

(2011) 01 GUJ CK 0062

In the Gujarat High Court

Case No : Special Civil Application No. 13630 of 2004

Ahmedabad Electricity Co. Ltd.

APPELLANT

Vs

Legend Shipbreaking Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 10-01-2011

Acts Referred:

Electricity Act, 2003 — Section 126, 127, 145, 50

Citation : (2011) 01 GUJ CK 0062

Hon'ble Judges : K.S. Jhaveri, J

Bench : Single Bench

Advocate : K.B. Pujara, for the Appellant; B.K. Damani, for Respondent 1 and Government Pleader for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

K.S. Jhaveri, J.—By way of present petition, the Petitioner has inter alia prayed for quashing and setting aside the action of the City Civil Court at Ahmedabad in entertaining Civil Suit No. 2610 of 2004 and in granting ex-parte injunction therein as well as to hold and declare that City Civil Court at Ahmedabad has no jurisdiction to entertain Civil Suit No. 2610 of 2004.

2. When present petition came up for admission hearing on 20th October 2004, this Court passed the following order:

Rule. Ad-interim relief in terms of para 11(d).

3. One of the main contentions of Mr. K.B. Pujara, learned advocate for the Petitioner, is that the Civil Courts' jurisdiction in such a matter has been completely barred as provided in Section 145 of the Electricity Act, 2003 (hereinafter referred to as "the Act"). In support of this submission, he has relied upon the decision of this Court in the case of Torrent Power AEC Ltd. Vs. Gayatri Intermediates Pvt. Ltd., and prayed that the present petition may be allowed.

4. Mr.B.K. Damani, learned advocate for the Respondent No. 1, has relied upon

the affidavit-in-reply and submitted that the order passed by the trial Court is just and proper and the same may be upheld by this Court by dismissing present petition.

5. Having considered the rival contentions raised by the learned advocates for the respective parties, averments made in the petition and the documentary evidence produced on record, it transpires that instead of making payment as per the assessment, the Respondent-Consumer preferred aforesaid Civil Suit and though the Civil Court's jurisdiction has been completely barred by Section 145 of the Act, the trial Court has entertained the suit and granted ex-parte ad interim injunction directing the Petitioner to maintain status quo.

6. It would be beneficial to reproduce the said Section 145 of the Act, which reads as under:

Section 145: Civil Court not to have jurisdiction:

No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Assessing Officer referred to in Section 126 or an Appellate Authority referred to in Section 127 or Adjudicating Officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action or to be taken in pursuance of any power conferred by or under this Act.

6. In support of his submission, Mr. Pujara has relied upon the decision of this Court in the case of Torrent Power AEC Ltd. (supra) and the relevant paragraph of the said decision is reproduced as under:

16. After undertaking the inquiry as mandated by the Apex Court in Dhulabhai case (Supra), we hold that the Electricity Act, 2003 read with the Central Government order dated 8th June 2005 and the Electricity Supply Code framed u/s 50 of the Act and the Statutory Regulations framed under the other provisions of the Act constitute a complete self-contained code in respect of criminal as well as civil liability in cases of theft of electricity and also in respect of the civil liability for unauthorised use of electricity. Hence, although there is no specific reference in Section 145 of the Act to exclusion of Civil Court to entertain any proceeding in respect of any matter which the Special Court is empowered by the Act to determine or any assessment (other than assessment u/s 126) which the licensee is empowered under the Act to determine, we are of the view that any dispute about the civil liability in theft cases is impliedly excluded from the jurisdiction of Civil Court.

(Emphasis supplied)

7. In view of aforesaid provision of law as well as in light of the decision of this Court, in my opinion, any dispute about the civil liability in theft cases is thus impliedly excluded from the jurisdiction of the Civil Court. Hence, the order passed by the City Civil Court, directing the Petitioner-Company to immediately reconnect the electricity connection of the Respondent, is bad in law, without

jurisdiction, null and void and is hereby declared as without jurisdiction.

8. In view of aforesaid, present petition is hereby allowed. The impugned order is quashed and set aside. The trial Court is directed to return the plaint to the original Plaintiff forthwith for presenting the same before the appropriate authority. Rule is made absolute with no order as to costs.