

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
ERNAKULAM.**

Dated this the 24th day of August, 2024

PRESENT

Shri.D.B.Binu	President
Shri. V. Ramachandran	Member
Smt.Sreevidhia.T.N	Member

I.A. 977/2024 INC.C. 984/2023

PETITIONER/ COMPLAINANT

Aleena Nelson, D/o Nelsan Ambooken, Ambooken (H), Pallatt Hills,
Ollur P.O, Thrissur, 680306.

(Rep. by Adv. Anjali Anil, NyaayanishthaLegal Associates, 2nd Floor, Mulloor
Building, Market Road, Near Saritha Theatre, Ernakulam 682035)

VS

RESPONDENT/ OPPOSITE PARTIES

Amjomol Jose, Proprietor, Zuhriyaa Boutique, Madathil Lane, Pulinchode
Junction, Thottakkattukkara, Aluva, Kerala 683108

ORDER

Shri. D.B. Binu, President

1. The petitioner, an Assistant Manager (Legal) at South Indian Bank, Thrissur, has filed an application under Section 65(2) of the Consumer Protection Act, 2019, seeking permission to serve notice to the Respondent/Opposite Party via WhatsApp, due to the failure of traditional service methods.
2. The complainant alleges a deficiency of service by the respondent regarding a kurta with dupatta ordered through the respondent's Instagram page. After paying Rs. 1,400/- via G-pay, the complainant received no communication and did not receive the order. Attempts to resolve the issue, including visiting the physical outlet and contacting customer care, were unsuccessful, leading the complainant to approach the commission.
3. Notices sent to the respondent's addresses were returned, prompting the complainant to suspect that the respondent is deliberately evading legal proceedings. Under these circumstances and the lack of an alternative address,

the complainant has requested service via WhatsApp, citing previous judicial recognition of this method as valid.

4. In **Dr Madhav Vishwanath Dawalbhakta v. M/s. Bendale Brothers, 2018 SCC OnLine Bom 2652**, the Hon'ble High Court of Bombay acknowledged the evolving nature of the service of process, noting that electronic means, including WhatsApp, can be used for serving legal notices when traditional methods fail. The Court emphasized that the essence of service is to ensure the defendant or contesting party is informed about the proceedings.

It was stated that the service can be affected via WhatsApp, and it was further opined that service is neither an empty formality nor a mere procedural ritual. The essence of service is to ensure that the defendant or the contesting party has knowledge of the proceedings, thereby fulfilling the fundamental purpose of due process.

“12. Thus, in sub-rule (i) a and (ii), the substituted service means fixing the copies of the summons in different places as mentioned in the Rule. However, the sub-rule (iii). gives a further option that the summons can be served in such other manner as the Court thinks fit. Thus, the manner which the Court opts for should be akin to the earlier mode of service, which is mentioned in the Rule. For this, the court can take into account **the modern ways of service which are available due to internet connection**. It can be served by courier or by email or by WhatsApp etc. The Court should be satisfied with such a service.”

5. Furthermore, in **Re Cognizance for Extension of Limitation, (2020) 9 SCC 468**, the Hon'ble Supreme Court of India directed that legal notices could be served through electronic means, including WhatsApp, especially during the COVID-19 pandemic when traditional service methods were disrupted. The Court recognized the importance of adapting to modern communication methods to ensure timely and effective service.

6. **The Hon'ble High Court of the Punjab-Haryana, in Monika Rani & Anr. v. State of Haryana & Ors., 2019 SCC OnLine P&H 6843**, permitted service via WhatsApp in cases where traditional service methods were unsuccessful. Similarly, **The Hon'ble High Court of Kerala** has allowed the service of notices through WhatsApp in *X v. Y*, stating that electronic means could be utilized to ensure that parties are informed promptly and adequately.

