

Debt Recovery Appellate Tribunal - Delhi

Shri Pramod Aggarwal vs Canara Bank on 2 December, 2003

Equivalent citations: IV (2004) BC 230

Bench: K Kumaran

ORDER K.S. Kumaran, J. (Chairperson)

1. Respondent-Canara Bank filed O.A. 40/99 before the Debts Recovery Tribunal-1, Delhi (hereinafter referred to as 'the DRT'). The DRT passed the final order on 22.5.2001 observing that the defendant/appellant was served by publication, but had not appeared before the DRT. The appellant, who is the only defendant, then filed a Miscellaneous Application before the DRT to set aside the ex parte final order. The learned Presiding Officer of the DRT, by the impugned order dated 27.11.2002, dismissed the said application. While doing so, the learned Presiding Officer observed that the appellant has been duly served, and the acknowledgement card for the same is on the record. He also observed that notice was also published in the newspaper. He, therefore, dismissed the application.

2. Aggrieved the appellant has preferred this appeal.

3. I have heard the Counsel for the appellant, and perused the records of the appeal as well as of the DRT.

4. First of all, the learned Counsel for the appellant points out that the addresses given in the O.A. are not correct. According to him, the appellant had shifted from Door No. 29-B, Door Sanchar Co-operative Housing Society, Patparganj, New Delhi to C-107, Takshila Apartments, I.P. Extension, Patparganj, New Delhi. He also contends the the appellant had no office at B-6 (Basement), Bhanot Corner, Pamposh Enclave, new Delhi. This apart, he also points out (from the records of the DRT itself) that the Appellant had given his address as that of Suhag Nagar in the application for granting overdraft facility as also in the pronote, whereas, no notice was taken to this address even.

5. The learned Counsel for the appellant points out from the day-to-day orders passed by the learned Presiding Officer of the DRT that notice was ordered on 2.2.99 for the hearing dated 9.3.99, and from 9.3.99 the case was adjourned to 29.3.99 as the affidavit regarding service had not been filed. He also points out that on 30.3.99 the learned Counsel for the respondent-Bank had filed the affidavit regarding service stating that the notices were served to the defendants on 4.2.99. He also points out that at the same breath it states that notices were returned with postal remarks "Left", and that the learned Counsel for the respondent-Bank had requested for ordering substituted service, which was allowed. The learned Counsel for the appellant also points out that the matter was ordered to be listed on 5.5.99 and thereafter was being adjourned from time-to-time, but ultimately on 28.1.2000 the learned Counsel for the respondent-Bank had produced a citation for publication of the notice in the newspaper dated 10.4.1999, and ultimately the appellant/defendant was proceeded ex parte on the ground that he was not present. He also points out that after some adjournments, the ex parte final order was passed on 22.5.2001.

6. The learned Counsel for the appellant pointing out above facts contends that the appellant was neither a resident nor was having any office at any of the addresses mentioned in the O.A. whereas, he has shifted his address, as pointed out already, to C-107, Takshila Apartment. I.P. Extension, Patparganj, New Delhi. He also points out that no attempts were made to serve the appellant at Suhag Nagar address mentioned in the application for over draft facility and pronote. He points out that without making any attempt to serve the appellant even at the above said address the mere oral request of the respondent-Bank for effecting substituted service was allowed just for the asking. He also points out that neither the Counsel for the respondent-Bank had slated that the appellant could not be served by any other mode, than by the mode of substituted service, nor has the learned Presiding Officer of the DRT recorded his satisfaction that the appellant could not be served by any other means or that he was deliberately avoiding service and, therefore, the defendant had to be served only by the mode of substitutes service. Therefore, he contends that the appellant/ defendant cannot be deemed to have been duly served by the mode of substituted service. I agree with the learned Counsel for the appellant in this respect. In view of what has been pointed out, the appellant cannot be deemed to have been duly served, especially, in view of the fact that the learned Presiding Officer of the DRT had not even recorded his satisfaction in this regard.

7. Of course, in the impugned order of the DRT, whereby the learned Presiding Officer of the DRT has declined the request of the appellant to set aside the ex parte final order, it has been observed that the defendant has been duly served, and there is an acknowledgement card on record. The learned Counsel for the appellant points out that the defendant had no office at the address mentioned in the acknowledgement card. He also points out that this acknowledgement card does not even bear the name of the appellant but merely says C/o M/s. Pramod Kumar Aggarwal and Co., Chartered Accountant. He further points out that it appear to have been signed by a person named Dharmender, who is not the appellant at all. He further points out even from the affidavit regarding service filed on behalf of the respondent-Bank enclosing this acknowledgement card, that it has merely been stated that it has been signed by some person, probably Dharmender, and it has not been mentioned as to what is the relationship between the appellant and the said Dharmender. He contends that this postal acknowledgement, purporting to be the evidence for service, had come to the knowledge of the appellant only after receipt of the impugned order. He points out that the records of the DRT show that the DRT has all along proceeded on the basis that the defendant had not been served, and he had to be served by the mode of substituted service. He also points out that even in the ex parte final order it has been stated in paragraph 8 that the appellant/defendant had been served by publication in the newspaper and not personally or by post. He contends that the appellant had not been served with any notice at all, and that he has no connection with the address mentioned in the postal acknowledgement, and that the appellant/defendant does not know who that Dharmender is. The learned Counsel for the appellant points out that the appellant has, therefore, filed two affidavits in this appeal stating that he was not served and the address is also not correct. In these circumstances, the learned Counsel for the appellant contends that it has to be held that there has been no due service of summons on the appellant/defendant and, therefore, the ex parte final order has to be set aside. The learned Counsel for the appellant contends that the appellant has good case on merits, and the appellant denies the issue of several cheques. I agree with the learned Counsel for the appellant, and in the circumstances pointed out, I am of the view that the appellant has to be given an opportunity to have his case decided on merits.

8. The learned Counsel for the appellant points out that before the DRT a Counsel had entered appearance on behalf of the respondent-Bank in response to the application to set aside the ex parte final order, but did not file any reply at all. He also points out that even before this Tribunal in spite of service on the respondent-Bank and a Counsel had undertaken to appear on behalf of the respondent-Bank, no one appeared and contested the case. He, therefore, contends that the case put forward by the appellant has to be taken as true/correct.

9. I agree with the learned Counsel for the appellant. In view of what has been pointed out above, the appeal has to be allowed setting aside the impugned order dated 27.11.2002 (dismissing the application filed by the appellant/defendant for setting aside the ex parte final order).

10. Accordingly, the appeal is allowed. The impugned order dated 27.11.2002 dismissing the application filed by the appellant/defendant to set aside the ex parte final order is set aside. The said application stands allowed.

11. The learned Presiding Officer of the DRT will take back the O.A. on file, give opportunity to the parties to put forward their case, including an opportunity to the defendant to file his written statement, and then dispose of the O.A. in accordance with law.

12. For this purpose, the appellant/defendant is directed to appear before the DRT on 7.4.2004 for taking further direction in the matter, without awaiting further notice from the DRT. The learned Presiding Officer will issue notice to the respondent-Bank for the same date for appearance and for taking further direction in the matter.

13. A copy of this order be furnished to the appellant, be served upon the respondent, and be also forwarded to the concerned DRT.