

Goodbye Postal Rule

denovo Dimensions of Service of Summons in Civil Suits in Sri Lanka through technological frontiers

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Abstract

Serving of summons could be treated as the most crucial elementary step of the life cycle of a civil suit in Sri Lanka. The Civil Procedure Code of Sri Lanka, which is at its 136 years of age, encountered a significant shift forward, particularly with the advent of Civil Procedure Code (Amendment) Act No 43 of 2024. In the spirit of the said Amendment, service of summons through electronic mail is allowed in Civil litigation in Sri Lanka from 2nd August 2024, if the Plaintiff wishes to resort to that technological step, subject to the production of all necessary documents to the relevant Court in the electronic form. The said Amendment has significantly altered the format of a proxy which was encapsulated in the 1st schedule of the Civil Procedure Code since its original enactment. Moreover, the applicability of postal rule heavily relied upon by the litigants in the Island to prove the service of summons, for a prolonged period will be inclined towards an obsolete stage, with the revolutionary provisions introduced for the Civil Procedure Code. In the above backdrop, this Article critically evaluates the significant changes made on the service of summons in Sri Lanka and whether the messaging applications popularly used by the public domain could be utilized to constitute a valid service of summons in the future. This paper is enriched with the judicial wisdom envisaged from neighboring India on the scope of the instant study and proposing reforms of the subject matter.

Keywords: Process Server; Proxy; Electronic Mail; Postal Rule; Messaging Applications.

1. Introduction

The purpose of issuing and serving summons on a Defendant is to duly notice the Defendant regarding a Court action instituted against the said Defendant and to call upon the Defendant to answer the Plaint in Civil Jurisdiction of Sri Lanka. It is imperative to note that until the summons is served on the Defendant, the Court cannot exercise the Civil jurisdiction on the Defendant. In simplest words, until the summons is served, a Defendant is not ought to have any knowledge regarding an action filed against that Defendant in the legal landscape of Sri Lanka.

2. Materials and Methods

This research was conducted upon the Black Letter legal research methodology, complemented by a qualitative evaluation of data. The primary sources examined include procedural legislation enacted by the Legislatures of Sri Lanka and India concerning the issuance of summons including the respective parliamentary debates, the judicial pronouncements which have interpreted the applicability of those legislative provisions.

3. Discussion

3.1. Issuance of Summons in the Civil Jurisdiction of Sri Lanka

The Chapter VIII of the Civil Procedure Code contains the provisions relating to the issue of summons in the civil jurisdictions in Sri Lanka. The Civil Procedure Code of Sri Lanka (hereinafter referred to as the 'CPC') was enacted in 1889. The preamble to the CPC spells that it is an Ordinance to consolidate and amend the law relating to the procedure of the Civil Courts.

The Original Section 55 of the CPC which contained the side note 'Summons', was initially amended by the Civil Procedure Code (Amendment) Act No 20 of 1977 thereafter by the Civil Procedure Code (Amendment) Act No 79 of 1988, subsequently by the Civil Procedure Code (Amendment) Act No 14 of 1997.

Section 59(1) of the CPC, as amended by the Civil Procedure Code (Amendment) Act No 14 of 1997 provided that summons shall ordinarily be served by registered post. Therefore, the initial step regarding the service of summons was to have the summons sent by registered post to the address of the Defendant as appears on the summons. In that backdrop, it was imperative to tender the accurate address of the Defendant to the Courts by a Plaintiff, for the service of summons.

3.2. Impact of the Civil Procedure Code (Amendment) Act No 43 of 2024 over the issuance of Summons

It is noteworthy that the said principal section relevant to the issuance of summons encapsulated in the original Section 59 of the CPC was repealed by the Civil Procedure Code (Amendment) Act

No 43 of 2024 (hereinafter sometimes referred to as the 'Act No 43 of 2024') and a new Section 59 has been introduced.

