

Metro Polymers and ors. Vs. Indian Renewable Energy

Metro Polymers and ors. Vs. Indian Renewable Energy

SooperKanoon Citation : sooperkanoon.com/56361

Court : DRAT Delhi

Decided On : Jun-17-2004

Reported in : IV(2004)BC48

Judge : K Kumaran

Appellant : Metro Polymers and ors.

Respondent : Indian Renewable Energy

Judgement :

1 This appeal has been filed by the defendants in O.A. 472/97 (hereinafter referred to as "the appellant-defendants") against the impugned order dated 28.4.2000 passed by the learned Presiding Officer of the Debts Recovery Tribunal, Delhi (hereinafter referred to as "the DRT") dismissing the application filed by the appellant-defendants to set aside the ex parte final order passed against them on 24.3.1998 in O.A. 472/97.

2. The respondent-Indian Renewable Energy Development agency Limited (hereinafter referred to as "the respondent") filed the O.A. before the DRT for the recovery of Rs. 24,86,977 with interest and costs. The learned Presiding Officer of the DRT passed the ex parte final order on 24.3.1998 accordingly.

3. On 30.11.1998 application to set aside the ex parte final order was filed on behalf of the appellant-defendants. The learned Presiding Officer of the DRT after giving opportunity of hearing to both sides dismissed the said application by his

order dated 28.4.2000. The learned Presiding Officer of the DRT observed that notices and summons were issued, and on 10.12.1997 postal receipts were filed by the Counsel for the respondent. He also observed that the learned Counsel for the respondent requested for service on appellant-defendants by way of publication, that, after satisfaction, the request of the respondent was allowed and it was ordered that the appellant-defendants be served by publication in the newspaper "Statesman". The learned Presiding Officer of the DRT also observed that in spite of publication in the newspaper "Statesman" dated 29.12.1997, the appellant-defendants failed to appear and, therefore, were proceeded ex parte.

4. The learned Presiding Officer of the DRT also observed that the acknowledgement for service or the unserved envelopes had not returned in this O. A. and, therefore, there was presumption of service of summons on the appellant-defendants. The learned Presiding Officer of the DRT held that no written application or even an affidavit that the appellant-defendants were evading service was required for directing substituted service since the Tribunal is not bound to observe the procedure prescribed by the provisions of the CPC, but is guided by the principles of natural justice. The learned Presiding Officer of the DRT further observed that the appellant-defendants had not even given the date when they came to know about the proceedings in the O.A. and, therefore, the application filed for the purpose of setting aside the, ex parte final order is also barred by time. Observing that the appellant-defendants have failed to show any good and sufficient cause for setting aside the ex parte final order and that the application is also barred by limitation, the learned Presiding Officer of the DRT dismissed the application.

5. Aggrieved the appellant-defendants have approached this Tribunal with this appeal. The respondent has filed a suitable reply opposing the appeal. The appellant-defendants have filed a rejoinder.

6. J have heard the Counsels for both the sides and perused the records.

7. The learned Counsel for the appellant-defendants contends that the appellant-defendants were not served with any summons and had no knowledge of the proceedings in the O.A. But, the learned Counsel for the respondent, on the other

hand, contends that the O.A. was taken up on 15.10.97, and the learned Presiding Officer of the DRT ordered issue of summons fixing the date of hearing as 10.12.97. He points out that the summons along with the copy of the O.A. were sent to the appellant-defendants on 29.10.97 by Registered Post, and that on 10.12.97 the postal receipts for having despatched the summons to the appellant-defendants were filed into the DRT. He also contends that the respondent addressed the postal department to find out whether the summons were served upon the appellant-defendants or not, and ultimately came to know that the summons were delivered to the appellant-defendants on 6.11.97 and 13.11.97. The learned Counsel for the respondent also points out that the affidavit of Mr. Piyush Kumar, the Law Officer of the respondent-Bank, was filed before the DRT on 14.3.2000, which establishes that the summons were served on 6.11.97.

The learned Counsel for the respondent also contends that another affidavit of Mr. R.N. Bishai, the clerk of the Advocate, was filed before the DRT on 13.4.2000, which contained the confirmation from the post office about the summons having been delivered to the appellant-defendants on 6.11.97 and 13.11.97. Therefore, the learned Counsel for the respondent contends that the claim of the appellant-defendants that they were not served with the summons and that they had knowledge of the proceedings in the O.A., is not correct.