After that, **The Hon'ble High Court of Delhi** issued an order on **April 27, 2017 in Tata Sons Ltd & Ors v. John Doe**, in a defamation action, the Hon'ble High Court permitted the plaintiff to serve one of the defendants with

the summons through email, text message, and WhatsApp. The Court summoned defendants in a case involving trademark infringement and passing off using WhatsApp after traditional modes of service repeatedly failed in *Meena Prints Pvt. Ltd. v. Vahini Enterprises and Anr.*

7. The Bombay High Court introduced the Bombay High Court Service of Processes by Electronic Mail Service (Civil Proceeding) Rules, 2017, under the High Courts Act, 2015, applicable to all commercial disputes, including appeals. Similarly, the Karnataka High Court recently enacted The Karnataka Courts – Service of Summons/Notices/Processes/Documents (Civil Proceedings) by Electronic Mail Rules, 2023, aimed at expediting the service of legal documents through modern communication methods. The Kerala High Court has also adopted a hybrid method, known as E-post, which combines electronic processing with traditional physical delivery for serving legal notices. (Tellmy Jolly, ‘Kerala High Court Initiates Hybrid E-Post Service for Speedy Delivery of Legal Notices’, (Live Law April 8, 2024) accessed 4th May 2024.) Additionally, the Punjab and Haryana High Courts have established similar rules. These developments affirm the acceptance of WhatsApp and other apps as valid means of serving legal notices and summonses.

Sub-section (1) of Section 65 of the Consumer Protection Act, 2019 reproduced below:

“65. SERVICE OF NOTICE, etc.

All notices, required by this Act to be served, shall be served by delivering or transmitting a copy thereof by registered post acknowledgement due addressed to the opposite party against whom the complaint is made or to the complainant by speed post or by such courier service, approved by the District Commission, the State Commission or the National Commission, as the case may be, or by any other mode of transmission of documents including electronic means.”

“...or by any other mode of transmission of documents including electronic means.”

Section 65 of the Consumer Protection Act, 2019, outlines the process for serving notices in consumer disputes. Sub-section (1) stipulates that all notices required by the Act must be served by registered post with acknowledgment due, speed post, or an approved courier service. Importantly, the section also allows for sending notices through electronic means, reflecting the Act's adaptation to modern communication methods. Sub-section (2) builds on this by allowing Consumer Commissions **to serve notices electronically**, particularly to electronic service providers, who must designate a nodal officer for this purpose. The section maintains traditional methods of service while acknowledging the growing importance of digital communication, especially in light of the COVID-19 pandemic. Sub-section (3) further clarifies that if a party

acknowledges receipt of the notice or refuses delivery, the notice is deemed served. The provision also allows for the notice to be considered served within 30 days, even if the acknowledgment is lost or misplaced, with tracking options available through the Indian Post website. This section ensures that the process of serving notices is both flexible and reliable in the modern digital age.

Unfortunately, some online platforms engage in tactics such as frequently changing their addresses to defeat or delay the judicial process. This not only constitutes unfair trade practices but also contributes to a docket explosion, overwhelming the courts and delaying justice for other litigants. Such practices are detrimental to the timely and effective resolution of disputes, which is the very object of the Consumer Protection Act, and they erode public trust in the judicial process. By recognizing and adapting to modern communication methods like WhatsApp for serving notices, we can mitigate these tactics, curb unfair trade practices, and ensure that the judicial process remains effective and efficient, safeguarding the rights of all parties involved.

In an era where digital communications, including artificial intelligence and platforms like ChatGPT, have become a vital part of our lives, legal institutions need to adapt and recognize the validity of such methods. The law must serve the people, and in doing so, it must evolve to meet the needs of the times. The use of WhatsApp for serving notices is a step towards ensuring that justice is not delayed due to outdated procedural constraints. For the notice to be deemed properly served, the complainant does not need to take excessive means such as using a bailiff or the 'beat of a drum.' This Commission is mindful of the human element in legal disputes; the frustration and anxiety faced by the complainant due to the opposite party's non-cooperation are palpable. By allowing service through modern means, we aim to uphold the principles of justice, equity, and fairness, ensuring that every individual has a fair opportunity to present their case.

In light of these judicial precedents, the increasing reliance on electronic communication, and the specific circumstances of this case where the Respondent/Opposite Party has been unresponsive to traditional service methods, this Commission finds it appropriate to allow the complainant's application. The complainant has demonstrated a consistent effort to communicate and serve notice through conventional means, which were unsuccessful due to the respondent's possible evasion.

Therefore, it is hereby ORDERED that the complainant is permitted to serve the notice on the respondent through the WhatsApp number of the opposite party, in addition to any other electronic means available, including

email if possible. The complainant is directed to submit proof of such service to the Commission within one week . This order is made to ensure that the respondent is duly informed of the proceedings, and to prevent any undue delay or prejudice to the complainant's case.

Pronounced in the open Commission on this the 24th day of August, 2024



D.B. Binu, President



V. Ramachandran, Member



Sreevidhia.T.N., Member

kp/

Despatch date:

By hand:

by post: