

Order-16 Summoning and Attendance of Witnesses

CONTENTS

1. List of witnesses and summons to witnesses
- 1A. Production of witnesses without summons
- 2 . Expenses of witness to be paid into Court on applying for summons
3. Tender of expenses to witness
- 3A. Special provision for public servants summoned as witnesses in suits in which the government is not a party
4. Procedure where insufficient sum paid in
- 5 . Time, place and purpose of attendance to be specified in summons
6. Summons to produce document
- 7 . Power to require person present in Court to give evidence or produce document
- 7A. Summons given to party for service
8. Summons how served
9. Time for serving summons
10. Procedure where witness fails to comply with summons
11. If witness appears, attachment may be withdrawn
12. Procedure if witness fails to appear
13. Mode of attachment
14. Court may of its own accord summons as witnesses strangers to suit
- 15 . Duty of person summoned to give evidence or produce document
16. When they may depart
17. Application to rules 10 to 13
18. Procedure where witness apprehended cannot give evidence or produce document
19. No witness to be ordered to attend in person unless resident within certain limits
20. Consequence of refusal of party to give evidence when called on by Court
21. Rule as to witnesses to apply to parties summoned

Order-16 Summoning and Attendance of Witnesses

Order-16 Summoning and Attendance of Witnesses

1. List of witnesses and summons to witnesses :-

(1) On or before such date as the Court may appoint, and not later

than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.

(2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application slating therein the purpose for which the witness is proposed to be summoned.

(3) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.

(4) Subject to the provisions of sub-rule (2), summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officers as may be appointed by the ¹ ["Court in this behalf within five days of presenting the list of witnesses under sub-rule (1)"].]

1. Substituted for "Court in this behalf", vide " Order-16 Summoning and Attendance of Witnesses" Dt.December 30,1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

1A. Production of witnesses without summons :-

Subject to the provisions of sub-rule (3) of rule I, any party to the suit may, without applying for summons under rule I, bring any witness to give evidence or to produce documents.]

2. Expenses of witness to be paid into Court on applying for summons :-

(1) The party applying for a summons shall, before the summons is granted and within a period to be fixed ¹ ["which shall not be later than seven days from the date of making application under sub-rule (4) of rule 1"], pay into court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

1. " Order-16 Summoning and Attendance of Witnesses" Dt.December 30, 1999 Published in Received the assent of the

President on the 30th December, 19 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

3. Tender of expenses to witness :-

The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

3A. Special provision for public servants summoned as witnesses in suits in which the government is not a party :-

(1) Notwithstanding anything contained in the foregoing rules, in all suits or other proceedings to which the Government is not a party where a servant of the Central Government or a railway employee is summoned to give evidence and/ or to produce documents in his official capacity/the Court shall direct the party applying for summons to deposit such sum of money as will, in the opinion of the Court be sufficient to defray the travelling and other expenses of the officer concerned as for a journey or tour, and on the deposit of such sum the Court shall direct the summons to be issued and, out of the sum so deposited or out of any further sum which the Court may subsequently direct the party applying for summons to deposit, the Court shall, on the appearance before the Court of the officer summoned, pay him the amount of travelling and other expenses admissible to him as for a journey on tour under the rules applicable to his service.

(2) The officer appearing before the Court in accordance with sub-rule (1) shall produce a certificate duly signed by the Head of his office, showing the rates of travelling and other allowances admissible to him as for a journey on tour, and the amount payable to him by the Court shall be computed on the basis of rates specified in such certificate".

4. Procedure where insufficient sum paid in :-

(1) Where it appears to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses or reasonable remuneration the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment may order such sum to be levied by attachment and sale of the moveable property of the party obtaining the summons; or the Court may discharge the person summoned, without requiring him

to give evidence; or may both order such levy and discharge such person as aforesaid.

(2) Expenses of witnesses detained more than one day.-Where it is necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the moveable property of such party; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

5. Time, place and purpose of attendance to be specified in summons :-

Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document, which the person summoned is called on to produce, shall be described in the summons with reasonable accuracy.

6. Summons to produce document :-

Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

7. Power to require person present in Court to give evidence or produce document :-

Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his possession or power.

7A. Summons given to party for service :-

1 [. .-]

(1) The Court may, on the application of any party for the issue of a summons for the attendance of any person, permit such party to effect service of such summons on such person and shall, in such a case, deliver the summons to such party for service,

(2) The service of such summons shall be effected by or on behalf of such party by delivering or tendering to the witness personally a copy thereof signed by the Judge or such officer of the Court as he may appoint in this behalf and sealed with the seal of the Court.

(3) The provisions of rules 16 and 18 of Order V shall apply to a summons personally served under this rule as if the person effecting service were a serving officer.

(4) If such summons, when tendered, is refused or if the person served refuses to sign an acknowledgment of service or for any reason such summons cannot be served personally, the Court shall, on the application of the party reissue such summons to be served by the Court in the same manner as a summons to a defendant.

