

Study on the Customer's Address of E-commerce Platform as the Service Address of Civil Litigation

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Abstract

As a procedure of civil litigation, service, throughout the entire process of litigation, connects various stages of litigation. The "service difficulty" of civil litigation has been a challenge faced by the courts of our country, which has affected the judicial efficiency. Due to a variety of reasons, the court cannot obtain the exact address of the parties, leading to the problem of "service difficulty". China is currently the most developed country in the world in terms of e-commerce transactions. There are a large number of customers involving in e-commerce transactions, covering a wide range, and each e-commerce platform has customer information registered by the customers for transactions, including the real and valid addresses for the customers to receive the goods personally. If the addresses of these customers are served as the service addresses of civil litigation, it will greatly improve the efficiency of service, and then solve the problem of "service difficulty".

Keywords

Civil Litigation, service, e-commerce platform, service Address.

1. Introduction

Service is a bridge of information communication between the parties and the court and between the parties in civil litigation, and is the link between the litigation acts before and after the litigation, which connects the entire civil litigation procedure, and is the key link of the civil litigation procedure. Whether the service procedure is smooth or not affects the judicial fairness, and determines the judicial efficiency. However, in practice, the problems of the nature of the case, the type of the case and the system defects of the court's service procedure itself hinder the proceeding of the court's service procedure, thus affecting the proceeding of the entire litigation procedure. In this paper, it is believed that how to obtain the exact address of the served person is the key to the success of the service procedure. Courts often fail to obtain the exact address of the served person, thus leading to the problem of "service difficulty". But information technology is highly developed today, and information should not be a problem that restricts the service. The rapid development of e-commerce provides a good platform and opportunity to solve the problem of "service difficulty", and the feasibility of the customer's address of e-commerce platform as the service address of civil litigation is studied in this paper.

2. Overview of Civil Litigation Service

2.1 Definition of Service

Service is to deliver the relevant legal documents and litigation documents served by the judicial organ, according to the procedure and time prescribed by law, to the parties and other litigant participants, in

order to enable the addressee to timely grasp and understand the right to participate in legal proceedings and the requirements to be complied with, and to protect the smooth conduct of civil proceedings [1] .

2.2 Definition of Service Subject

The only Statutory body of civil service is the people's court. The parties and other participants in the proceedings submitting litigation documents or other documents to the people's court are not referred to as service. If the people's court has entrusted the parties and other participants in the proceedings to deliver the litigation documents, it shall not produce the effect of service.

2.3 Applicable Procedure

The procedure of service is only exists in the process of litigation. The court serves documents to citizens, legal persons or other organizations outside the lawsuit do not belong to service in the sense of civil procedure law. Nevertheless, it would not rule out the application of delivery procedures.

2.4 Object of Service

The object of service is all the participants, usually the parties, witnesses, etc. The people's procuratorate or the people's court may also serve as an object when participant in the proceedings.

2.5 Types of Documents to be Served

The documents served are limited to litigation documents. Specifically including judgments(mediation agreements) written by the court, verdicts , decisions , notifications ,guidance documents such as notice (accepting cases, litigation or proof, inform notice to members of the collegial panel), copy of the bill of complaint, copy of the court summons, conciliation statements and order of payment, etc. The report of the people's court and the letter of correspondence shall not be applicable to the procedure of service. Litigation materials exchange by the parties also do not apply.

2.6 Legal Forms of Service in China

The form and procedure of civil litigation service is laid down in plain terms by statute. The subject of service namely the people's court shall not create any other forms of service other than those prescribed by law. If the people's court deliver the litigation documents in a non-legal form, the procedure is illegal and does not produce service effect. At present, our country's civil procedure law stipulated the forms of service, including Direct service, indwelling service, electronic service, entrusted service, mail service, service by passing on, service by publication,and service through foreign diplomacy and treaties. Direct service, indwelling service, entrusted service, mail service, service by passing on, service by publication are traditional service forms, while electronic service is the product of the information age. The sequential arrangement of the traditional six ways of service implied the legislators' preference for the preferential selection of service. Direct service is the first choice. If direct service is rejected by the party, indwelling service shall be applied. Neither direct service nor indwelling service is unattainable, entrusted service and mail service shall be applied. Service by publication should be strictly limited. In judicial practice, the people's court shall select the form of service in strict accordance with the priority order. For electronic service, the application is subject to the consent of the addressee.

