



+IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No. 154 of 2015

Smt. Sunita Nayak **Appellant(s)**

Represented by Adv.–
Mr. Niranjana Singh, Advocate
-Versus-

Anup Kumar Tota **Respondent(s)**

Represented by Adv.
Mr. Ashok Das, Advocate

CORAM:

**HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
AND
HON'BLE MR. JUSTICE SIBO SANKAR MISHRA**

ORDER

06.04.2026

(Hybrid mode)

Order No.

- 12.**
- 1.** Heard learned counsel for the parties.
 - 2.** This is an appeal filed by the appellant-wife challenging the judgment dated 18.05.2015 passed by the learned Judge, Family Court, Berhampur in C.P. No.218 of 2013, whereby the marriage between the appellant-wife and respondent-husband was dissolved.
 - 3.** Earlier, notice was issued to the sole respondent-husband. It is submitted that the learned counsel who was appearing for the respondent has expired. Therefore, vide order dated 23.02.2026, fresh notice was directed to be issued through Speed Post with A.D. as well as through Special Messenger. The report of the Special Messenger reveals that upon visiting the residence of the respondent, the family members present refused to



receive the notice and directed the messenger to return. Consequently, the notice was affixed on the door/grill of the house of the respondent in presence of two witnesses and report to that effect has been submitted.

4. Delay and prolongation of the judicial process are largely attributable to the hindrances that occur in the service of summons/notices upon the parties. Quite often, we encounter situations where, even if notice is sent to the correct address, the postal endorsement leaves the matter in an ambiguous state, making the determination of sufficient service a debatable question. Hence, it is essential to examine the statutory provisions governing the service of summons/notices under different statutes and the manner in which judicial pronouncements have strengthened those provisions.

5. Section 114 illustration (f) of the Indian Evidence Act permits the Court to presume that the common course of business has been followed in particular cases. In the context of postal communication, this provision enables the Court to presume that a letter, duly posted, would have been delivered in the ordinary course.

Section 27 of the General Clauses Act, 1897, also contemplates a presumption of service when a document is properly addressed, prepaid and posted by registered post. For the convenience of ready reference, the said provision is reproduced hereunder:-



“27. Meaning of service by post.—*Where any [Central Act] [Substituted by A.O.1937, for " Act of the Governor General-in-Council.] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression serve or either of the expressions give or send or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.”*

It would be apt to rely on ***Ajeet Seeds Limited v. K. Gopala Krishnaiah***, reported in **2014 (12) SCC 685**, where the Hon'ble Supreme Court has reiterated that once notice is sent by registered post to the correct address, a presumption of service arises and the burden shifts upon the addressee to prove that it was not served. It was held thus:-

“10. It is thus clear that Section 114 of the Evidence Act enables the Court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. Section 27 of the GC Act gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. It is not necessary to aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business.”



Further, Order VI Rule 14A CPC mandates that every pleading shall contain the address for service and such address shall be deemed to be the proper address for effecting service of all processes. Once notice is sent to such disclosed or known address, the party cannot subsequently avoid service by remaining absent or unavailable.

Order V Rule 9(5) CPC further strengthens the presumption of service by providing that where a summons is properly addressed, prepaid and sent by registered post acknowledgement due, the Court may declare that the summons has been duly served, notwithstanding non-receipt of the acknowledgement, if it is satisfied that the addressee is deliberately avoiding service. For the sake of ready reference, sub-rule 5 of Rule 9, Order-V of CPC is extracted below:-

“(5) When an acknowledgment or any other receipt purporting to be signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or had refused to accept the summons by any other means specified in sub-rule (3) when tendered or transmitted to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant:

Provided that where the summons was properly addressed, pre-paid and duly sent by ³⁴⁴[speed post with registration and proof of delivery, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the proof of delivery] having been lost or mislaid, or for



any other reason, has not been received by the Court within thirty days from the date of issue of summons.”