8. The learned Presiding Officer has also observed in paragraph 6 of the impugned order dated 28.4.2000 (dismissing the application to set aside the ex parte final order) that the deponent of the affidavit (filed in support of the application to set aside the ex parte final order, namely, Mr. Meganathan) was personally served, and had accepted notice on behalf of the other defendants.

9. The learned Counsel for the appellant-defendants, on the other hand, contends that the case of the respondent has throughout been that the appellant-defendants evaded service or they could not be served in the ordinary manner and, therefore, they had to be served by the mode of publication of the summons in the newspaper 'Statesman'. He contends that it was not the case of the respondent that the appellant-defendants had been served through the 2nd appellant-Mr.

Meganathan. In this connection, he points out the order dated 10.12.97 of the DRT wherein it has been mentioned as follows: "Postal receipts filed. The Counsel for applicant requests that the defendants be served through publication. I am satisfied that the defendants cannot be served in the ordinary manner. Hence, request for substituted service is allowed. They be served through publication in the Statesman at the cost of the applicant. Fixed for service report and WS on 27.1.1998.

He also points out the order dated 27.1.98 of the DRT, which mentions that the citation was filed, that all the defendants have been served through publication in the Statesman, and that they have not put in appearance. The learned Counsel for the appellant-defendants further points out that by order dated 10.3.98 the learned Presiding Officer of the DRT, observing that all the defendants have been served through publication, had set them ex pane. He further points out that even in the ex parte final order dated 24.3.98, the learned Presiding Officer has observed that efforts were made to get the defendants served through Registered Post and ordinary process, but they could not be served, that on the submission of the respondent, substituted service was allowed and defendants were served through publication, that the defendants did not appear in spite of service through publication, and thereby failed to show cause as to why the relief claimed by the respondent should not be granted.

10. The learned Counsel for the appellant-defendants contends that it is clear from all these aspects that the DRT did not pass the ex parte final order dated 24.3.98 on the basis that the appellant-defendants have been served personally, as is now sought to be contended by the respondent.

11. The learned Counsel for the appellant-defendants further contends that even in the reply to the application filed by the appellant-defendants before the DRT to set aside the ex parte final order, the respondent had alleged that the learned Presiding Officer of the DRT came to the conclusion that the appellant-defendants were evading service of summons, and so they should be proceeded ex parte.

He also points out the specific averment in paragraph 5 of the reply that the appellant-defendants had deliberately evaded the service of the summons, and

were keeping out of the way with the sole purpose of delaying and frustrating the claim of the respondent.

12. The learned Counsel for the appellant-defendants points out that the application to set aside the ex parte final order was filed before the DRT on 30.11.98, and after the respondent filed its reply, the application came up for hearing on 21.1.2000, and the learned Presiding Officer of the DRT had reserved orders on that application. He points out that the order on that application were pronounced on 28.4.2000. He further points out that even at the time of reserving the orders the respondent had not filed either the affidavit of Mr. Piyush Kumar, the Law Officer, along with the annexures, or even the affidavit of Mr.

R.N. Bishai, along with annexures, to show that the appellant-defendants had been served with the summons in the O.A. He points out that as conceded in the reply filed to this appeal by the respondent, the affidavit of Mr. Piyush Kumar, along with annexures, was filed on 14.3.2000 while that of Mr. R.N. Bishai, the Advocate's clerk, was filed on 13.4.2000. He, therefore, contends that it is clear that these two affidavits along with the alleged proof of service of summons in the O.A. on the appellant-defendants were filed subsequent to 21.1.2000, the day on which the learned Presiding Officer had reserved orders on the application for setting aside the ex parte final, order. Pointing out this aspect, the learned Counsel for the appellant-defendants contends that the learned Presiding Officer of the DRT, by taking note of these affidavits and the documents filed by the respondent after he had reserved orders on 21.1.2000, had observed that the appellant-defendants had been served through the 2nd appellant-defendant Mr. Meganathan. He contends that the appellant-defendants had no opportunity of meeting such a case, which was not even put forward either in the reply to the application to set aside the ex parte final order or even in the proceedings of the O.A.itself. He, therefore, contends that the reliance placed by the learned Presiding Officer of the DRT on those affidavits and documents without giving an opportunity to the appellant-defendants to put forth their case with reference to those affidavits and documents filed by the respondent after the learned Presiding Officer of the DRT had reserved orders on 21.1.2000, is clearly a violation of the principles of natural justice, and cannot be sustained at all.

13. I find from the records of the DRT also that the orders had been reserved by the learned Presiding Officer of the DRT on 21.1.2000.

Concededly, these two affidavits of Mr. Piyush Kumar and Mr. R.N.Bishai, along with the alleged proof of service of summons in the O.A.on the appellant-defendants, had been filed subsequently. The respondent has conceded in its reply to this appeal itself that the affidavit of Mr. Piyush Kumar was filed on 14.3.2000 while that of Mr.

R.N. Bishai was filed on 13.4.2000. Therefore, it is evident that the learned Presiding Officer of the DRT has taken note of these two affidavits and the alleged proof of service filed along with those affidavits, and had come to the conclusion in the impugned order that the appellant-defendants have been served through one of the defendants. In my view, the learned Presiding Officer of the DRT should not have placed reliance on those affidavits and documents without giving an opportunity to the appellant-defendants to put forward their case with regard to them. It is apparent that these documents were filed after the learned Presiding Officer of the DRT had reserved orders on the application to set aside the ex parte final order. There is nothing on record to show that the learned Presiding Officer gave any opportunity to the appellant-defendants to put forward their case in this behalf.

14. It is seen from the records of the DRT that on 21.1.2000 the learned Presiding Officer of the DRT fixed the case for orders on 29.2.000. The records of the DRT also show that on 29.2.000 the matter was simply re-notified for 15.3.2000, from 15.3.2000 to 28.3.2000, from 28.3.2000 to 17.4.2000, from 17.4.2000 to 28.4.2000 and that on 28.4.2000 the impugned order was passed. None of these orders show that the appellant-defendants were given any opportunity to put forth their case with regard to these two affidavits and the documents filed by the respondent to prove service of summons in the O.A. on the appellant-defendants. Therefore, the learned Presiding Officer of the DRT ought not to have placed reliance upon these affidavits and documents and held that the appellant-defendants have been served through one of the defendants. Therefore, the present contention of the respondent that the appellant-defendants had been served with the summons in

the O.A. and, therefore, their claim that they had no knowledge of the O.A. is false, cannot be accepted. The case of the appellant-defendants cannot be condemned on the basis of some material or evidence, to which they had not been called upon to give their reply or explanation.

15. Therefore, taking into consideration all these aspects, I am of the view that the case of the appellant-defendants that they had not been served with the summons in the O.A., and that they had no knowledge of the proceedings in the O. A., cannot be rejected at this stage.

16. But, this Tribunal being guided by the principles of natural justice. I am of the view that, at the same time, the case of the respondent that the appellant-defendants were served with the summons in the O.A. cannot and should not also be rejected at this stage. This is especially so, since the respondent has been able to find out about the alleged service of the summons subsequently. In my view, interests of justice require that the respondent should' be allowed to put forth its case that the appellant-defendants were served with the summons in the O.A., and also to produce the affidavits and the alleged proof of service on the appellant-defendants.

17; Naturally, this will call for granting opportunity to the appellant-defendants to put forward their case with regard to these two affidavits referred to above and also the documents which are alleged to be the evidence of service of the summons in the O.A. on the appellant-defendants. It is only after giving both the sides opportunity to put forth their case in this regard, the questions whether the appellant-defendants were served with the summons in the O.A., and whether they had the knowledge of the O.A. can be decided, and appropriate orders can be passed.

