

**In the Court of Dr. Ashok Khemka IAS, Financial Commissioner,
Haryana, Chandigarh**

ROR No. 164/2015-16

Satbir v. Ramdiyal and Krishan Kumar

Present:-

1. Shri Bhupender Singh, counsel for petitioner
2. Shri Ajit Singh Sihag, counsel for respondent no. 1.

The case was fixed for service and summoning of records from lower courts. Respondent no. 2 is not served. The Halqa Patwari has submitted a report that respondent no. 2 no longer resides in the village. He has shifted to Kathmandu (Nepal), but his address in Kathmandu is not known. A mobile phone number 009779841228041 belonging to respondent no. 2 was provided by the petitioner. The respondent no. 2 was informed about the summons from this Court by the Halqa Patwari on the said phone and was asked to appear on 16.02.2017 on phone. On being asked to provide his address in Kathmandu, the respondent no. 2 refused.

The modern age is made highly mobile due to technological advancements. The physical address is no longer permanent as before and keeps changing. But electronic mail address and mobile phone number of a person is relatively more permanent than his physical address. The law is not fossilized. Law is a living concept and follows technological advancements. An email address or a mobile phone number is also the address of a person in the present times.

In M/s. SIL Import, USA v. M/s. Exim Aides Silk Exporters, Bangalore, AIR 1999 SC 1609, the Supreme Court while dealing with technology advancements and its applicability in law ruled as below:

“When the legislature contemplated that notice in writing should be given to the drawer of the cheque, the legislature must be presumed to have been aware of the modern devices and equipment already in vogue and also in store for future. If the court were to interpret the words giving notice in writing in the section as restricted to the customary mode of sending notice through postal service or even by personal delivery, the interpretative process would fail to cope up with the change of time.”

The following rule from the book, Statutory Interpretation by Francis Bennion, 2nd Edition, Section 288 with the heading “Presumption that updating

construction to be given” has been quoted by the Supreme Court in State (Through CBI/New Delhi) v. S.J. Chaudhary, (1996) 2 SCC 428:

“(2) It is presumed that Parliament intends the court to apply to an ongoing Act a construction that continuously updates its wording to allow for changes since the Act was initially framed (an updating construction). While it remains law, it is to be treated as always speaking. This means that in its application on any date, the language of the Act, though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat it as current law.”

Order V, Rule 9 (2) of the CPC specifies that summons may be sent in **such manner as the Court may direct** and in Rule 9(3) **any other means of transmission** is provided. It is, therefore, directed that a clear image of the summons notice bearing the seal of the Court shall be sent to respondent no. 2 through the Whatsapp messenger on the mobile phone number 009779841228041 of respondent no. 2. At this stage, the counsel for respondent no. 1 undertakes to send an image of the summons notice through Whatsapp messenger from his mobile phone. The request is allowed. An image of the summons notice will be sent to the mobile phone number 009779841228041 of respondent no. 2 through Whatsapp messenger from the mobile phone no. 9417461491 of the counsel for respondent no. 1 and the same shall be treated as proper mode of service as provided in Order V Rule 10 of the CPC. The counsel for respondent no. 1 shall produce proof of electronic delivery through Whatsapp messenger by taking a printout and duly authenticate the printout by affixing his signature.

In addition to the service through Whatsapp messenger, a copy of the summons to respondent no. 2 shall be served by pasting the summons on some conspicuous place in or near the joint land holding and the house in the village where he resided before moving out as per the provisions of section 20(2) of the Punjab Land Revenue Act, 1887 read with Order V Rule 17 of the CPC. The case is adjourned to 13-07-2017 at 3-00 P.M.

I order accordingly.

Chandigarh, dated
06-04-2017.

(Ashok Khemka)
Financial Commissioner, Haryana