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**(2009) 11 GUJ CK 0081**

**In the Gujarat High Court**

**Case No :** Appeal From Order No. 314 of 2009 and Civil Application No. 9306 of 2009 in Appeal From Order No. 314 of 2009

Dakshin Gujarat Vij Company Limited

APPELLANT

Vs

Paramount Textile and Others

RESPONDENT

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**Date of Decision :** 26-11-2009

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10  
Electricity Act, 2003 — Section 126, 127, 135, 136, 137

**Citation :** (2009) 11 GUJ CK 0081

**Hon'ble Judges :** D.A. Mehta, J

**Bench :** Single Bench

**Advocate :** R.V. Acharya, for the Appellant; Nehal R. Joshi, for the Respondent

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**Judgement**

D.A. Mehta, J.—This Appeal has been preferred by the original plaintiff challenging order dated 29.8.2008 made by the Court of 2nd Additional Senior Civil Judge, Navsari in Special Civil Suit No. 40 of 2004 whereby the plaint has been ordered to be returned to the plaintiff under provisions of Order 7 Rule 10 of the Code of Civil Procedure, 1908.

2. The case of the Appellant, who is the original plaintiff, is that the Civil Court has committed an error in law in coming to the conclusion that it had no jurisdiction to entertain and try the suit considering the fact that the suit was only for recovery of outstanding amount of Rs. 4,37,355.87 ps. with delay payment charges and interest @ 18% p.a. from the date of the suit. According to the learned Advocate appearing for the plaintiff, the Civil Court has committed an error in considering that the subject matter of the suit was relatable to either theft of electricity energy or any offence relatable thereto and thus reference to provisions of Section 145 of the Electricity Act, 2003 (the Act) ousting the jurisdiction of Civil Court has wrongly been made. Similarly the finding that the suit has to be presented before the Special Court constituted u/s 153 of the Act is also incorrect. Learned Advocate invited attention to provisions of Section 135

onwards in support of the submissions made.

3. Learned Advocate appearing for the opponents, - original defendants in the suit submitted that in light of provisions of Sections 145 and 127 of the Act, the Civil Court had rightly come to the conclusion that it had no jurisdiction to entertain the suit. Referring to provisions of Sections 126 and 135 of the Act, it was submitted that the Act provides for redressal of grievances and in the circumstances, the Appeal was not required to be entertained.

4. Considering the scope of controversy, the Appeal is hereby admitted and taken up for final hearing and disposal today.

5. Section 126 of the Act relates to assessment and under Sub-section (1) of the said section, it is provided that if on an inspection of any place or premises etc., the Assessing Officer comes to the conclusion that such person is indulging in unauthorised use of electricity, the Assessing Officer shall provisionally assess to the best of his judgment the electricity charges payable by such person, or any other person benefited by such use. Thereafter, under various Sub-sections the mode and manner of making final assessment have been laid down. Section 127 of the Act relates to the provision regarding Appeal to the Appellate Authority. u/s 127(1) of the Act it is provided that any person aggrieved by the final order made u/s 126 of the Act may, within the prescribed period of limitation, prefer an Appeal in the prescribed form before the Appellate Authority.

6. In the present case, as recorded in paragraph No. 2 of the plaint, an assessment was framed in 2002 for a sum of Rs. 6,96,934.87 ps. against which the defendants made payment of a sum of Rs. 2,09,579/-. Thus the outstanding balance of Rs. 4,37,355.87 ps. was due and payable by the defendants. The defendants having failed to discharge the said liability, the plaintiff - the Electricity Supply Company, filed the suit in question for recovery of the said sum along with interest.

7. The plaintiff company was not the person aggrieved by the said assessment and the consequential demand made upon the defendants and therefore could not have invoked powers of Appellate Authority u/s 127 of the Act. Similarly the plaintiff company was not the person, who was alleged to have committed theft of electric power or any other offence for which action in law could be initiated against the plaintiff company. Therefore, the provisions of Section 153 of the Act which provide for constitution of Special Courts, and provisions of Section 154 of the Act, which provide for procedure and power of Special Court could not have been invoked because what is triable only by the Special Court is every offence punishable under Sections 135 - 139 of the Act. Nor is this a case where the plaintiff company is seeking to have the defendants punished or penalised for any of the offences punishable under Sections 135 - 139 of the Act. This is a simple suit for recovery of outstanding dues in relation to electricity consumption by the defendants in past.

8. Hence, merely because the assessment of the amount was made on the basis

of discovery of malpractice and the assessment was framed u/s 126 of the Act, or corresponding provision under the provisions of the old Act, recovery proceedings thereof cannot be either taken before the Appellate Authority or the Special Court. The Civil Court has therefore committed an error in law in coming to the conclusion that it had no jurisdiction to entertain and try the suit.

9. Accordingly, impugned order dated 29.8.2008 is hereby quashed and set aside and Special Civil Suit No. 40 of 2004 filed by the plaintiff company is restored to file of the Civil Court, Navsari, who is directed to hear and proceed with the suit in accordance with law.

10. The Appeal is allowed accordingly in the aforesaid terms.

11. In light of the order made in Appeal the Civil Application has been rendered infructuous and stands rejected accordingly.