18. But, he learned Counsel for the respondent contends that the summons in the O.A. were despatched to the appellant-defendants, and the postal receipts for having done so were filed before the DRT, that neither the unserved envelopes addressed to the appellant-defendants, nor the acknowledgement for service had come back and, therefore, the learned Presiding Officer could presume that the appellant-defendants had been served. He, therefore, contends that the learned

Presiding Officer was justified in setting the appellant-defendants ex pane, and passing the final orders. But, I am of the view that this contention of the respondent cannot be accepted. First of all, the learned Presiding Officer has not proceeded on this basis and set the appellant-defendants ex parte. As pointed out already, on 10.12.97, when the postal receipts were filed, even the learned Counsel for the respondent had requested that the appellant-defendants be served through publication, and the DRT has observed that it was satisfied that the appellant-defendants cannot be served in the ordinary manner and, therefore, the request for substituted service was allowed. The DRT directed that the appellant-defendants be served by publication in the newspaper 'Statesman', I have also pointed out the order dated 10.3.98 passed by the DRT that all the defendants have been served through publication in the newspaper, and that the defendants are proceed ex pane. Thereafter, he had passed the final orders on 24.3.98, The learned Presiding Officer of the DRT before passing the final orders in the O. A. did not hold that the appellant-defendants should be deemed to have been served in view of the fact that the summons sent to them had not come back undelivered. When this was not the basis for proceeding against the appellant-defendants ex parte, and since the appellant-defendants were proceeded ex parts on the basis that they have been served through publication, the contention put forward by the respondent that the appellant-defendants should be deemed to have been served with the summons in the O.A, cannot be accepted. The fact that the Counsel for the respondent did not request the DRT to presume service on the basis that the summons had not been received back unserved, and the DRT also did not deem it fit to do so, but had ordered publication of the notice/summons in the newspaper as requested by the Counsel for the respondent also indicates that on 10.12.97 the respondent did not want and the DRT did not deem it fit to hold that the appellant-defendants should be deemed to have been served with notice/summons. For the same reason, the observations of the learned Presiding Officer of the DRT in the impugned order dated 28.4.2000 that for these reasons there was also a presumption of service of the summons on the appellant-defendants cannot be sustained.

19. But, the learned Counsel for the respondent further contends that even otherwise the DRT, after satisfying itself that the appellant-defendants cannot be

served in the ordinary manner, had ordered service on them by the mode of substituted service and, therefore, the service on the appellant-defendants by the mode of publication is also valid service. He, therefore, contends that when the appellant-defendants did not appear in pursuance of this publication of the summons in the newspaper, the learned Presiding Officer of the DRT was justified in setting them ex parte, and passing the final orders.

20. The learned Counsel for the appellant-defendants, on the other hand, contends that the order dated 10.12.97 of the DRT shows that the postal receipts had been filed, and the Counsel for the respondent had merely requested that the appellant-defendants be served through publication.

He points out that no application, not even an affidavit, was filed on behalf of the respondent alleging that the appellant-defendants were either evading service or could not be served in the ordinary manner.

He points out that the DRT without giving any reasons whatsoever has merely stated that it was satisfied that the defendants cannot be served in the ordinary manner. He, therefore, contends that the order of the DRT directing the service on the appellant-defendants by the mode of publication itself is not valid and, therefore, service by the mode of publication in the newspaper cannot also be a valid or proper service. He further contends that the 1st appellant-defendant is a concern, of which the 2nd appellant-defendant is the proprietor. He points out from the addresses of the defendants given in the O.A. itself that the 1st defendant is located in Chennai, while the appellant-defendants 2 and 3 are residents of Chennai. He contends that the newspaper 'Statesman' has no wide circulation in Chennai and, therefore, by publishing the summons in a newspaper which is not widely circulated in Chennai, the respondent cannot contend that the appellant-defendants must have gained knowledge of the proceedings in the O.A. from that publication. He also points out the case of the appellant-defendants that they were not aware of the publication also.

The learned Counsel for the appellant-defendants contends that the publication cannot be held to be valid in view of this factor also.

21. I agree with the learned Counsel for the appellant-defendants in this regard. First of all, there is nothing to show that the appellant-defendants were either evading service of the summons in the O.A., or that they could not be served by the ordinary process, The respondent had not filed any application supported by an affidavit that the appellants-defendants are either evading summons or that they cannot be served by the ordinary process. As pointed out already, on 10.12.97 the postal receipts for despatching the summons were filed, and the Counsel merely requested that the appellant-defendants be served through publication. Order passed on that day does not show that any affidavit regarding service was filed, or that the unserved postal envelopes had been filed. The order docs not even show that the Counsel for the respondent had even orally slated that the defendants cannot be served in the ordinary manner. Therefore, in the absence of such material it is not clear from the order as to how the DRT satisfied itself that the defendants could not be served in the ordinary manner.

