



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.234 OF 2020

Shri Mangesh Satish Vairat and ors. ... Appellants  
Vs.  
Smt. Sangita Tanaji Nanavare and anr. ... Respondents

-----

Mr.Yogesh Pande, Advocate for the Appellants.  
Ms.Poonam Mital, Advocate for the Respondent No.2.

-----

CORAM : ABHAY AHUJA, J.  
DATE : 06 JULY, 2023.

P.C. :

1. On 15<sup>th</sup> June, 2023, the following order was passed:-

“At the request of Mr. Yogesh Pande, learned Counsel for the Appellants, who seeks some time to furnish judgment to demonstrate that service to Respondent No.1, which has been returned un-served is good service, list on 6 July 2023.”

2. Today Mr. Pande furnishes a decision of the Hon’ble Supreme Court in Civil Appeal Nos.\_\_\_\_ of 2021 arising out of Special Leave Petition (Civil) D No.1855 of 2020 in case of Vishwabandhu Vs. Shri Krishna and another to demonstrate that service to Respondent No. 1 which has been returned with remark “left the said address since 4 to 5

years ago, hence "returned" would in view of the decision of the Hon'ble Supreme Court be a good service.

3. Learned counsel draws the attention of this court to paragraph No.

19 of the said decision which is usefully quoted as under :-

19. The summons issued by registered post was received back with postal endorsement of refusal, as would be clear from the order dated 19.02.1997. Sub-Rule (5) of Order V Rule 9 of the Code states inter alia that if the defendant or his agent had refused to take delivery of the postal article containing the summons, the court issuing the summons shall declare that the summons had been duly served on the defendant. The order dated 19.02.1997 was thus completely in conformity with the legal requirements. In a slightly different context, while considering the effect of Section 27 of the General Clauses Act, 1897, a Bench of three Judges of this Court in C.C. Alavi Haji vs. Palapetty Muhammed and Anr. made following observations:-

"14. Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further 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. This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement “refused” or “not available in the house” or “house locked” or “shop closed” or “addressee not in station”, due service has to be presumed. [Vide Jagdish Singh v. Natthu Singh 3 : State of M.P. vs. Hiralal & Ors. 4 and V. Raja Kumari vs. P. Subbarama Naidu & Anr. 5 ]. ... ....”

4. A bare perusal of the same clearly indicates that if a Defendant or his agent has refused to take delivery of a postal article, then the court issuing the summons shall declare that the summons have been duly served on the defendant. While holding so the Hon’ble Supreme Court also referred to the decision of a three Judges’ Bench of the Hon’ble Supreme Court in a case of **C.C.Alvai Haji Vs. Palapetty Muhammed and anr.**<sup>1</sup> where in paragraph No.14 it has been observed that when a notice is sent by registered post and is returned with a postal endorsement “refused” or “not available in the house” or “house locked” or “shop closed” or “addressee not in station”, due service has to be presumed. No

---

1 AIR 2007 SC (Supp)1705

doubt when these packets are returned with these remarks, due service ought to be presumed. However, in the present case as noted above, the notice has been returned with the remark “left the address since 4 to 5 years ago, hence returned” and not with the remarks referred to in the aforesaid decision of the Hon’ble Supreme Court and therefore, in my view the decision of the Hon’ble Supreme court in the case of **Vishwabandhu Vs. Shri Krishna and another ( supra)** would not lend any assistance to Mr. Pande’s submissions with respect to service to Respondent No.1.

5. Accordingly, let service to Respondent No.1 be completed by the next date.

6. Ms.Poonam Mital, learned counsel for the Respondent No.2- Insurance Company to endeavour to furnish correct address of Respondent No.1 to Mr. Pande.

7. List on 3<sup>rd</sup> August, 2023.

(ABHAY AHUJA, J.)