

CIRCULAR NO.45

SUBJECT – Substituted Service

Procedure in inquiries under the
Bombay Public Trusts Act,1950

The Assistant Charity Commissioner, Poona Region, has raised a question whether it is permissible, in a fit case, to effect service of notice on a party by substituted service. He contends that the Bombay Public Trusts Act,1950 or the rules made thereunder do not provide for this mode of service and requests for instructions.

The view expressed by the Assistant Charity Commissioner is not correct. Attention is invited to Section 73 of the Bombay Public Trusts Act,1950 which provides that in holding inquiries under this Act, the officer holding the same shall have the same powers as are vested in Courts in respect of, among other matters, summoning and enforcing the attendance of any person and examining him on oath. In view of this provision the Deputy or Assistant Charity Commissioner can, in holding inquiries under this Act, adopt the procedure and exercise the powers vested in Civil Courts in respect of service of summons, laid down in Order V of the Civil Procedure Code, Order V rule 20 of the Civil Procedure Code contemplates substituted service and this mode of service can be restored to, in fit cases, by the Deputy or Assistant Charity Commissioner.

2. A question has often been raised whether the provisions of the Civil Procedure Code apply to the proceedings before the Deputy or Assistant Charity Commissioner, Section 76 of the Bombay Public Trusts Act, lays down that Civil Procedure Code will apply to all proceedings before the Court under this Act. The word "Court" has been defined in Section 2(4) of the Act and in view of this provision, proceedings before the Deputy or Assistant Charity Commissioner can not be said to be proceedings before the Court. Section 76 therefore, does not apply to proceedings before the Deputy or Assistant Charity Commissioner under this Act.

Attention is, however, invited to rule 7 of the Bombay Public Trusts Rules,1951, which provides that except as expressly provided in these Rules, inquiries under the Act shall be held, as far as possible, in the Greater Bombay Region, in accordance with the procedure prescribed for the trial of suits under the Presidency Small Cause Courts Act, 1882 and elsewhere under the Provincial Small Cause Courts Act, 1887. Section 17(1) of the Provincial Small Cause Courts Act, 1887 read as under :

"The procedure prescribed in the Code of Civil Procedure, 1908 shall, save in so far as is otherwise provided by that Code or by this Act, be the procedure followed in a Court of Small Causes in all suits cognizable by it and in all proceedings arising out of such suits:.....

Section 9 of the Presidency Small Cause Courts Act read with the rules framed by the High Court thereunder, also prescribes generally the procedure laid down in the Civil Procedure Code for trial of suits under the Presidency Small Cause Courts Act.

It will thus appear that under rule 7 of the Bombay Public Trusts Rules, 1951, read with the abovementioned provisions of the Presidency Small Cause Courts Act and the Provincial Small Cause Courts Act, the procedure to be followed generally in inquiries before the Deputy or Assistant Charity Commissioner under this Act will, except as expressly provided by the Bombay Public Trusts Rules, and the aforesaid provisions of the Presidency and Provincial Small Cause Courts Acts, be the procedure prescribed under the Code of Civil Procedure.

Dated : 22nd February, 1953.

D.R.PRADHAN
Charity Commissioner, Bombay