
(2019) 12 SEBI CK 0009

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No.407 Of 2019

Kishore V. Gandhi

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 12-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 14
Securities And Exchange Board Of India (Procedure For Holding Inquiry And Imposing Penalties By Adjudicating Officer) Rules, 1995 — Rule 7, 7(a), 7(c)
Securities And Exchange Board Of India (Prohibition Of Fraudulent And Unfair Trade Practices Relating To Securities Market) Regulations, 2003 — Regulation 3, 4
Securities And Exchange Board Of India Act, 1992 — Section 30

Citation : (2019) 12 SEBI CK 0009

Hon'ble Judges : Tarun Agarwala, Presiding Officer; Dr. C. K. G. Nair, Member; M. T. Joshi, J

Bench : Full Bench

Advocate : Kunal Katariya, Sourbahi Waknis, Vishal Kanade, Chirag Bhavsar, Eram Quraishi

Final Decision : ?Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. Against the order of the Adjudicating Officer imposing a penalty of Rs.10 lakhs the present appeal has been filed. The Adjudicating Officer held

that the appellant alongwith other entities had indulged in circular, reversal and synchronized trades thereby violating Regulations 3 and 4 of the

Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003

(hereinafter referred to as "PFUTP Regulations").

2. The penalty order has been imposed upon Kishor V. Gandhi, HUF. The present appeal has been filed by Kishor V. Gandhi contending that the

HUF was dissolved and, therefore, the present appeal was being filed in his individual capacity. Considering the peculiar facts of the case, we permit the appellant to pursue the appeal as the Karta of Kishor V. Gandhi, HUF.

3. The ground urged by the appellant are two folds, namely, that the show cause notice was never served upon the appellant and consequently was denied an opportunity of hearing. The second ground urged is, that the proceedings are liable to be quashed on the ground of laches in as much as there is an inordinate delay in initiating the proceedings.

4. In this regard, the relevant facts is, that the investigation period is 1st September, 2009 to 15th January, 2010. The Adjudicating Officer was appointed on 8th August, 2013 and the show cause notice was issued on 28th February, 2018.

The said show cause notice came back undelivered and consequently it was affixed at the last known address of the appellant on 14th April, 2018.

Subsequently, the notice for hearing fixing 12th June, 2018 and again for 16th July, 2018 came back undelivered and thereafter notice for hearing for

27th July, 2018 was served by affixation again at the last known address. In this fashion, substantial compliance was made by the Adjudicating Officer

who proceeded with the matter ex-parte and passed the impugned order.

5. We have heard Mr. Kunal Katariya, Advocate assisted by Ms. Sourbahi Waknis, Advocate for the Appellant and Mr. Vishal Kanade, Advocate

assisted by Mr. Chirag Bhavsar and Ms. Eram Quraishi, Advocates for the Respondent.

6. It was contended by the learned counsel of the appellant that the notice was sent at the address which he had vacated and sold to one Mr. Satish

Chowdhary in 2011 and, since then, the appellant had not been occupying the said premises. Thus, the question of service of summons does not arise.

7. The fact that the appellant had sold the premises and vacated the same has been denied by the respondent for want of knowledge. The respondents

however submit that the summons were sent at the last known address and when it came back undelivered the same was served by affixation at the

last known address and, consequently, service of the summons was made in accordance with Securities and Exchange Board of India (Procedure for

Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995.

8. In this regard, Rule 7 of the Rules is extracted as under:-

Service of notices and orders.

7. A notice or an order issued under these rules shall be served on the person in the following manner, that is to say,-

(a) by delivering or tendering it to that person or his duly authorised agent;

(b) by sending it to the person by registered post with acknowledgement due to the address of his place of residence or his last known place

of residence or the place where he carried on, or last carried on, business or personally works, or last worked, for gain:

(c) if it cannot be served under clause (a) or clause (b), by affixing it on the outer door or some other conspicuous part of the premises in

which that person resides or is known to have last resided, or carried on business or personally works or last worked for gain and that

written report thereof should be witnessed by two persons.

9. The aforesaid Rules provide the manner of service of the notice, namely, by delivering or tendering it to the person or to his authorized agent or by

sending it by registered post acknowledgment due to the address of his place of residence or his last known place of residence or the place where he

carried on, or last carried on, business. Rule 7(c) further provided that if the person cannot be served under the modes prescribed under Clause 7(a)

and (b) in that event service would be made by affixation at the place where he had last resided or carried on business.

10. In the instant case, we do not find anything on the record to indicate that any effort was made by the respondent to serve the notice personally.

Had this procedure been adopted the process server would have come to know as to whether the appellant was staying at the premises or had left the

premises. Thus, without complying with the procedure adopted under clause (a) under Rule 7 respondent cannot take steps to serve by way of speed

post or by affixation under clause (c).

11. We are also of the opinion, that the mode of service prescribed under Rule 7 is not exhaustive and other modes of service is available in addition to

the mode of service prescribed under Rule 7, for example, publication of notice in newspaper or service through email.

12. In addition to the modes prescribed under the Rules of 1995, other modes could also be utilized such as O29R2 of CPC or under the Securities and

Exchange Board of India (Manner of Service of Summons and Notices issued by

the Board) (Amendment) Regulations, 2007 which has been issued in exercise of the powers conferred by Section 30 of the SEBI Act, 1992 which provides various modes for tendering notice to a person which also includes service by electronic mail service.

13. Consequently, we are of the opinion that sufficient service was not made upon the appellant. Since the show cause notice was not served upon the appellant a vital right was denied to him to reply to the show cause notice and thereafter to defend himself. Such denial of right is violative of the principles of natural justice as embodied under Article 14 of the Constitution of India.

14. In our opinion, in the given circumstances, service of the summons pursuant to the show cause notice was insufficient even though the summons and the affixation of summons thereafter was done at the last known address. Service by affixation can only be resorted after all other attempts by other means are exhausted which in the instant case was not done. The affixation was done admittedly when the summonses were returned undelivered. No effort was made by the respondents to find out the correct address of the appellant after he vacated the premises.

15. In the light of the aforesaid, we are of the opinion, that the impugned order suffers from the principles of natural justice as embodied in Article 14 of the Constitution. We find that the appellant was not served and affixation of the summons was made at the address where the appellant had already vacated and left. We accordingly hold that the appellant was not served with the summons and the entire procedure proceeded ex-parte in violation of the principles of natural justice. On this short ground, the impugned order cannot be sustained and, therefore, it is not necessary for the Tribunal to dwell on the issue as to whether the proceedings should be quashed on the ground of laches.

16. We accordingly set aside the impugned order of the Adjudicating Officer. The appeal is accordingly allowed. The matter is remitted to the Adjudicating Officer to decide the matter afresh after giving an opportunity of hearing to the appellant. For this purpose, the appellant will appear before the Adjudicating Officer on 27th December, 2019 on which date he would be supplied with a copy of the show cause notice. The appellant will provide his residential and business address along with mobile numbers, land line

numbers and email address. The Adjudicating Officer will thereafter proceed with the matter and pass appropriate orders after providing the appellant an opportunity to file his reply and after giving an opportunity of hearing. It would be open to the appellant to raise all such grounds that are permissible in law before the Adjudicating Officer which if raised will be considered and dealt with.