

1965 *Present : Tambiah, J., and Sirimane, J.*
 THOMAS SILVA, Appellant, and CHARLOTTE SILVA,
 Respondent

S. C. 20/63—D. C. Panadura, 7695

Debt Conciliation Ordinance—Application for relief thereunder—Preliminary hearing—Failure to give notice of it to applicant by registered post—Effect—Sections 23 (2) and 54 (1).

When an application for relief is made under section 14 of the Debt Conciliation Ordinance the Board has no jurisdiction to dismiss it before notice fixing a date for preliminary hearing is sent by registered post to the applicant as required by section 23 (2) of the Ordinance. An application which is dismissed without jurisdiction must be regarded as still pending before the Board, and the provisions of section 54 (1) are not applicable to it.

APPEAL from an order of the District Court, Panadura.

E. B. Wikramanayake, Q.C., with *S. W. Jayasuriya*, for the defendant-appellant.

C. Ranganathan, for the plaintiff-respondent.

April 6, 1965. TAMBIAH, J.—

In this case the defendant made an application for relief under the Debt Conciliation Ordinance, and his application was received by the Board on 28.3.60. This application was fixed for preliminary hearing as required by Section 23 of the Debt Conciliation Ordinance. The question to be decided in this case is whether the order of the Board fixing the inquiry was sent by registered post to the applicant, who is the defendant in this case.

Section 23 (2) of the Debt Conciliation Ordinance is an imperative provision. At the trial Mr. Advocate Fernando, who appeared for the plaintiff, stated that he had no objection to certified copies of the Board proceedings being accepted. Mr. Advocate Jayasuriya marked

documents D1 to D4. D4 is the order made by the Board dated 31.5.61. In D4 there is a statement to the effect that the notice requiring the applicant to be present on the date of inquiry has not been sent to him from the office. Counsel for the appellant contended that this is not legal evidence on which the court can act.

If no notice as required by Section 23 (2) of the Debt Conciliation Ordinance was sent by registered post to the applicant, it is our view that the Board had no jurisdiction to dismiss the defendant's application, as it purported to do on 16.9.64. His application would, therefore, be pending, and it was unnecessary for the Board to have restored it back to the Roll, as it purported to do by the order contained in D4.

It is a fundamental rule of law that a party should be noticed before an order could be made against him—vide *De Mel v. M. W. H. de Silva*.¹

Mr. Ranganathan submitted that, where an application has been dismissed, that application can only be restored under the provisions of Section 54 (1) of the Debt Conciliation Ordinance.

In our view, Section 54 (1) only applies where the Board having jurisdiction to make such an order, dismisses the application.

If notice had not been served as required by Section 23 (2) of the Debt Conciliation Ordinance, the defendant's application was pending before the Board at the time of this action, and, therefore, this action should be dismissed.

We set aside the order of the learned District Judge and send the case back for re-hearing on the question as to whether notice of the order of the Board fixing the date of the preliminary inquiry was sent by registered post to the applicant, in conformity with Section 23 (2) of the Debt Conciliation Ordinance.

The costs of this appeal as well as the trial will abide the event.

SIRIMANE, J.—I agree.

Order set aside.
