

**NOTIFICATION BY THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE**

No. P. 1601/2014

(For insertion in the Maharashtra Government Gazette Part IV-C)

The Hon'ble the Chief Justice and the Judges of the Bombay High Court are pleased to direct that the following draft of the rules of the Bombay High Court proposed to be framed in exercise of powers under Section 122 of the Code of Civil Procedure, 1908 and all other powers enabling it in this behalf is published as required by Section 23 of the General Clauses Act, 1897 for the information of all persons likely to be affected thereby; and notice is hereby given that the said draft Rules will be taken into consideration by the High Court of Judicature at Bombay on or after the 30th April, 2014.

Chapter I

General

1. Title:

These Rules may be called the Bombay High Court Service of Processes by Courier Service (Civil Proceedings) Rules, 2013.

2. Commencement:

These Rules shall come into force with effect from the date of its publication in the official Gazette.

3. Application:

These Rules shall apply to, all civil proceedings including Suits, Writ Petitions, Applications, Appeals, Revisions or Reviews pending before the High Court of Judicature at Bombay and its' Benches at Aurangabad and Nagpur or any Subordinate Court thereto in Maharashtra.

4. Definitions:

- (a) "Code" means the Code of Civil Procedure, 1908.
- (b) "Courier" means a proprietorship concern, a firm, a company or a body corporate engaged in the business of delivering postal articles.
- (c) "Recommendation Committee" means the committee constituted by the Chief Justice of the High Court, consisting of a sitting Judge of the High Court, Registrar General, Registrar (Judicial), and Principal Judge of the City Civil Court Bombay/ the Chief Judge, Small Causes Court Bombay, for preparing a panel of proposed Approved Couriers.
- (d) "High Court" means the High Court of Judicature at Bombay and its Benches at Nagpur, Aurangabad and High Court of Bombay at Goa.
- (e) "Chief Justice" means the Chief Justice or the Acting Chief Justice of the High Court of Judicature at Bombay.
- (f) "Registrar General" means the Registrar General of the High Court of Judicature at Bombay.
- (g) "Registrar (Judicial)" means the Registrar (Judicial) of the High Court of Judicature at Bombay (Principal Seat).
- (h) "Approved Courier" means the Courier on the panel of Approved Couriers.

- (i) "Proof of Delivery" means the report submitted by the Approved Courier, in the format prescribed by these Rules of the service of summons/notices or any other communication of the Court and includes the reasons of non-delivery.
- (j) "Postal Article" includes the envelopes, packets, parcels containing summons, notices, documents or other communications of the Court handed over for service to the Approved Courier with the label "COURT SUMMONS SERVICE".
- (k) "Administrative Judges Committee (ADM)" means the Committee consisting of the Chief Justice and the Four Judges of the High Court.

CHAPTER 2

Selection of Courier and service by Courier

5. Procedure for selection of an Approved Courier:

(A) The High Court will invite tenders from the Couriers who desire to be selected as Approved Couriers, on the terms and conditions laid down in these rules and other directions and instructions issued by the High Court from time to time, within a specified period as given in the notification. The tender will be issued as far as possible in Form 'A' appended with these rules.

(B) The Chief Justice will constitute a 'Recommendation Committee' consisting of :-

- (i) a sitting Judge of the High Court of Judicature at Bombay, who will head the Committee;
- (ii) Registrar General
- (iii) Registrar (Judicial)
- (iv) Principal Judge of the Bombay City Civil Court/ Court of Small Causes at Mumbai.

(C) The Recommendation Committee will prepare a panel of all the proposed Approved Couriers taking into consideration:-

- (i) reputation of the Courier;
- (ii) past record of the Courier;
- (iii) structure of the organization of the Courier and its network including the financial capacity and standing.
- (iv) the experience and capacity of the Courier to provide the desired service;
- (v) willingness to abide by the terms and conditions as laid down in these rules; and
- (vi) readiness to fulfill the criterion laid down by the High Court.

