

Code of Civil Procedure ITI/ITO

1. Order V - Issue & Service of Summons
2. Notice by the 1st party to the opposite party -> Plaint (petition filed by the plaintiff before court) -> Suit -> Summons to the defendant -> Written Statement to be filed by the defendant
3. With Summons - Copy of the Plaint should be attached
4. Personal Attendance can be insisted only when the defendant Resides
 - (i) within the jurisdiction of the court
 - (ii) within 50 miles
 - (iii) 200 miles if 5/6th of the distance is connected by road, Rail or ship
5. Small Causes courts can issue Summons - only for final disposal
6. Not Only as witness - even for Production of document summons could be issued.
7. Instead of summons even letter could be sent.
8. Modes service of Summons:-
 - (i) Only copy of the summons to be served
 - (ii) Even on Agent or Manager. Master of a ship - is an Agent
 - (iii) Not found at residence for a reasonable time
 - (iv) Agent, male or female adult member of the family But not on the servant

If Defendant refuses or not found at the resident or no agents or members - service by Affixure.

 - Report stating circumstances name & address of the person identifying the house shall be submitted by the serving official.
 - Serving Officer shall be examined on oath
 - Court then declares - Summons is duly served
 - In addition to the above - summons could be sent by RPAD
 - If Defendant or Agent refuses to receive the RPAD - Courts declare Valid Service
 - If Acknowledgement not received within 30 days from date of issue - Deemed to have been served.

Substituted service :- If defendant not found at the premises Last resided or carried on business - service by affixure and the procedure is as the case of service by affixure as detailed earlier.

The summons could be served with the help of other agencies.

If the defendant is :

 - within the Jurisdiction of other court through that court
 - in Prison through Officer In-charge for service
 - Outside India & no agent in India - By Post
 - residing in foreign territory where a political agent is appointed or Court is established as per CPC then through such agent or court
 - Soldier, Sailor & Airman - through Commanding Officer
9. Service & endorsement by the serving agencies are required
10. Summons and attendance of witness - Order XVI & XVI (A)
11. If party wishes - to file application and list of witnesses to court
Witness without summons - permissible
12. Expenses in connection to the witnesses:-

The party applying - shall pay to court
H.C. makes rules in this regard
13. Particulars in the summons - Place, Purpose, details of document to be produced
14. Summons could be served by the party or court - if not served by the party, handed over to court for service through messenger of the court.

Failure to comply with summons:-

avoids or failed to produce

proclamation issued by the court for attendance or production of documents

Proclamation is fixed on the outer door

warrant with or without bail- for arrest or attachment of property

but small causes court- has no such powers

Court excuses in case sufficient cause but cost of attachment shall be borne by the defaulter

Fine not exceeding Rs. 500 for defaults.

Personal attendance of the witnesses could be insisted where the witness resides within 100 km or 500 km if public conveyance is available.

- But no limit for places connected with Air travel
- Any party fails to give evidence or document- his case could be dismissed for default - the party to the suit could also be a witness
- Witnesses confined or detained in prison
- Personal attendance of imprisoned could be insisted only where the distance from jail is below 25 km
- Commission could also be sent if the evidence is material.

Affidavit(O-XIX)

- Written Statement - of deponent- on oath duly affirmed before Court or Magistrate or Commissioner
- Requires cross examination of the deponent
- The Court may order to prove fact by Affidavit

Attachment of Property (Sec-60, O-XXI)

- If money not paid within 30 days from date of passing decree- Court order for affidavit with asset details
- If the Judgement Debtor failed to pay , the Decree Holder may apply to Court to orally examine the J.D. with regards to his debts & asset
- Court order for attendance with Book or documents
- If Judgement debtor disobeys - Civil Prison not exceeding 3 months

Property not attachable:-

Tools of artisan, Personal ornaments, Books of A/c, PF, Gratuity, LIC, Air, Army, Naval, Rs. 1000 & 2/3rd of the remainder(except maintenance), 1/3rd of salary in case of maintenance

Attachment of Moveable Property.

Delivered to Decree Holder or receiver

Kept under custody for 3 months then Sale by court - Balance Money after adjusting all dues to the Judgement Debtor

Immovable property

Possession to Decree Holder - In case of illegal occupation, Evacuation will be by the court

Court has power to Break open but time for women to withdraw

Tenant not bound by decree can occupy but to pay the rent to Decree Holder affix the warrant & beat drum- Similar procedure for joint Ownership property

Civil procedure code ITI/ITO Commission (O-XXVI)

- I Court may issue commission in 5 cases:-If the witness
1. suffers from Sickness or exempted
 2. resides beyond the jurisdiction of the court
 3. is about to leave India
 4. is a Govt. Servant & appearance affects his official duty
 5. resides out side India

Evidence taken by commission could be produced before the court as evidence with the consent of the opposing party.

II Commission for local Investigation for the following

- (1) To Elucidating facts
- (2) To ascertain market value
- (3) To ascertain profits, damages or annual net profits

- III Other types of commissions
 - Scientific investigation
 - Commission for sale of Moveable property that are in the custody of court
 - Crop valuation- accounts of partial partition
 - Commission by H.C. at the instance of foreign tribunals
 - Expenses should be borne by Party at/for whose instance / benefit commission was granted

- IV Powers
 - (1) Examine Parties & Witnesses
 - (2) Call for documents, records
 - (3) Enter any premises connected to the dispute
 - (4) Proceed ex parte
 - (5) Summon & examine witnesses => in this regard deemed to be Civil Court

Review (Sec. 114, Order- XLVII)

- I Situations warranting review
 - 1. **Fresh new & important material or evidence** - not within knowledge of or could not have been produced by the aggrieved party when the original decree was made
 - 2. **Apparent Mistake of-law, fact or procedure**
 - 3. on any other sufficient cause

- II Other points involved in review
 - 4. No Review if appeal has been preferred on same ground
 - 5. No Review for order passed on the Review application.
 - 6. After withdrawal appeal Review petition can be in the original court.
 - 7. After filing review , appeal is preferred, review could be kept pending till disposal of the appeal
 - 8. Limitation period for filing petition 30 days from the date of order
 - 9. Review Petition shall be filed before the same court- in case High Court it should be before the same judge or his successors
 - 10. If petition is dismissed for default- it can be restored for sufficient cause. Rejection of application on failure of applicant to appear- can be restored if he proves that he was prevented by the sufficient cause.
 - 11. Form of application for review- Same form preferring for appeal
 - 12. No application of review without notice to the opposite party
 - 13. Order of rejection of review's application - final & not appealable

NOTE: The Symbol * denotes most important**

The underlined and Blocked portions are to be studied thoroughly

Best wishes from MSTU Chennai