

(2019) 05 P&H CK 0092

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 3543 Of 2018 (O&M)

Dakshin Haryana Bijli Vitran Nigam Ltd.

APPELLANT

Vs

Prem Kumar Narang And Another

RESPONDENT

Date of Decision : 10-05-2019

Acts Referred:

Electricity Act, 2003 — Section 49

Code Of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2

Citation : (2019) 05 P&H CK 0092

Hon'ble Judges : Amol Rattan Singh, J

Bench : Single Bench

Advocate : Prateek Mahajan, Sunil Kumar

Final Decision : Allowed

Judgement

By this petition, the petitioner Corporation (hereinafter referred to as "the Corporation"), challenges the orders passed by both the learned Courts below on an application filed by respondent No.1 (plaintiff in the suit) under Order 39 Rules 1 and 2 of the CPC, allowing such application, thereby directing the petitioner to release a temporary electricity connection in favour of the plaintiff, till the final disposal of the suit.

As already noticed in the previous orders passed on 29.03.2019 and 05.04.2019, Mr. Mahajan, learned counsel for the petitioner, had relied upon a judgement of the Supreme Court in *Dakshin Haryana Bijli Vitran Nigam Ltd. vs. M/s Paramount Polymers Pvt. Ltd.*, 2007(1) RCR (Civil), 396, wherein it was held that after the insertion of Clause 21(A) in the 'Terms and Conditions of Supply of Electrical Energy', (such terms and conditions stated to have been formulated under Section 49 of the Electricity Act, 2003), recovery of arrears of dues on any electricity connection can be made by the Corporation even from a subsequent purchaser of the property in which the connection was installed.

The reasoning given by the learned Courts below in allowing the application, is to

the effect that arrears of dues on account of an electricity connection do not constitute a charge over the property and consequently a transferee of the premises cannot be compelled to pay the dues as were to be paid actually by the previous owner of that premises (in whose name the electricity connection was installed at the relevant time).

This has been held by the trial Court even after noticing the judgement in the M/s Paramount Polymers Pvt. Ltd.'s case (*supra*).

Per contra, on the last date of hearing, learned counsel for the respondent/plaintiff had relied upon another judgement of the Supreme Court, in *Southern Power Distribution Company of Telengana Limited and others vs Gopal Aggarwal and others*, 2017(4) RCR (Civil) 710, to submit that where the new owner of a property was an auction purchaser and had not purchased the property directly from the previous owner, he would not be bound to clear the dues to an electricity company, as were payable by the previous owner.

Today, learned counsel upon another judgement of the for the respondent has further relied Supreme Court, in *Haryana State Electricity Board vs. M/s Hanuman Rice Mills, Dhanauri and others*, AIR 2010 SC 3835, to point out that in paragraph 6 of the said judgement it has been held as has been held in the judgement in *Gopal Aggarwal's* case (*supra*).

He further points out that the Harayan State Electricity Board is the predecessor-in-interest of the present petitioner Corporation.

Having considered the matter, whereas though what learned counsel for respondent no.1 submits is obviously correct to the extent that the petitioner corporation is the successor to the Haryana State Electricity Board and therefore the aforesaid appeal before the Supreme Court was virtually of the present petitioner itself, yet, even in that judgement, it has been held as follows by their Lordships (in paragraph 9 thereof) :-

"9. The position therefore can may be summarized thus :

(i) Electricity arrears do not constitute a charge over the property. Therefore in general law, a transferee of a premises cannot be made liable for the dues of the previous owner/occupier.

(ii) Where the statutory rules or terms and conditions of supply which are statutory in character, authorize the supplier of electricity, to demand from the purchaser of a property claiming re-connection or fresh connection of electricity, the arrears due by the previous owner/occupier in regard to supply of electricity to such premises, the supplier can recover the arrears from a purchaser."

Hence, it has been held that though electricity arrears do not constitute a charge on the property in which the connection is installed and therefore a transferee of the premises cannot be held liable to pay the dues as were liable to be paid by the previous owner/occupier thereof, yet, once a statutory rule or the terms and

conditions of supply (also observed in that judgement to be statutory in character), authorise the supplier of electricity to demand even from the purchaser of the property such dues as a condition precedent to installing a new connection in his premises, the only remedy with the new purchaser is to seek recovery of the arrears of the dues paid by him from the previous owner.

It is to be further noticed that the aforesaid judgement duly took notice of Clause 21(A) of the 'Terms and Conditions of Supply of Electricity Energy' as has been referred to by Mr. Mahajan, learned counsel for the petitioner; but in the circumstances of that case, it was held that the said clause having been inserted on November 27, 2001, with the property having been purchased in that case by the subsequent consumer (respondent before the Supreme Court) on 16.01.1991, and the demand for the arrears having also been made in the year 16.01.1995, the new clause would have no application.

Thus the ratio of the judgement is actually to the effect that if the statute lays down a condition precedent, for installing a connection in a premises, such condition being payment of arrears due from a previous consumer in that premises, the subsequent consumer has to comply with that condition, with his remedy being recovery of such dues from the previous consumer.

That being so, this petition is allowed with the impugned order set aside, but with no comments made on the rights of the parties qua each other, because learned counsel for the respondent/plaintiff has further pointed out that the Corporation Bank is also a party to the suit and consequently, as to who eventually is liable to pay the arrears due to the petitioner Corporation, is a matter to be settled by the trial Court on the basis of evidence led before it.