2.7 The Application of Constructive Service

The Supreme People's Court about ' Summary Procedure Provisions of Civil Cases' and 'Delivery Forms of Civil Litigation documents' establish a constructive service system. If due to the recipient's own responsibility, provides or confirms the inaccurate address of service , refuses to provide the delivery address, service address has changed but unable to inform the people's court, people designated or on behalf of the addressee refuses to sign, leading litigation documents fail to deliver to the recipient, the date that documents returned as from the date of service date. The people's court shall

release the obligation and record the application. At the same time, if the addressee is able to prove that he is not at fault in the service of the litigation documents, the constructive service shall not apply.

2.8 Legal Effects of Service

The legal effect of service may include: the entry into force of certain judicial documents; the relevant period begins to be calculated; the rights and obligations of the parties in the procedure are determined.

3. The Problems and Causes of Civil Litigation Service in China

3.1 The Main Problems of Civil Litigation Service in China

Throughout the study of the civil service in our country's legal and practice circles, the problems existing in the service of our country are mainly analyzed from the aspects of legislation and practice. The problems in legislation are as follows: (1) The provisions on the subjects of civil service are not clear; (2) The provisions on the served subjects of civil service are not clear; (3) The provisions on the subjects for the civil service cost are not clear [2]; and (4) The provisions on the legal liability of the civil service are not clear. The problems in practical operation are as follows: in terms of the service method: (1) Direct "service is difficult"; (2) The entrusted service efficiency is low [3]; (3) The lien service conditions are severe; (4) The provisions on service by passing on are not scientific; and (5) The service by publication is disorderly [4]; in terms of the human factor: (1) The court's manpower and material resources are insufficient; (2) The parties obstruct the service [5].

All the above-mentioned problems affect the actual effect of the service at different levels, which leads to the awkward situation of "service difficulty" of the court. However, in this paper, it is considered that the "service difficulty" is mainly caused by the unclear address of the served person. According to the law of our country, the service of civil litigation is the function of the court and the obligation of the court as a state agency, but the effective service of the court should be based on the clear addresses of both parties. When the address of the served person is clear, the court may choose the proper service method according to the specific circumstances. As far as the current legal provisions are concerned, in the case where the service address of the party is unclear, it may choose the method of service by publication, but the service by publication has strict application conditions. The publication period is 60 days, and if each service procedure is served by publication, it will seriously affect judicial efficiency. In addition, the service by publication is, after all, fictional service, and the litigation rights of the parties cannot be effectively guaranteed. Whether from the perspective of judicial efficiency or judicial justice, the service by publication is not the best service method. Even in recent years, the introduction of the "constructive service", which has been highly praised, cannot solve the problem, since the "constructive service" is applicable for those parties who have completed the service address confirmation, or have been informed of the adverse consequences, but it is still not applicable for those parties who have not been found or informed by the people's court of the litigation situation at all.

3.2 Analysis of the Causes for the Unclear Address of Civil Litigation Service in China

When the market economy of our country is at a relatively low level, the natural persons have poor mobility and stable residency, the legal persons and other economic organizations are small in quantity, and administrative management is relatively in place. In particular, there are fewer cases, and the service method prescribed by the present law can basically meet the requirement of the service of civil litigation. However, with the change of the production mode, the development of economy and the progress of science and technology, the following new situations have emerged: the people flow, logistics, capital flow and information flow in the society are becoming more frequent, the flow of the served person reflected in litigation practice is increased, and the geographical scope of the distribution is enlarged. The corresponding administrative management lags behind, the leadership of the grass-roots organizations is weak, or the parties are completely divorced from the organizations and units, so that the social forces that can be adopted by the courts at the time of service will not exist. The

corresponding population mobility information management lags behind, and our country has not established a complete system of population information management. The existing public security organs and related departments have not improved the information management of the mobile personnel, and the information update lags behind. In civil litigation, there is no system that restricts the movement of the parties involved or reports the whereabouts, and it also fails to connect with the registration and inspection system of the mobile personnel registered permanent residence and identity card by public security organs and the grass-roots self-governing organizations. These social factors objectively lead to the fact that the served person's address is unclear.