(D) (i) The Recommendation Committee, after preparing the proposed panel will place it before the **Administrative Judges Committee (ADM)** for consideration and approval of the panel of Approved Couriers. The ADM will examine the entire list of the applicants as well as the proposed panel of Approved Couriers and after examining the same, issue appropriate directions notifying the final panel of selected Approved Couriers.

(ii) The Registrar General will intimate all the Approved Couriers of their being empanelled.

6. Agreement and Undertaking by a Courier:

The Approved Courier shall enter into an agreement, with such variations and modifications as may be found necessary in **Form 'B'** and shall also file an undertaking before the Registrar General, stating therein:

- (a) That the Approved Courier is not a party to any litigation pending before any of the Courts in the State of Maharashtra and if it is, make a full and complete disclosure of the same.
- (b) That the Approved Courier will be solely responsible for the safety and security of the documents/goods to be delivered by it.
- (c) That the postal article handed over to the Approved Courier will be handled only by its regular employees having reasonable knowledge of English and local language.
- (d) The service of process by the Approved Courier shall be made in terms of the provisions of Order V, Rules 12 to 18 of the Code of Civil Procedure, 1908.
- (e) That the Approved Courier shall design its 'proof of delivery' in the format approved by the Registrar General.
- (f) That the Approved Courier shall necessarily furnish proof of delivery in case of served processes with legible signatures of the recipient or return envelope with a proper report in legible handwriting in case of unserved process within a period of 30 days, under acknowledgment from the Registry. In case of refusal by addressee, the name and designation of the person refusing the article or his relationship with the addressee, shall be clearly mentioned on the

unserved article.

(g) The proof of delivery or refusal shall be supported by an affidavit of the person delivering the postal article.

(The returns in cases of witness summons, notices and all other processes required to be served on individuals should be drawn up in form similar to the forms prescribed in Appendix 'A' to these rules so far as they may be applicable.)

7. Procedure for removing the Courier from the panel of Approved Couriers:

- (a) Name of the Courier shall be liable to be removed from the panel if;
 - (i) the Court, which has issued the summons or on whose behalf summons has been issued, finds prima facie the person employed by the Courier to deliver the postal article entrusted to the courier to have filed a false affidavit or given a false report, as the case may be.
 - (ii) It is found that the Courier is not providing the service upto the expectation of the litigants or advocates or the Court.
 - (iii) it is found that the Courier has been rendering deficient service.
 - (iv) it is found that the Courier has made false statement in the application.
 - (v) it is found that the Courier has done something which may be considered as the sufficient ground to remove the Courier from the panel.
- (b) As soon as it comes to the knowledge of the Registrar General that the Courier has acted in violation of Rule 7(a) or it has been brought to his

knowledge that it has done something which makes the Courier liable to be removed under this Rule, he will make an inquiry in this respect himself or depute anyone to make inquiry in this respect. If the Registrar General comes to the conclusion that the Courier has done something which makes it liable to be removed from the panel, he will call for an explanation of the Courier as to why it should not be removed. The Registrar General shall place the reply, if any, received from the Courier proposed to be removed alongwith his recommendations before the ADM.

(c) The ADM, after going through the recommendations of the Registrar General, reply, if any, submitted by the Courier and on making such further inquiries as the ADM may consider appropriate, may approve the recommendations of the Registrar General for the removal of the Courier from the panel of Approved Couriers or pass such orders or give such directions as the ADM may consider appropriate.

(d) In case of recommendation of removal of the Courier being approved by the ADM, name of the Courier shall be removed from the panel of Approved Couriers and the Registrar General shall inform the said Courier accordingly.

CHAPTER 3

Miscellaneous

8. Summonses to witnesses :

The provisions of these rules shall apply to summonses to give evidence or to produce documents or other material objects.

9. Notices or other communication during the proceedings :

The Court may direct that a notice or any other communication to any of the parties to the suit or any interlocutory proceeding, before it, may be sent by Courier in the manner and in the format it may consider appropriate.

10. Saving of the powers of the Court :

Nothing in these rules shall be deemed to limit or otherwise affect the power of the Court relating to service of summons or notices or other communications as given in the Code or any other law for the time being in force.