3.3. What is the “Process server” introduced by the Civil Procedure Code (Amendment) Act No 43 of 2024?

There is a substantial shift of the mode of serving summons with the provisions introduced to the CPC, through Act No 43 of 2024. The new Section 59(1) of the CPC provides that summons shall ordinarily be served by the process server, registered post or courier service. The term process server is a new notion for the CPC, introduced by Act No 43 of 2024 and it warrants discovering what is meant by process server.

The Section 60(5) of the CPC provides that “process server” means a fiscal, a deputy fiscal, an officer authorized by the Judge or Registrar of the court to serve documents of the court within the local limits or outside the local limits of the court as directed by the court, or the Grama Niladhari within whose division the defendant resides. Nonetheless, the Legislature has not intended to include any non-human within the umbrella of the process server.

3.4. Serving of Summons through electronic mail

It is startling to note that the Legislature has provided another mode of serving of summons, for the election by a plaintiff in a civil suit. That is the mode of electronic mail. However, the term electronic mail has not been interpreted by Act No 43 of 2024. The amended Section 59(1)(b) of the CPC provides that where the Plaintiff wishes summons may also be served through electronic mail, all necessary documents shall be submitted by the Plaintiff to the relevant Court in electronic form. In this background, there is a necessity for the civil Courts in Sri Lanka to facilitate the serving of summons through electronic mail, in the instances where a Plaintiff of an action prefers to serve summons through electronic mail. Hence the requirement to maintain an official email address for the issuance of summons by the Registrar's office of a civil Court is to be termed as a timely requirement in pursuant to Section 59(1)(b) of the CPC.

3.5. Could the summons be served via other electronic means including WhatsApp?

Upon the contemplation of the new structure introduced by the Act No 43 of 2024 for the serving of summons, it is observed that the CPC has not provided any provisions to recognize any other electronic means of summons of summons other than the mode of electronic mail. However, it is noteworthy that there was a specific question posed by the Hon Member of the Parliament Lakshman Kiriella on the Minister of Justice, Prison Affairs and Constitutional Reforms (hereinafter referred to as the 'Minister of Justice') Dr Wijeyadasa Rajapakshe, P.C., when he was presenting the relevant Civil Procedure Code (Amendment) Bill before the Legislature of Sri Lanka, at its second reading on 23rd July, 2024, whether a Whatsapp could be included (as a mode of delivery of summons)?. It is striking to note that the Hon. The Minister of Justice has replied to

that question affirmatively with the specific remark that Whatsapp could be included for this context. The Minister of Justice further illustrates that anything which could be classified under the electric method may be used (for the delivery of summons). However, the Minister of Justice has not used the word 'electric methods' (in sinhala) instead of the term electronic methods in answering that specific question. There appears to be a discrepancy of the sinhala text used for electronic mail in the Act. Nonetheless, as per the said specific conversations reported at the Parliamentary debate in respect of the Act No 43 of 2024, it may be a mooted point whether a broader interpretation should be accorded for the Section 59(1)(b) of the CPC to include other modes of electronic means of delivery of summons, apart from the specific reference of electronic mail, which exists in the present (amended) enactment.

3.6. Could the provisions of Electronic Transactions Act No 19 of 2006 be utilized to fill in the omissions of Section 59(1) of the CPC?

The Electronic Transactions Act No 19 of 2006 (hereinafter referred to as Act No 19 of 2006) is an Act to recognize and facilitate the creation and exchange of data messages, electronic documents, electronic records and other communications in electronic form in Sri Lanka. Particularly Section 3 of the Act No 19 of 2006 provides that 'No data message, electronic document, electronic record or other communication shall be denied legal recognition, effect, validity or enforceability on the ground that it is in electronic form'. The term data message is interpreted in Section 26 of the Act No 19 of 2006 as information generated, sent, received, to be stored by electronic, magnetic, optical or other similar means.

