

Service Of Summons In Civil Suits

Samit Kumar

Research Scholar, Faculty of Law
Maharshi Dayanand University, Rohtak

Abstract:

The term Civil Suit is in reference to a civil action brought in court of law in which plaintiff, a party who claims to have incurred loss as a result of a defendant's action, demand a legal or equitable remedy. A civil suit is filed by the plaintiff by presentation of plaint before the court having jurisdiction in this regard when a suit is filed or instituted the court orders to issue summons to the defendant. The summons is issued to permit the defendant to appear and answer the claim of plaintiff.

Definitions:

What are summons: - A summon is legal document that is issued by a court on a person involved in a legal proceeding. When a legal action is taken against a person or when any person is required to appear in the court as a witness in a proceeding, to call upon such person ensure his presence on the given date of proceeding. Summons is served.

Service of summons:

Service of summon is the procedure by which a party to a civil suit gives an appropriate notice of initial legal action to another party, court of administrative body in a effort to exercise jurisdiction over that person so as to enable that person to respond to the proceeding before the court, body or other tribunal.

Rules relating to service of summons:

Order V of the Code of Civil Procedure 1908, provides that when a suit has been duly instituted, a summon may be issued to the defendant to appear and answer the claim of the plaintiff on the day to be specified therein. It further provides that no such summon shall be issued when the defendant has appeared at the time of presentation of plaint and admitted the plaintiff's claim.

Modes of service of summon:

1. **Personal Service:** - Order V rule 10 of The Code of Civil Procedure, 1908 provides that service of summon shall be made by delivery or tendering a copy thereof, signed by the judge or such officer as he appoints in this behalf and sealed with the seal of the Court. Rule 12 of Order V of the Civil Procedure Code, whenever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service in which case the service on such agent shall be sufficient.

Rule 15 of Order V of The Code of Civil Procedure, 1908 provides that where in any suit the defendant is absent at the time when the service of summon 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 he has no agent empowered to accept service of summon on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him.

2. **Service by Affixation:** - Order V rule 17 of The Code of Civil Procedure, 1908 provides this mode of service. According to it, where the defendant or the agent or such other person, as aforesaid i.e., the adult member of his family 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 summon on his behalf, nor any other person on whom the service can be made, the serving officer shall affix a copy of summon on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally work 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 so and the name and the address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.
3. **Service by Registered Post:** - Order V rule 19-A provides for simultaneous issue of summons for service by post in addition to personal service. It lays down that the court shall, in addition to and simultaneous with, the issue of summons for service also direct the summons to be served by registered post, acknowledgement due, addressed to the defendant or his agent, actually and voluntarily resides or carries on business or personally work for gain.

Sub Rule (2) of Rule 19-A of order V of the Civil Code lays down that when an acknowledgement purporting to be signed by the defendant or his agent is received by the Court or the postal article containing the summon is received back by the Court with the endorsement purporting to have been made by a postal employee to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summon when tendered to him, the court issuing the summon shall declare that the summons had been duly served on the defendant.

Sub Rule (3) of Rule 19-A of order V of the Civil Code says service of summons may be made by delivering or transmitting a copy thereof by Registered post A.D. or by speed post or by such courier services as are approved by the High Court or by the court referred to in sub rule (1). However service of summon under this rule shall be made at the expenses of plaintiff.

4. Substituted Service:

Order V rule 20 of the Civil Code provides for this kind of service. It lays down that where the court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summon cannot be served in ordinary way, the court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the court house, and also upon some conspicuous part of the house, if any and 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 think fit.

Sub Rule-1 of Rule 20 of Order V further provides that where the court acting under sub rule-1 orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which defendant is last known to be have actually or voluntarily resided, carried on business or personally worked for gain.

5. Service of soldier, sailors or airman: - Order V Rule 28 provides that where the defendant is a soldier, sailor or airman, the court shall send the summon for service to his commanding officer together with a copy to be retained by the defendant.
6. Service on Corporation: - Order XXXIX Rule 2 of the Civil Code provides rule as to service of summon on corporation. It provides that summon may served to the Secretary or any Director or other Principal Officer of the corporation or through post to the office of corporation.

7. Service on person residing in jurisdiction of another court: - Order V Rule 21 provides that in such a case, summon may be sent by post the court by which it is issued, whether within or without the State, either by one of its officer or by post to any court having jurisdiction in the place where the defendant resides.

Conclusion:

Thus be more precise and concise summoning is not only an integral part of judiciary but also accelerates the legal process. It provides an opportunity to a defendant to respond the claim of the plaintiff. Without the service of summoning the suit is devoid of fairness and legitimacy. However, service of summoning can be affected through the aforesaid modes; it enables the defendant to put forward his answer to the claim of plaintiff in a very lawful manner before the Hon'ble Court. In other words we can say summon is a short of key that opens the lock of legal process in a suit. Atmost care is exercised while issuing the summons with regards to date, time and name of the court.

References:

1. The Code of Civil Procedure, 1908
2. C.K. Takwani: Civil Procedure Code
3. M.P. Jain: The Code of Civil Procedure