

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 06.01.2022

**Misc. Application No. 1228 of 2021
And
Misc. Application No. 1 of 2022
And
Appeal No. 722 of 2021**

Ashish Pandey
N2 - 301, Paras Irene, Sector -70A,
Near SPR Road,
Gurgaon, Haryana-122001. Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. ... Respondent

Ms. Aishwarya Shubhangi, Advocate i/b Triad Law Chambers for
the Appellant.

Mr. Abhishek Khare, Advocate with Mr. Sharvil Kala, Advocate i/b
Khare Legal Chambers for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Justice M. T. Joshi, Judicial Member

Per : Justice Tarun Agarwala, Presiding Officer (Oral)

1. We have heard the learned counsel for the parties. The present appeal has been filed against the order dated February 24, 2021 passed by the Adjudicating Officer (hereinafter referred to as 'AO') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI').

2. There is a delay in the filing of the appeal. The ground urged is that the appellant was never served with the show cause notice nor was served with the impugned order and they only came to know about the impugned order when they searched the website of SEBI in August 2021.

3. A limited affidavit has been filed by the respondent contending that the show cause notice was sent at the last known address of the appellant at New Delhi on December 23, 2020 which returned undelivered and thereafter publication was made in two newspapers of Delhi, based on which the appellant was required to file a reply to the show cause notice. It was contended that in view of the publication, the appellant is deemed to have been served.

4. We find that the appellant has made a specific assertion that he had shifted his residence from New Delhi to Gurgaon Haryana on June 15, 2019. We further find that the procedure involved under Rule 4 of the Securities and Exchange Board of India (Procedure for

Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to 'Rules') has not been followed in the instant case. The respondent is required to deliver the summons personally and thereafter by registered post and thereafter by affixation and as a last resort by publication. We find that the appropriate procedure has not been followed in the right perspective and no steps have been taken to serve the summons personally or by affixation and if the same had been done the respondent would have got to know about the shifting of the appellant from the residence in question. In any case, publication in the newspapers is reputable presumption.

5. Considering the aforesaid, we are of the opinion that the appellant was not served with the show cause notice nor was served with any notice asking them to appear for hearing. We are of the opinion that the delay in the filing of the appeal has been sufficiently explained. Consequently, the delay is condoned. The application is allowed.

6. For the same reason, we are of the opinion that the proceedings were ex-parte and the appellant was not given an opportunity of hearing. Consequently, the impugned order cannot be sustained on this short ground and is set aside. The appeal is allowed and the

matter is remitted to the AO to pass a fresh order after serving a show cause notice and proceed from thereafter. In this regard, the appellant will appear before the AO on January 24, 2022 on which date the appellant would be served with the show cause notice and the matter will proceed from there onwards in accordance with law. In the circumstances of the case, parties shall bear their own costs.

7. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the Registry. In these circumstances, this order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Parties will act on production of a digitally signed copy sent by fax and/or email.

Justice Tarun Agarwala
Presiding Officer

Justice M. T. Joshi
Judicial Member

06.01.2022
PTM