Nonetheless, it is further elaborated by the Minister of Justice at the aforesaid debate relating to the second reading of the Civil Procedure Code(Amendment) Bill, that even though it has passed a passage of time around 18 years after the enactment of the aforesaid Act No 19 of 2006, the electronic communication method envisaged by the said Act had not been directly introduced to the Judicial process of Sri Lanka. In view of the said context, the Minister of Justice has emphasized that the Legislature intends to use the modes of electronic transactions and communication for the civil actions through the aforementioned Civil Procedure Code (Amendment) Bill. Section 2 of the Act No 43 of 2024 has amended Section 5 of the CPC by inserting the same definition assigned to the term 'electronic' by the Electronic Transactions Act No 19 of 2006. Accordingly, the term 'electronic' used in Section 59 of the CPC should be interpreted with the broader definition which amounts to the 'information generated, sent, received or stored by electronic, magnetic, optical, or similar capacities regardless of the medium'.

3.7. What is meant by the electronic form of summon, in terms of CPC.

It is observed that if the Plaintiff wishes to serve summons through electronic mail, all necessary documents shall be submitted by the Plaintiff to the relevant court in electronic form. However, the term 'electronic form' has not been interpreted by Act No 43 of 2024.

3.8. Burden of a Party to tender the mobile phone number and the electronic mail address in a civil suit

Section 5 of Act No 43 of 2024 has introduced subsection (2) to Section 55 of the original enactment of CPC. Accordingly, every party to an action, not appearing by a registered attorney, shall on or before the date specified in the summons deliver to the Registrar a memorandum substantially in the Form No 16A in the First Schedule in duplicate setting out the address, mobile phone number and the electronic mail address if any, which shall be considered as the registered address, the registered mobile phone number and the registered electronic mail address of such party for the service of notices or any other legal document required to be served on such party under the provisions of the CPC.

3.9. Duty of a Registered Attorney to tender the mobile phone number and the electronic mail address in a civil suit

The amended Section 55(3) of the CPC provides that where a party appears by a registered attorney, the address, the mobile phone number and the electronic mail address of the registered attorney contained in the appointment of such registered attorney under section 27 of the CPC, shall be deemed to be the registered address, the registered mobile phone number and the registered electronic mail address of such Attorney-at-Law so long as the appointment is in force.

3.10. The Change of the format of the 'Proxy' in a civil suit in Sri Lanka, with the advent of Information Technology.

It is noteworthy that the format of a proxy contained in Form 7 of the first schedule to the CPC was intact until Act No 43 of 2024 amended the said Form, after 135 years. The original format of a proxy did not provide provisions to remark the mobile phone number and/or the electronic mail address of the registered attorney. Then this context would escalate to the next vital dimension how a party can prove the service of summons which are served to the mobile phone and/or to the electronic mail address of the party to the action and/or of the registered attorney appointed by the respective party in terms of Section 27 of the CPC.

3.11. Proof of service (of Summons)

Section 61 of the CPC provides provisions in relation to the proof of summons. Section 61(b) of the CPC spells out that when summons are served by electronic mail, the proof of sending the electronic mail by the Registrar and filed as part of the case record, shall be sufficient evidence of the service of summons of the date of such service, and shall be admissible in evidence and the statements contained therein shall be deemed to be correct unless and until the contrary is proved. The Section 61 of the Civil Procedure Code renders the applicability of the postal rule, which is conventionally rooted in the voyage of proving the service of documentary evidence

predominantly through the registered postal articles before Courts of law, effectively obsolete in the Sri Lankan legal context.

3.12. Provisions of the Code of Civil Procedure of India relating to the issuance and service of Summons.

Code of Civil Procedure of India (hereinafter referred to as the “CPC of India”) governs the process of summons. There are three sets of provisions which regulate the process of summons in terms of the CPC of India, particularly Sections 27 to 32, Order V and Order XVI. Order V of the CPC of India specifically deals with the issue and service of summons. The provisions which are captured under Order V are designed to ensure the procedural fairness, mitigation of the delay and minimization of the ambiguity in the communication process regarding summons and in the said footing Order V plays a pivotal role in the effective administration of civil litigation in India. The said Order V of the CPC of India consisted of 1-30 Rules. The said Rules govern the issuance and service of summons. Rule 9 of the said Order allows the service of summons through registered post, courier, or electronic means in addition to personal service.

