

Tata Steel Processing and Distribution Ltd. Vs. Ideb Projects Pvt. Ltd.

Tata Steel Processing and Distribution Ltd. Vs. Ideb Projects Pvt. Ltd.

SooperKanoon Citation : sooperkanoon.com/110544

Court : Kolkata

Decided On : Jul-24-2017

Judge : Sanjib Banerjee

Appellant : Tata Steel Processing and Distribution Ltd.

Respondent : Ideb Projects Pvt. Ltd.

Judgement :

OD-21 GA No.2034 of 2017 APO No.334 of 2017 in CS No.29 of 2013 IN THE HIGH COURT AT CALCUTTA Civil Appellate Jurisdiction ORIGINAL SIDE TATA STEEL PROCESSING AND DISTRIBUTION LTD.Versus IDEB PROJECTS PVT.LTD.BEFORE: The Hon'ble JUSTICE SANJIB BANERJEE And The Hon'ble JUSTICE SIDDHARTHA CHATTOPADHYAY Date : July 24, 2017.

Appearance: Mr.Malay Kr.

Ghosh, Sr.Adv.Mr.Suman Dutta, Adv.Mr.Atish Ghosh, Adv.Mr.R.Mitra, Adv.Mr.Arindam Chandra, Adv.Mr.Rajsekhar Mantha, Sr.Adv.Ms.Soumashree Ghosh, Adv.Mr.Supratim Goon, Adv.The Court : The decree-holder questions the propriety of an order passed on a petition for setting aside an ex parte decree that found no grounds having been made out for the respondent herein not being represented before the suit Court; and yet unconditionally set aside the ex parte decree against payment of nominal costs.

The facts are not in much dispute, though considerable time has been taken on behalf of the respondent to refer to matters that were wholly unnecessary in the context of the appeal and the scope thereof.

It must also be recorded that the interpretation of the facts by the trial Court has also been questioned by the respondent, without the respondent preferring any independent appeal or even a cross-objection.

There is no dispute that the writ of summons was served on the respondent by September, 2013 in a suit instituted earlier that year.

The trial Court noticed the appropriate certificate in such regard having been issued by the Deputy Sheriffs office.

The trial Court referred copiously to the grounds indicated in the petition for setting aside the ex parte decree verified by an affidavit of a director of the respondent herein, Harkirat Singh Bedi.

Such grounds included the fact that Bedi was a busy man who required to travel a lot, that he sent e-mails to his Kolkata lawyers and that the Kolkata lawyers may not have taken appropriate steps despite the respondents efforts to defend the suit.

Indeed, in the light of the allegations levelled against a firm of Advocates by the respondent herein, an affidavit was called for from the dealing Advocate of such firm.

The conclusions drawn by the trial Court from Bedis excuses and how such excuses were dealt with by the firm of lawyers are accepted by the appellant; but are sought to be questioned by the respondent herein.

On December 4, 2013, Bedi sent an e-mail to the firm of Advocates and on December 11, 2013, he enquired of such firm whether they would represent the defendant.

By the mail of December 11, 2013, Bedi also referred to having released a previous payment of Rs.1,50,000/- to the law firm.

The Court observed that the respondent herein did not execute any vakalatnama or affidavit of competency nor did it furnish any instructions to indicate the grounds for seeking condonation of delay.

The respondent has placed copies of the e-mails of December 11, 2013, January 15, 2014 and July 5, 2015 appearing backwards from pages 47 to 45 of the appeal papers. It does not appear that the trial Court drew any erroneous conclusion on reading such mail.

There was no reply from the law firm as to whether it would defend the suit on behalf of the respondent herein.

The respondents request for sending over vakalatnama and application for condonation of delay and other related papers appears not to have been responded to on behalf of the law firm.

The mail of July 5, 2015 marked a previous mail of an illegible date in December, 2014, requesting an update on what happened in the matter when the suit was listed on December 4, 2014.

However, the decree was passed on December 3, 2014.

The respondent has referred to a judgment reported at (2011) 3 SCC 545. Such judgment was also cited before the trial Court.

Paragraphs 15 and 16 of such report have been placed and they are of some relevance.