It is relevant to note that under Order V Rule 17 of the Code of Civil Procedure, 1908 where the defendant or his agent refuses to receive the summons, the serving officer is empowered to affix a copy of the summons on the outer door or conspicuous part of the house, and such service, upon due compliance and report, can be treated as valid under Order V Rule 19 CPC. Order V Rule 17 of the Code of Civil Procedure, 1908 reads as under:-

“17. Procedure when defendant refuses to accept service, or cannot be found. - *Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgement, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, [who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time] and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did do, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.”*



6. From the decision of the Hon'ble Supreme Court in ***Madan & Co. v. Wazir Jaivir Chand, (1989) 1 SCC 264*** and ***C.C. Alavi Haji v. Palapetty Muhammed, (2007) 6 SCC 555***, the principles relating to deemed service of notice can be briefly narrowed down as follows:

(i) Where a notice is properly addressed, prepaid and sent by registered post, the sender is deemed to have discharged his legal obligation.

(ii) Upon dispatch, a presumption of due service arises under Section 27 of the General Clauses Act, and actual receipt by the addressee is not always necessary.

(iii) Refusal to accept notice or conduct indicating deliberate avoidance amounts to valid and sufficient service in the eye of law.

(iv) Endorsements such as "not found", "not in station", or "addressee has left", "not available in the house", "house locked" or "shop closed" do not defeat service. However, if a registered letter addressed to a person at his correct address does not get served in the normal course and is returned, it can be attributed to the addressee's own conduct.

(v) Once the notice is sent by registered post to the correct address, due service has to be presumed, unless the contrary is proved by the addressee.

(vi) The requirement of service must be interpreted in a practical and reasonable manner, and an



addressee cannot defeat service by remaining absent or failing to make arrangements to receive communications.

7. Applying the aforesaid principles to the facts of the present case, it is evident that the appellant has taken all reasonable steps for effecting service upon the respondent. Notice was sent through Speed Post at the correct address and also through Special Messenger. The report of the Special Messenger clearly establishes that the family members of the respondent refused to accept the notice, whereafter the same was affixed on the residence in presence of witnesses. The postal article, on the other hand, has been returned with the endorsement "Left". The report is reproduced herein for ready reference:-

"(i) Fresh Notice in Appeal matter as well as I.A. for interim Maintenance was issued to sole-R by Special Messenger. S.R. of such notice was book with a report of Special Messenger that "being present all the Family Members of the Sole-R at home did not receive the notice and said that "you return the notice". Hence the notice was effected by affixture in presence of two witnesses. Photo Copy of notice attached to the "door Grill" of the house of sole-R with presence of two witnesses placed at Flag 'H'.

(ii) Such notice was issued to sole-R by speed post with A.D. The said notice was returned with endorsement of Posted Authority the "Left"."

In such circumstances, the serving officer, having no alternative, proceeded to effect service by affixture on the outer door/grill of the house in presence



of two witnesses. Such a mode of service is expressly recognized under Order V Rule 17 CPC and, upon due compliance and reporting, constitutes valid service in the eye of law. The endorsement “Left”, when read in conjunction with the refusal by family members and the affixture, clearly indicates that the respondent is avoiding service. As held in ***Madan & Co. v. Wazir Jaivir Chand*** (supra), such conduct cannot be permitted to defeat the process of law.

8. It is further pertinent to note that despite the statutory presumptions arising under Section 114 illustration (f) of the Evidence Act and Section 27 of the General Clauses Act, no material has been placed on record by the respondent to rebut such presumptions. There is no explanation as to absence, no denial of address, and no effort to contest the mode or manner of service. In absence of any rebuttal, the presumptions operate with full force in favour of valid service.

The appellant has not only complied with the statutory requirement of dispatching notice to the correct address but has also taken additional steps by way of personal service and affixture. Such conduct clearly demonstrates due diligence and bona fides. On the contrary, the conduct of the respondent reflects a clear attempt to avoid service.

Therefore, this Court holds that the case at hand squarely falls within the parameters laid down by the Hon'ble Supreme Court and the statutory framework



governing service of notice. The presumption of due service stands firmly established and remains unrebutted.

9. Accordingly, it is held that notice upon the sole respondent has been duly and sufficiently served.

10. List this matter on 04th May, 2026 for hearing.

(Manash Ranjan Pathak)
Judge

(Sibo Sankar Mishra)
Judge

Swarna