If the present contention of the respondent that the appellant-defendants had been actually served is accepted on proper proof, then this observation of the DRT that the appellant-defendants could not be served in the ordinary manner, cannot be sustained, and will have no basis. Therefore, as on 10.12.97, there was no material available before the DRT to come to a conclusion that the appellant-defendants cannot be served in the ordinary manner, and on that basis pass the order for service on the appellant-defendants by the substituted mode, i.e., by publication in the newspaper. Therefore, this direction by the DRT that the appellant-defendants be served in the O.A. by publication of the summons in the newspaper, is not valid and, therefore, on the basis of an invalid publication of the summons, the appellant-defendants cannot be proceeded ex pane.

22. Further, there is nothing to show that the newspaper 'Statesman' was in wide circulation in Chennai, the place at which the 1st appellant-defendant is located and the appellant-defendants 2 and 3 reside. That is also a factor which will go to show that the publication of summons in the newspaper cannot be made the basis for proceeding against the appellant-defendants ex pane. Therefore, the contention of the respondent that the appellant-defendants have been rightly set ex parte and the final order, has been accordingly passed, cannot be accepted.

23. The learned Counsel for the respondent, of course, contends that there were some meetings for exploring the possibility of a settlement between the parties, and that the representative(s) of the appellant-defendants had attended the same. He, therefore, contends that the contention of the appellant-defendants that they were not aware of the proceedings cannot be accepted. In this connection, the learned Counsel for the respondent points out the copies of the Minutes of the Meeting dated 2.12.2000 wherein a Chartered Accountant, by name, A.B. Kannan, is stated to have attend the meeting. The Minutes also show that the respondent will continue to pursue its recovery proceedings filed and decreed in the DRT. He also points out the copy of the Minutes of another such Meeting dated 16.9.2001 wherein also it has been mentioned that it was without prejudice to the rights of the respondent in the recovery proceedings. The learned Counsel for the respondent points out that two persons had represented the appellant-defendants in this meeting dated 16.9.2001, But, in my view these meetings and proceedings thereunder cannot in any way affect the right of the appellant-defendants to put forward the contention that they were not served in the O.A. As pointed out already, they had filed the application to set aside the ex parte final order on 30.11.98 itself, whereas, these meetings had taken place in the years 2000 and 2001 only. Therefore, even if some representative(s) of the appellant-defendants had attended such meetings for exploring the possibility of a settlement, it does not mean that the appellants were aware of the proceedings in the O.A. when it was pending, or that they had been served with the summons. Therefore, this contention put forward by the respondent cannot be accepted.

24. In view of my finding above that the respondent should be given an opportunity to put forth their case that the appellant-defendants had been served with the summons in the O.A., and that the appellant-defendants should be given opportunity to put forth their case in this regard, I am of the view that while setting aside the impugned order dated 28.4.2000, the matter must be remanded back to the DRT for further consideration and fresh disposal of the application to set aside the ex parte final order in accordance with law and in the light of the observations contained in this order.

25. Of course, the learned Counsel for the respondent contends that the appellants have not stated in their application as to how they came to know about the passing of the final order. He contends that there is no specific mention in this regard in the application filed by the appellant-defendants to set aside the ex parte final order. In my view, this aspect of the matter can also be put forward before the DRT for its consideration and decision.

26. Accordingly, the appeal is allowed setting aside the impugned order dated 28.4.2000, and remanding the matter back to the DRT concerned for further consideration and fresh disposal.

27. The learned Presiding Officer of the DRT shall take back the Miscellaneous Application to set aside the ex parte final order on his file, give opportunity to the respondent to put forth its case that the appellant-defendants had been served with the summons in the O.A. The learned Presiding Officer shall also give opportunity to the appellant-defendants to put forward their case with regard to this claim of the respondent. The learned Presiding Officer of the DRT, after giving sufficient opportunity to both sides to put forth their case, shall dispose off the Miscellaneous Application to set aside the ex parte final order in accordance with law and in the light of the observations contained in this order.

28. For this purpose, the parties, through their Counsel, are directed to appear before the DRT on 5.8.2004 for taking further directions in this matter.

29. Copy of this order be furnished to appellant-defendants and the respondent. A copy be also forwarded to the DRT concerned.

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