

SUIT No.557/2013

NAZAR AKBAR, J: By order dated **17.12.2013** the Additional Registrar was directed to explain his position with respect to non-writing of diary of the proceeding of the board of Additional Registrar right from **02.05.2013** onward. The Additional Registrar instead of immediately clarifying his position, after two months on 18.02.2014 sought explanation of Jr. Clerk of D-II Branch whose explanation is also on court file. Jr. Clerk explanation shows that case was listed in Court from 23.9.2013 to 17.12.2013 repeatedly once in every month, therefore, it could not be placed in the board of Additional Registrar. The first diary of Additional Registrar is dated **2.5.2013** and process was to be returned on **17.9.2013** at least one week before the date when case was put up in Court for the first time on **23.9.2013** as per explanation of Jr. Clerk. The Additional Registrar, in terms of Order dated **17.12.2013** was further directed that he should ensure compliance of Sindh Chief Court Rules (SCCR) which compliance should be reflected in his diary on Court file and repeat notice and explain his position. Unfortunately the Addl. Registrar has not even followed the instructions besides failing to submit his explanation. On **04.08.2014** this case was fixed before another Bench and the learned Judge reminded that order dated **17.12.2013** has not be

complied with and directed the Additional Registrar (OS) to comply with such direction before placing the suit in Court. Despite reminder dated **4.8.2014** the Additional Registrar (OS) did not issue fresh notices and in his diary dated **18.2.2014** declared service held good on the basis of 9 month old bailiff report dated **14.5.2013**. This bailiff report which ought to have been examined by the Addl. Registrar on or before **17.9.2013**. Had he examined it, he could not have found it satisfactory to hold service good. Unfortunately like undated explanation of Jr. Clerk D-II Branch the bailiff report also seems to have been procured subsequently to the order dated **17.12.2013**. However it was defective report by all means to hold service good and post the case for written statement. The bailiff report dated **14.5.2013** is to the effect that Defendant No.5 came to the bailiff with an advocate namely **Abrar** and collected summons from the bailiff on **6.5.2013**. The bailiff has not given Bar Council registration number of so called advocate Abrar nor he has obtained copy of CNIC or any other identification from Defendant No.5 to ascertain that he is the Defendant No.5. Who knows it was the plaintiff himself or his representative. There was no justification to declare that summons / notices received by unidentified Defendant No.5 were sufficient to hold service good on all the Defendant No.1 to 9. The Addl. Registrar did not apply his mind to the requirement of **Rules 139 to 146** of the SCCR particularly **Rule 145** which reads as under:-

145. Inquiry as to sufficiency of service. The Registrar (O.S.) shall hold an inquiry as to the sufficiency of service of process in all cases in which it has been returned and in which an appearance has not been entered on the day appointed therefore in such process by or on behalf of the person or persons against whom it has been issued.

Such inquiry may be adjourned, if necessary, from time to time. Affidavits and further affidavits may be received or evidence taken *viva voce* at such inquiry.

While holding service good after 9 months of bailiff report, the Addl. Registrar failed to appreciate that the so-called advocate Abrar has not filed his power on behalf of Defendants from **6.5.2013** to **18.2.2014** when Additional Registrar held service good on all the Defendants. He also failed to appreciate from the record that the subsequent notices sent to the Defendants on different applications filed by the Plaintiffs have never been served on them. This shows that the Additional Registrar has not only deliberately failed and practically refused to submit his explanation but he has also defied orders of Court to repeat notices.

2. Repeat summon/notice through pasting and the bailiff is directed to ensure that all legal requirements of pasting should be completed.