Civil Procedure Law and relevant judicial interpretation of our country only stipulate the contents of the service method and the service standard. Obviously, the existing Civil Procedure Law is not complete and rigorous with regard to the civil service system, and has some defects. First of all, since the current law does not prescribe which addresses can serve as the specific service address of the served person, but also does not prescribe the legal consequences of providing the false addresses, so that some parties exploit the legal loopholes to achieve the unlawful purposes. At present, in judicial practice, the defendant's address is provided by the plaintiff, and the court cannot directly prove that the defendant's address provided by the plaintiff is unclear or incorrect at the time of the plaintiff's prosecution, so sometimes in order to confirm whether the defendant's address is correct or not, it must implement a service at a cost. Therefore, some plaintiffs deliberately conceal the defendant's true service address or provide a false address to the people's court in order to achieve the illegal purpose of preventing the defendant from appearing in court, so that the defendant cannot actually accept the service. According to the provisions of the Civil Procedure Law of China, after the court accepts the case, the matters related to the service are made by the court in accordance with the functions and powers of the court, so the consequences of multiple service due to the false address provided by the plaintiff can only be directly borne by the court. The parties bear no legal liability for service, so they are not initiative to provide accurate service address to the court.

Finally, because the law does not stipulate the sanction measures for the parties who avoid the service, and objectively condones some parties to deliberately avoid or obstruct the service, and delay the litigation.

4. The Conception of How to Make the Customer's Address of the E-commerce Platform as the Service Address

4.1 Institutional Ideas

In this paper, to make the customer's address of the e-commerce platform as the service address refers to the court to use customer's real-name registration information, including shipping address and contact phone number registered on the electric business platform, as the address of the civil action of the party concerned. The court needs to establish an Internet access control system, which can refer to the existing network execution control system established in the civil execution procedure. The court needs to obtain statutory authorization to inquire customer's addresses on various e-commerce platforms, and relevant judicial interpretations need to be issued. The court also needs to develop the applicable condition based on electric business platform customer's address. For example, this system can only be used in the situation that the plaintiff cannot provide the address or contact phone number, or the defendant's address provided is not clear. The court may use the customer's address of the e-commerce platform as the service address in accordance with its authority or the party's application. The customer's address the Court query for should be frequently used in 1 year by the parties. The judgment standard of 1 year conforms the determination of the habitual residence of our civil procedure law and its judicial interpretation. The customer's address of the e-commerce platform obtained by the court shall be the information of the party's real-name registration. When the court queries addresses from multiple e-commerce platforms, the delivery address can be used simultaneously to ensure the success rate of delivery. The customer's address of the e-commerce

platform obtained by the court can serve as the address of direct service, indwelling service, entrusted service, mail service.

4.2 Legal Support

To my point of view, to use the customer's address of e-commerce platform as the delivery address is in line with the current law of our country. According to the supreme court's regulation 'Several Opinions on Further Strengthening the Civil Service Work', Article 8 (4), 2017, 7: Without the above situations, using the parties commonly used address in civil activities within a year for delivery. People engaged in commodity trading on the e-commerce platform is a kind of typical civil activity, which conforms to the provisions of this article. However, this rule sets an excess of precondition for the use of the article, which can only be used if all the pre-delivery modes cannot be delivered. I believe that the application scope of this article should be expanded to reduce the applicable conditions.

4.3 Practical Support

The real-name registration information on the electric business platform is often real and effective. Since the parties need to use it as shipping address, to make sure he/she could receive purchase goods, there is no subjective deliberately fill in false information. The authenticity and validity of customer's addresses have been demonstrated in the past successful e-commerce transactions.

In the civil procedure, the court has used the network to carry out a control system, which can be used to query the bank deposit, stock, fund, property, vehicle and other property information of the person subjected to execution. It has been proved that the court can obtain the property information of the person subjected to execution through the network and improve the efficiency of execution, which solves the problem of "Service difficulties" to a great extent. Service procedure and execution procedure are similar on the problem of the symmetry of information, so service procedure can completely according to network execution system to establish a service network system.

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