(5) Where a summons is served by a party under this rule, the party shall not be required to pay the fees otherwise chargeable for the service of summons.

8. Summons how served :-

Every summons¹ [under this order, not being a summons delivered to party for service under rule 7-A,] shall be served as nearly as may be in the same manner as a summons to a defendant, and the rules in Order 5 as to proof of service shall apply in the case of all summonses served under this rule.

1. Subs. by C.P.C. (Amendment) Act No. 104 of 1976, Sec. 66 (or the words "under this order" (w.e.f. 1st February, 1977).

9. Time for serving summons :-

Service shall in all cases be made a sufficient time before the time specified in the summons (or the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

10. Procedure where witness fails to comply with summons :-

1 [(1) Where a person, to whom a summons has been issued either to attend to give evidence or to produce a document fails to attend or to produce the document in compliance with the summons, the Court-

(a) shall if the certificate of the serving officer has not been verified by affidavit or if the service summons has been effected by a party or his agent, or

(b) may, if the certificate of the serving officer has been so verified, examine on oath the serving officer or the party or his agent, as the case may be, who has effected service, or cause him to be so examined by any Court touching the service or non-service of the summons.]

(2) Where the Court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document, in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail for the arrest of such person, and may make an order for the attachment of his property to

1. C.P.C. (Amendment) Act No. 104 of (1976).

11. If witness appears, attachment may be withdrawn :-

Where, at any time after the attachment of his property, such person appears and satisfies the Court-

(a) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service, and

(b) where he has failed to attend at the time and place named in a proclamation issued under the last preceding rule, that he had no notice of such proclamation in time to attend, the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

12. Procedure if witness fails to appear :-

1[(1)] The Court may, where such person does not appear, or appears but fails so to satisfy the Court impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case and may order his property, or any part thereof, to be attached and sold, or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any:

Provided that, if the person whose attendance is required pays into Court the costs and fine aforesaid, the Court shall order the property to be: released from attachment.

2 [(2) Notwithstanding that the Court has not issued a proclamation under sub[^]rule (2) of rule 10, nor issued a warrant nor ordered attachment under sub-rule (3) of that rule, the Court may impose fine under sub-rule (1) of this rule after giving notice to such person to show cause why the fine should not be imposed.]

1. Renumbered by C.P.C. (Amendment) Act No. 104 of 1976, Sec. 66 (w.e.f. 1st February, 1977).

2. Ins. by C.P.C. (Amendment) Act No. 104 of (1976) (w.e.f. 1st February, 1977).

13. Mode of attachment :-

The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are applicable, be deemed to apply to any attachment and sale under this Order as if the person whose property is so attached were a judgment-debtor.

14. Court may of its own accord summons as witnesses strangers to suit :-

Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary ¹ [to examine any person, including a party to the suit) and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed and may examine him as a witness or require him to produce such document.

1. Subs. by C.P.C. (Amendment) Act No. 104 of 1976, Sec. 66, for the words "to examine any person other than a party to the suit" (w.e.f. 1st February, 1977).

15. Duty of person summoned to give evidence or produce document :-

Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place.

16. When they may depart :-

(1) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of.

(2) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security may order him to be detained in the civil prison.

17. Application to rules 10 to 13 :-

The provisions of rules 10 to 13 shall, so far as they are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of rule 16.

18. Procedure where witness apprehended cannot give evidence or produce document :-

Where any person arrested under a warrant is brought before the Court in custody and cannot, owing to the absence of or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security of his appearance at such time and place if it thinks fit, and, on such bail or security being given, may release him, and in default of his giving such bail or security, may order him to be detained in the civil prison.

19. No witness to be ordered to attend in person unless resident within certain limits :-

No one shall be ordered to attend in person to give evidence unless he resides-

(a) within the local limits of the Court's ordinary original jurisdiction, or

(b) without such limits but at a place less than ¹[one hundred] or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than ²[five hundred kilometres] distance from the court-house: ³ [Provided that where transport by air is available between the two places mentioned in this rule and the witness is paid the fare by air, he may be ordered to attend in person.]

1. Subs. by C.P.C. (Amendment) Act No. 104 of 1976, Sec. 66, for the words "fifty" (w.e.f. 1st February, 1977).
2. Subs. by C.P.C. (Amendment) Act No. 104 of (1976)., for the words "two hundred miles" (w.e.f. 1st February, 1977).
3. Added by C.P.C. (Amendment) Act No. 104 of (1976). (w.e.f. 1st February, 1977).

20. Consequence of refusal of party to give evidence when called on by Court :-

Where any party to a suit present in Court refuses, without lawful excuse when required by the Court, to give evidence or to produce any document then and there in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit.

21. Rule as to witnesses to apply to parties summoned :-

Where any party to a suit is required to give evidence or to produce a document the provisions as to witness shall apply to him so far as they are applicable.