HIGH COURT , APPELLATE SIDE)

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BOMBAY , DATED 10.04.2014)



**(RAJENDRA G. AVACHAT)
REGISTRAR (LEGAL & RESEARCH)**

APPENDIX 'A'
SPECIMEN FORMS

The forms given below are only illustrative and not exhaustive. They should be modified to suit different circumstances.

1. Endorsement of acknowledgment of service to be taken from the person served.

"I the undersigned (Name).....
have received this day a copy of this summons and a copy of the plaint in the suit.

Date.....month.....20.....about..... a.m./p.m.
Witness

(Signed)

Note.- Where the person receiving the summons is illiterate his thumb impression should be taken on the original summons and the name and signature of the person endorsing the thumb impression must be given. People are in the habit of writing all sorts of irrelevant matters in the endorsement acknowledging service. They should not be allowed to do so. The endorsement must be brief and to the point.

2. Process server's remark

"I delivered a copy of this summons and a copy of the plaint in the suit to the defendant XX by name personally on date.....month..... 20.....about.....a.m./p.m. and obtained his acknowledgment of service as above. I know him personally (or, he was pointed out and identified to me by AB).

Date.....month.....20.....

(Signed)
Process Server

Witnesses :-
(Signed)
(Signed)

"I hereby declare on solemn affirmation that what is stated above is true.

Date.....month.....20.....

Process Server"

Form of the affidavit to be made by the Process Server which is to accompany the return of summons or notice :-

"I state on solemn affirmation as follows :-

The defendant/opponent.
(Name).....was shown to me by Mr.....as the person named and the summons/notice was served on him/her this day.....of month.....20.....at about.....o'clock by tendering him/her a copy thereof and he/she signed in my presence in token of the receipt of the said summons/notice (or the person having been served refused to sign the process in the presence of Mr.....who under his signature has testified to it).

(Signed)
Process Server.

Note. If the copy was served on the agent or on the adult family member residing with the defendant, the name of such person together with the person for such service should be stated in the affidavit.

(2)

"I tendered a copy of this summons and a copy of the plaint on date.....month.....20.....to the defendant (name)..... whom I knew before (or, who was pointed out and identified to me by Mr.). He however refused to accept them. I therefore affixed the copy of the summons on the outer door of the house in which he ordinarily resides. The house was previously known to me as his ordinary place of residence [or, the house was pointed out to me as his ordinary place of residence by (name)..... was who has signed below].

Date.....month.....20.....

Witnesses :-

(Signed)
Process Server

(Signed)
(Signed)

(Affidavit as above)

(Signed)
Process Server

(3)

"I went to (name of the place).....on date.....month.....
20.....to serve the summons on the defendant by name.....and made the
following efforts to find him :-

(State fully what efforts were made).

As the defendant could not be found I tendered a copy of the summons
and of the plaint to Mr.....who is his brother or father(as the
case may be), and who resides with him, and he refused to accept them. I
thereupon affixed a copy to the outer door of the house in which the defendant
ordinarily resides. I did so in the presence of (name)..... who has
signed in testimony of the fact.

Datemonth.....20.....

(Signed)
Process Server

Witnesses :-

(Signed)
(Signed)

(Affidavit as above)

(Signed)
Process Server

(4)

"I affixed a copy of the summons on date.....month.....20.....on
the notice board of the Court and another copy on the outer door of the house
on which the defendant (name) was last residing. The house was pointed out

to me by (name) as the defendant's last place of residence.

Date.....month.....20.....

(Signed)
Process Server

Witnesses :-

(Signed)

(Signed)

(5)

"I went to the place(name).....on date.....month.....
20.....in search of the defendant (name) On enquiry I learnt that he had gone
away to (name of the place).....and was expected back after a month.
(State the approximate time according to the information received). I therefore
return the summons unserved.

Date.....month.....20.....

(Signed)
Process Server

Witnesses :-

(Signed)

(Signed)

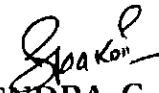
(Signed)
Process Server

HIGH COURT , APPELLATE SIDE)

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BOMBAY , DATED 10.04.2014)


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