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IS SERVICE OF SUMMONS BY WHATSAPP PROPER SERVICE?

1. INTRODUCTION

In a recent order of the Bombay High Court, service of summons by *WhatsApp* was considered as an acceptable mode of service based on the facts of that case. This was followed by another order in April 2017 by the Financial Commissioner Court of Haryana, which ordered summons to be served through *WhatsApp* in order to reduce the delay in serving summons in the absence of a proper address.

2. BRIEF FACTS

2.1 The Bombay High Court Order

In the matter of *Kross Television India Pvt Ltd & Another v. Vikhyat Chitra Production & Others*, Kross Television India Pvt. Ltd and another (the “**Plaintiffs**”) filed a suit against Vikhyat Chitra Production and others (the “**Defendants**”) before the Bombay High Court seeking an injunction in respect of a Kannada film ‘*Pushpaka Vimana*’ (the “**Kannada movie**”) which was alleged to be a plagiarized copy of a Korean film “*Miracle In Cell No.7*” (the “**Korean movie**”). The Plaintiffs claimed to have lawfully obtained an assignment from the producers of the Korean movie for its Hindi remake.

The Plaintiffs claimed that in February 2017, during their research, they came across the infringing Kannada movie and on further checking with the assignors of the Korean movie, the Plaintiffs learnt that the original producers of the Kannada movie had not obtained any assignment or rights from the producers of the Korean movie. The Plaintiff’s filed a case of copyright infringement against the Defendants.

Under the Code of Civil Procedure, 1908 (the “**CPC**”), the Plaintiffs tried to serve the summons on the Defendants on the address obtained from the Central Board of Film Certification. The service of summons was avoided by two of the Defendants, several times by changing their address and utilizing other tactics. After repeated failed attempts to serve the summons on the Defendants, the Plaintiff’s advocates found out the contact number of the producers and verified it through the app ‘*Truecaller*’ and then sent the summons through *WhatsApp*.

The Defendants reportedly replied to the said summons as follows: “*I dint understand anything. Will check with my legal team and I’ll text you back. I am out of station.*” The summons was also sent through emails.

The Hon’ble Mr. Justice G. S. Patel J. adopted an innovative method holding the service through *WhatsApp* as a proper service. The court noted that the service of summons on the Defendants through *WhatsApp* was a proper mode of service, as the Defendants had rightly *received* and *acknowledged* such service. The judge clarified that generally, defendants who avoid and evade service by regular modes cannot be permitted to take advantage of that evasion. An interim injunction was granted by considering the service to be completed.

In particular, the judgment of the court stated that:

“The purpose of service is to put the other party to notice and to give him a copy of the papers. The mode is surely irrelevant. We have not formally approved of email and other modes as acceptable simply because there are inherent limitations to proving service. Where an alternative mode is used, however, and service is shown to be effected, and is acknowledged, then surely it cannot be suggested that the Defendants had ‘no notice’...”

2.2 The Financial Commissioner Court, Haryana

In *Satbir Singh vs. Ramdayal and Another* before the Financial Commissioner Court in Haryana (a quasi-judicial body headed by senior IAS officer Ashok Khemka) (the “FCC”), the FCC ordered a summons in a partition suit be served through *WhatsApp*. The FCC while passing the order stated that an email address or a mobile number is also the address of a person in present times. The FCC directed that an image of the summons bearing the court seal be sent to the party's mobile number and a printout of the delivery report on *WhatsApp* was considered as proof of delivery.

Singh had filed a partition suit before the FCC against his brothers over a family property in Aurang Shahpur Village near Hisar. When the FCC issued notice to both brothers seeking their replies in the matter, Ramdayal received the summons, but it could not be served on his other brother, Krishan, as he had moved to Kathmandu. A report received from local revenue officials stated that Krishan was contacted over his phone but he refused to give his address in Kathmandu. Considering the above circumstances, the FCC passed an order to serve the summons upon Krishan through *WhatsApp* and also directed that an image of the summons notice (bearing the court's seal) be sent to Krishan's number and the printout of the delivery report on *WhatsApp* be considered as proof of delivery.

The FCC, in addition, pursuant to section 20(2) of the Punjab Land Revenue Act, 1887, read with Order V Rule 17 of the CPC, also directed that a copy of the summons be pasted on some conspicuous place in or near the joint land holding and the house in the village where Krishan Kumar resided before moving out.

IndusLaw View:

The order is welcome, reflecting contemporary technology and the idea that notice is generally given through electronic means in today's world. In most cases, service of summons in India is a tedious and time-consuming process. The judicial process is already saddled with the burden of huge pendency of cases and delays in rendering justice.

While the technology of communication has advanced by leaps and bounds, the law governing the service of summons continues to remain antiquated. It was time that the courts took a practical approach even in an otherwise simple process of service of summons. The above court orders are very prudent and a pioneering adoption of communication technology, reducing unwanted delay in the service of summons. The courts have set a welcome precedent that paves the way for technology serving effective summons, largely bypassing unwanted delays arising under the traditional postal service of summons.

However, although the adoption of technology is a welcome idea, the wrongful use of such modes of service by litigants cannot be ruled out. Proper checks and balances in adopting the use of technology are essential. The idea of the *acknowledgement* of receipt in case of service through *WhatsApp* should not be considered an appropriate acknowledgement unless and until the mobile number is verified to be the mobile number of the concerned defendant.

Besides, it must also be borne in mind that the above orders were passed on the facts and circumstances of those cases, where the defendants could not be served effectively through the normal route of serving summons. It is therefore difficult to state with certainty that such service of summons through *WhatsApp* will now be accepted in all cases. Therefore, it would still be advisable

to only resort to such electronic mode of service, only where it can be demonstrated that normal service of summons has failed. We would certainly require more clarity either in the form of an amendment to the existing legal regime, or a judgment in a higher court, to conclusively decide if such mode of service is acceptable in all situations.

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