additional charge being levied from the parties at whose instance the process or document is issued. In cases in which it is considered necessary to register the cover, the fee for registering it will also be paid by means of service postage stamps (*see* Section 143 of the Code of Civil Procedure).

In the case of process transmitted by post under the proviso to Rule 10 or under Rule 20-A of Order V of the First Schedule to the Code of Civil Procedure, the party at whose instance the process is issued will be required to pay all postal charges for postage and registration. The party will be required to pay only the normal process fee when service by post is ordered either in lieu of or in addition to the service in the ordinary manner. When the party concerned puts in a stamped postal envelope, the Ahlmad or the Moharrir should give him a receipt for the same.

2. Service stamps to be used for transmission of processes to another Province—Processes received for service from Courts in other States should be returned in service postage paid covers, the stamps being provided by the returning Court. Similarly, processes returned to Punjab Courts from Courts in other States will be sent in service postage paid covers. The same rule, of course, applies to processes returned by or to other Courts in the same State.

Service postage labels required for this purpose will be obtained in the usual way.

POLICE ASSISTANCE

1. The Punjab Government has decided that the following conditions should govern the rendering of Police assistance to the Civil Courts in the execution of warrants of arrest and distress or of warrants for the delivery of possession of immovable property.

2. When request may be made for Police Assistance—A Subordinate Judge may move the District Judge, or in his absence from the district, the Senior Subordinate Judge to ask the District Magistrate for Police Assistance. The request must be accompanied by evidence of the circumstances sufficient to satisfy the District Magistrate that there is a design to commit a cognizable offence or that there is a likelihood of the commission of a cognizable offence by the person or persons on whom a warrant of arrest or distress or for the possession of immovable property is to be served.

3. Government should be informed when Police Assistance permitted—In all cases in which the District Magistrate has given permission for the employment of Police for the assistance of the Civil Courts in the execution of warrants, a report of the circumstances should be submitted by him through the Commissioner to the State Government.

1. Option of a party to fill up forms—With their applications for the issue of process, parties may, if they so desire, file printed forms of the same duly filled up in accordance with the rules of the High Court regarding the issue of the process. The date of appearance and the date of the process will be left blank.

2. Responsibility for accuracy of contents—The parties or their pleaders shall sign the forms thus filed in the left bottom corner, and will be held responsible for the accuracy of the information entered in the forms.

3. Legible handwriting—The forms must be filled up in a bold, clear and easily legible handwriting.

4. Dates to be filled in by office—When orders for the issue of process are passed by the Court, the date fixed for appearance will be inserted in the form and the process will be dated by an officer of the Court before the processes are signed.

5. Free supply of forms—The necessary number of printed forms of process will be supplied to the parties or their pleaders, free of cost, on application to such officer of the Court as the Presiding Judge shall direct.

APPENDIX I

*Affidavit of Process server to accompany Return of a Summons or Notice
(Order 5, Rule 18)*

(Title)

The Affidavit ofson of

I and say as follows:

(1) I am a process server of this Court.

(2) On theday of19I received

a issued by the Court ofin Suit Noof19 in the said Court, dated the day of19 for service on.

(3) The saidwas at the time personally known to me and I served the said
on on theday of19 ... at about. ... o'clock on thenoon atby
tendering a copy thereof to and requiring signature to the original

(a)

(b)

(a) Here state whether the persons served signed or refused to sign the process and in whose presence.

(b) Signature of process server.

or

(3) The saidnot being personally known to me accompanied me to
..and pointed out me a person whom he

stated to be the saidand I served the said on on the day of ...
...19 ... at about o'clock in the noon atat tendering a copy thereof to
and requiring signature to the original

(a)

(b)

(a) Here state whether the persons served signed or refused to sign the process and in whose presence.

(b) Signature of process server.

or

(3) The saidand his house in which he ordinarily resides being

I went to said pointed out to me by house inand there on the ...
.....day of 19 at o'clock in the noon I did not

neighbours

I was told thathad gone to and would not be back till

Signature of process server.

or

If substituted service has been ordered, state fully and exactly the manner in which the summons was served with special reference to the terms of order for substituted service.

by the saidbefore me thisday of 19

Empowered under Section 139
of the Code of Civil Procedure
to administer the oath to deponents

APPENDIX II

List of Civil Courts in the Jammu and Kashmir State

Sl. No.	Name of the Court	Territorial Jurisdiction
Jammu Province		
1.	District Judge, Jammu.	Jammu excluding Tahsil R.S. Pura and Akhnoor.
2.	Muisiff, Ranbir Singh Pura.	Tahsil R.S. Pura.
3.	Munsiff, Samba.	Tahsil Samba.
4.	Munsiff, Akhnoor.	Tahsil Akhnoor.
5.	Sub-Judge, Udampur.	Udampur District excluding Ramnagar and Reasi Tahsils.
6.	Sub-Judge, Reasi.	Reasi.
7.	Sub-Judge, Ramnagar.	Ramnagar.
8.	Sub-Judge, Bhaderwah.	Doda District excluding Kishtwar, and Ramban.
9.	Munsiff, Kishtwar.	Kishtwar.
10.	Munsiff, Ramban.	Ramban.

11.	Sub-Judge, Poonch.	Poonch District excluding Rajouri.
12.	Sub-Judge, Rajouri.	Rajouri.
13.	Sub-Judge, Kathua.	Kathua District.
Kashmir Province		
14.	District Judge, Srinagar.	Srinagar District.
15.	Sub-Judge, Anantnag.	Anantnag District and excluding Shopian and Phulwama Tahsils.
16.	Munsiff, Shopian.	Shopian and Phulwama Tahsils.
17.	Sub-Judge, Baramulla.	Baramulla District excluding Sopore and Handwara.
18.	Munsiff, Sopore.	Sopore.
19.	Munsiff, Handwara.	Handwara.
20.	Deputy Commissioner, Leh.	Ladakh District.

1. In the case of employees of the Northern Railway, a copy of the summons should be addressed to the Divisional Superintendent or other superior officer concerned according to the list given in the appendix to Chapter 8.