3.13. Judicial wisdom of India relating to the issuance and service of India, in the Digital Age

There are several cases of India, which have pronounced decisions in relation to the modern service of summons. In the case of *Central Electricity Regulatory Commission v National Hydroelectric Power Corporation Ltd*,¹ the Court has permitted email notice to be served along with the ordinary mode of serving notice. The court has ruled that this practice should be followed in commercial litigations and in cases where urgent interim relief is sought in the Supreme Court. In such cases, the advocate-on-record filing appeal/petition should furnish the email address of the respondent company along with a soft copy of petition/appeal in portable document format (PDF). The notices served on such matters should then be sent through email along with the ordinary mode of service.

In *Bhim Rathke Vs Mr. R.K. Sharma*² case, the Patiala House Courts, New Delhi endorsed the decision pronounced by the High Court of Delhi in *Tata Sons Limited & Others. Vs John Doe(s) & Others*³ with approval, wherein the Defendants were allowed to be served (summons) by text message as well as through WhatsApp as by email and to file an affidavit of service. The Court has further referred to the case of *Indian Bank Association and Others Vs Union of India* and Others⁴ case, where the Supreme Court had held that MM/JM should adopt a pragmatic and realistic approach while issuing summons.

¹ Central Electricity Regulatory Commission v. National Hydroelectric Power Corporation Ltd (2010) 10 SCC 280.

² Bhim Rathke v. RK Sharma Cr Revision No. 16/2018.

³ Tata Sons Limited & Ors v. John Doe 2017 SCC Online Del 8335.

⁴ Indian Bank Association v. Union of India (2014) 5 SCC 590.

In the case of *Ksl and Industries Ltd v Mannalal Khandelwal and the State of Maharashtra*⁵ the Court while deciding a case emanated from the proceedings under Section 138 of the Negotiable Instruments Act, 1881 held that the Court must adopt all pragmatic methods of services (of summons) on the accused. The court further held that repeated summons be sent by employing all methods, including email, to ensure service of summons. Moreover, the Court remarked that it is always desirable to have a process service agency attached to the District and Sessions Court and the High Court to ensure effective control on the process serving agency.

3.14 Recognition of summons through messaging applications

In light of the above reviewed case law, it can be stated that apart from serving notice through email, the Judicial landscape of India has commenced acknowledging the utility of services including WhatsApp, for service of court notice. However, there reported to be certain hardships in the proof of delivery of summons via WhatsApp.

When a message is delivered on WhatsApp, a double tick is shown to the sender of the respective message. These double ticks transform into blue ticks once the person reads the message. It is argued that a blue double tick of a WhatsApp message could be treated as a valid delivery of summons. Nonetheless when the blue ticks are disabled by the receiver through the settings of his respective device, there would be a void in obtaining the proof of summons. Moreover, the lack of capacity and infrastructure in Court houses would hinder the delivery of summons via messaging applications.

4. Conclusion

Upon the due evaluation of the material considered in this study, it is found that the intention of the Legislature to validate the other electronic means of the service of summons, including WhatsApp, has not been accurately captured in the literal interpretation of the newly introduced Section 59(1)(b) of the CPC. Moreover, significant disparity is observed in the words ‘electronic mail’ used in relation to the service of summons and the proof of service of the summons in the Sinhala text of the Act No 43 of 2024, which warrants a timely revisit. With the advancement of technology in the Digital Age, the provisions relating to the proof of service of summons in the CPC required to be broadly interpreted. In that context should the process server termed in Section 60(5) of the CPC include a non-human would be a heated mooted point. It is concluded that the duty of a party to a civil suit and the registered attorney in responding to the summons and other communication of the Court has been dramatically enlarged with the advancements of the communication technology in the legal landscape of Sri Lanka.

Acknowledgment

⁵ *Ksl and Industries Ltd v. Mannalal Khandelwal and the State of Maharashtra* 2005 CriLJ 1201.

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