

Poddars Electronics Ltd. Vs. Allahabad Bank and 5 ors.

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Court : DRAT Kolkata

Decided On : May-29-2001

Judge : A M Retd.

Appellant : Poddars Electronics Ltd.

Respondent : Allahabad Bank and 5 ors.

Judgement :

1. This is an appeal against the order of the Presiding Officer, Debts Recovery Tribunal, Calcutta, dated 23.10.2000 in T.A. No. 347 of 1995 by which the learned Presiding Officer refused to set aside the ex-parte order passed by him.

2. The case of the appellant who was defendant No. 4 in the original suit before the Debt Recovery Tribunal is that he was not aware of the filing of the suit till 25.11.1998 when he came across a paper publication whereby his knowledge about a suit by the Bank dawned. It is the further case of the appellant that no attempt was made to serve notice of the suit on the appellant and, as such, the substituted service effected by publication is not in accordance with law. It is their further case that on getting the information from the newspaper, he at once contacted a Lawyer and after inspection of the record, application was made for certified copy of the impugned order on 7.12.1998. He got the certified copy on 10.12.1998 and thereafter filed a Misc. Case under Section 22(2)(g) for setting aside the ex-parte decision as also the certificate. But the learned Presiding Officer rejected the said prayer holding inter alia that the date of knowledge as given by the appellant is not believable and as such the application giving rise to

the Miscellaneous Case was barred by limitation.

3. The appeal is being resisted by the respondent Bank alleging that the present appellant being defendant No". 4 in the original suit was all along aware of the filing of the suit, that they purposely refused to attend the proceeding in order to delay recovery procedure. It is also alleged that paper publication was made in accordance with law.

4. The point for decision is, whether the impugned order is in accordance with law

5. I have heard the argument advanced on behalf of the appellant and also the respondent. I have also considered the effect of the decision namely, the decisions reported in AIR 1989 Punjab and Haryana 319, AIR 1998 Madhya Pradesh 236, and also AIR 3 999 Bombay 235 in their application to the present appeal. After giving my careful consideration to the arguments as also the pleadings of the parties, I am of opinion that passing of the ex-parte decree and subsequently issuance of certificate are not in accordance with law and as such the view taken by learned Presiding Officer cannot stand.

6. The admitted position is that on 28.5.1993, a suit was filed by the respondent Bank against the appellant and others for realisation of certain sum of money. On 19th June, 1995, after the promulgation of the Recovery of Debts Due to Banks and Financial Institutions Act, the suit was transferred to the Debts Recovery Tribunal in Calcutta. Order regarding paper publication was effected by the learned Registrar of Debts Recovery Tribunal on 20.11.1995. The said order clearly shows that the conclusion drawn is not in accordance with law. Firstly there was no application on the part of the applicant Bank for an order regarding paper publication. Secondly, the conclusion drawn before directing publication is not also legal. To quote the relevant portion of the order "none is present on behalf of the respondent though notice was sent to them on 17.10.1995. There is no evidence of service or otherwise. Though, there is presumption of service since the postal packets containing the Tribunal's notice was returned undelivered. Let the notice be published in two newspapers" (emphasis supplied). The irresistible conclusion will be that the learned Registrar even being aware that there was no evidence of service on the respondents draw the presumption simply because the postal

packet containing notice came back undelivered. Such a presumption could have been drawn only if the said packet contained endorsement like "refused".

7. Substituted service can only be resorted to when there is reason for drawing the conclusion that the defendant is keeping out of the way for avoiding the service or there are some other reasons for which service in the original manner cannot be effected. Rule 11 of the Debts Recovery Tribunal (Procedure) Rules also speaks of notice being sent by Regd. Post. Simply because a notice sent by post came back undelivered, there cannot be any earthly reason to draw a conclusion as has been done by the learned Registrar and directing paper publication. Rule 23 of the D.R.T. (Procedure) Rules, comes into play only after sincere attempt is made to comply with Rule 21.

8. As such, the hearing of the claim case by the learned Presiding Officer and passing a judgment on 19.12.1997 and subsequent issuance of certificate on 19th January, 1998 are not in accordance with law.

9. Another important factor is that there is nothing on record to show that Rule 16 of the Procedure Rules namely, sending of copy of order passed by the Tribunal was communicated to the defendant. In this context, the appellant's case that he came to know of the paper publication as also the filing of suit on 25.11.1998 cannot be disbelieved. There is no dispute that certified copy was applied for on 7.12.1998 and it was supplied on 10.12.1998. The Misc. Case was setting aside of ex-parte decree was filed on 30.12.1998.

10. The learned Presiding Officer refused to set aside the order passed by him ex-parte for two reasons namely, he disbelieved the date of knowledge and consequently, he found the starting of the Misc. Case at a time when it was barred by law of limitation. I have shown that the fixing of the claim case for peremptory hearing ex-parte, is itself not in accordance with law and as such the conclusion drawn by the learned Presiding Officer can not stand. It may be remembered that a person does not gain in the least by purposely keeping himself away from appearing in the litigation and thereafter trying to get out of it by resorting to Misc. Application. In the result, the impugned order must be set aside. Accordingly, it is: That the appeal be allowed on contest but without any costs. Since a Nationalised

Bank is on the other side. The impugned order stands set aside. The claim case goes back to the Tribunal below where the present appellant as also the other defendants need to be given reasonable opportunity to file written objection against the Bank's claim and thereafter the learned Presiding Officer shall dispose of the case in accordance with law.

Let a copy of the judgment as also of the L.C.R. be sent back to the Tribunal expeditiously.

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