3. It is pertinent to mention here that not only in this case but in many other cases performance of Additional Registrar (O.S) is awful, he is in the habit of not holding the board of Addl. Registrar (O.S) properly and examining bailiff reports to hold service good in accordance with law. Other cases listed today including **Suit No.1641/2014** shows that process issued for **17.11.2014** but there is no diary of the Addl. Registrar for 17.11.2014 whether process has been returned or not. In another **Suit No.438/2014** there is first diary of Addl. Registrar for return of process on **19.3.2014** but on the said date summons were not returned by the bailiff and therefore, he ordered to call for report from bailiff and adjourned the case to **18.9.2014** for four months and at the same time directed to repeat

notice even without waiting for bailiff report. He very casually breached the mandatory **Rule 146** of the SCCR which reads:-

146. Fresh process not to Issue until previous one returned. Unless otherwise ordered, a second or subsequent process shall not be issued until after the one previously issued has been returned.

The use of the word “shall not be” in the above Rule was not supposed to be ignored as it has made the requirement of fresh summons subject to return of previous process. Again there is no diary of **18.9.2014** till date to show date bailiff has submitted report or not and whether fresh notices were issued or not. Similarly in **Suit No.729/2014** the last diary of Addl. Registrar is dated **24.12.2013** whereafter an undated diary shows that two weeks’ time was granted to Defendants for filing written statement when the case was adjourned to **14.4.2014**. But Addl. Registrar till to date has not taken up this matter to note that all the Defendants have filed written statement or not and how many are supposed to be debarred. The proceedings before Addl. Registrar in **Suit No.729/2014** seems to have be abandoned.

4. Proper service of summons and notices on the Defendants is the foundation of proper exercise of jurisdiction of Court. Improper service has invariably resulted in either multiplicity of litigation or setting aside of exparte order which in turn result in inordinate delay in the disposal of cases on merit. Therefore the failure of Addl. Registrar in discharging his onerous duty adversely affects not only valuable rights of the litigants but also renders the Court proceeding defective and meaningless as the final order on defective foundation are prone to set aside either by the same Court

under **Section 12(2) CPC** or on appeal by the Appellate Court. The proceeding before the Additional Registrar are judicial and order of Addl. Registrar are acts of Court as envisaged in **Rule 147** of SCCR and for convenience it is also reproduced below:-

147. Acts of Registrar to be effectual as acts of Court.

All act which may be done by the Court under O.V., rules 19, 20, 21 and 21-A of the First Schedule to the Code may be done by the Registrar (O.S.) and service of process as may be ordered by the Registrar (O.S) shall be as effectual as if the same had been ordered by the Court.

5. In view of the importance of the proceeding before the Addl. Registrar and his conduct as reflected above, Registrar is directed to hold a comprehensive audit of performance of Addl. Registrar (O.S) by appointing a team of atleast two members conversant with judicial work to examine all the cases which were filed at least immediately on opening of Court after summer vacation of 2013 till to date as well as disposed of exparte judgment and decree on the basis of defective service of summons during this period and after scrutiny submit report about the state of affairs in the office of Addl. Registrar so that at least in future process are properly issued and served. Exparte disposed of cases are required to be examined because such decrees, if found issued on the basis of defective service, should have resulted in condemning many of the litigants unheard. It is duty of Court to ensure justice to all and if any injustice was caused to anyone on account of negligence or incompetency of its officer in discharging his duties should not be allowed to be perpetuated. Therefore, as a result of aforesaid scrutiny, if it comes to the notice of the Court that the exparte orders were obtained by unscrupulous litigants through foul play in the process of service or otherwise, remedial steps be taken in

accordance with law. In this connection record of execution of exparte judgments and decree executed through Nazir of this Court should also be examined by the said team. Registrar on receiving such report is directed to examine conduct of the Additional Registrar (O.S) and place the same before the Hon'ble Chief Justice for his information and action if so desired by the Hon'ble Chief Justice. This exercise should be completed within 30 days.

5. Before parting with this order, I must observe that the role of advocates in obtaining defective report through bailiff and remaining silent on defective orders of service held good on Defendants cannot be ruled out. In administration of justice, the role of advocates is to ensure proper application of "Rules for Service" on Defendants and assist the court even at the level of Addl. Registrar to apply his judicial mind instead of capitalizing on such defects at initial stage of litigation for the benefit for their client.

J U D G E

Imran/PA