The Supreme Court observed that the test that has to be applied on receiving a petition under Order IX Rule 13 of the Code is whether the defendant honestly and sincerely intended to remain present when the suit was called on for hearing and did his best to do so. The Court also emphasised that sufficient cause would be the cause for which the defendant could not be blamed for his absence. The trial Court referred to the conduct of the respondent herein and the excuses proffered by Bedi on its behalf and, in the context of the Supreme Court judgments carried by the parties to such Court, including the one cited by the respondent herein,

rendered an opinion that Bedi for the defendant did not possess any of these attributes. The Court went on to record that Bedi thought that sending e-mails and making telephone calls would take care of his defence; but he did not execute any vakalatnama or affidavit of competency or take steps to file any written statement.

However, the Single Bench referred to a judgment reported at AIR 1987 SC1353 which was not cited by either of the parties, and quoted a substantial passage from the relevant report to observe that a defendant would not gain anything by suffering an ex parte decree.

To begin with, ordinarily, a precedent should not be referred to in a judgment, without the parties being made aware thereof.

However, if the quality of the assistance received is wholly inadequate and a point of law arising in a matter is wholly covered by a previous decision which is not cited, such decision may be referred to by the Court itself.

In this case, however, the 1987 judgment of the Supreme Court relied upon by the Single Bench was in a matter under Section 5 of the Limitation Act, 1963 and not under Order IX Rule 13 of the Code.

Further, the larger issue that arose before the Supreme Court in that matter was whether the State as a litigant was entitled to a degree of latitude on an application under Section 5 of the Limitation Act.

Order IX Rule 13 of the Code indicates the relevant considerations applicable therein.

Only two grounds appear to be of relevance in such a situation: whether the summons was duly served on the petitioning defendant; or, whether the petitioning defendant was prevented by any sufficient cause from appearing when the suit was called on for hearing.

The provision authorises the Court to impose conditions on a defendant, after examining the petition and passing an appropriate order thereon.

In the light of the observations recorded in the order impugned qua the conduct of the respondent herein and its said officer, Bedi, it does not appear that there was sufficient cause shown before the Single Bench for the respondent herein not being represented on the day that the suit was called for hearing, except the following paragraph: But nevertheless, M/S.R.Ginodia & Co.should have specifically written to the defendant No.1 that they were not defending the suit.

Having acted for the defendant no.1 in other cases they should have warned the defendant no.1 and Bedi that if adequate steps were not taken by them there was a risk of an ex parte decree being passed. Even if the Court found that such may have been somewhat of a cause for the respondent herein not being represented when the suit was taken up for hearing on December 3, 2014, the Court, in view of the conduct of the respondent herein as noticed earlier in the judgment and order impugned, ought to have imposed strict conditions on the respondent herein before setting aside the ex parte decree.

Indeed, the ground embodied in the relevant paragraph quoted above may not appear good ground to set aside the decree; but since such ground has been found to be sufficient, in the light of the previous finding rendered qua the conduct of the respondent herein, the decree could not have been unconditionally set aside by imposing token costs.

The order impugned dated May 19, 2017 is modified by requiring the respondent herein to deposit the entire decretal amount, inclusive of interest, till July 31, 2017 within a period of three weeks from date.

If such deposit is made with the Registrar, Original Side, the ex parte decree of December 3, 2014 will remain set aside in terms of the order impugned.

In default of such cash security being furnished within the time indicated, the order impugned will stand set aside and the appellant herein will be entitled to execute the ex parte decree of December 3, 2014 in accordance with law.

If the deposit is made in terms of this order and within the time permitted herein, the Registrar will invest the entire amount by way of a fixed deposit in any

nationalised bank having its branch within the vicinity of this Court.

In addition, the respondent herein should tender the costs awarded by the order impugned of Rs.2 lakh and a further sum of Rs.1 lakh as costs of the present proceedings.

It will be open to the appellant herein to execute such order for costs in accordance with law.

APO No.334 of 2017 and GA No.2034 of 2017 are allowed to the extent indicated above.

The respondent seeks a stay of the operation of this order, which is declined.

Urgent certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(SANJIB BANERJEE, J.) (SIDDHARTHA CHATTOPADHYAY, J.) sg/bp.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com