(2013) 03 GUJ CK 0049

In the Gujarat High Court

Case No : Appeal From Order No. 438 of 2012 with Civil Application No. 12446 of 2012 in Appeal From Order No. 438 of 2012

Executive Engineer (OandM) DGVCL APPELLANT

Vs

M/s. Ashok Organics Industries Ltd. RESPONDENT

Date of Decision : 08-03-2013

Acts Referred:

Citation : (2013) 03 GUJ CK 0049

Hon'ble Judges : Rajesh H Shukla, J

Bench : Single Bench

Judgement

Rajesh H. Shukla, J.—The present Appeal from Order has been filed by the appellant-original plaintiff, Dakshin Gujarat Vij Co. Ltd., being aggrieved with the order passed below Exh. 38 in Special Civil Suit No. 26/99 dated 13.7.2012 by the Principal Sr. Civil Judge, Ankleshwar on the grounds stated in the Appeal from Order. Heard learned advocate Ms. Lilu Bhaya for the appellant and learned counsel Shri Bijal Chhatrapati for M/s. Singhi & Co. for the respondent.

2. As is evident from the impugned order recording the details and the past history about the litigation, the appellant is the licensee under the Indian Electricity Act for distribution of electricity and the respondent is the consumer. The facts briefly stated are that the appellant filed Special Civil Suit No. 26/99 in the Court of the Civil Judge (S.D.), Bharuch, for recovery of the dues. The respondent herein filed the aforesaid application Exh. 38 referring to the fact that Special Civil Suit No. 192/2002 and 290/2001 have already been filed and the matter was referred to the Arbitrator. The Arbitrator/officer of the appellant original plaintiff, after considering the relevant material and rival submissions, passed an award in favour of the respondent company which was carried by way of appeal before the High Court being First Appeal No. 2512/2000 which is pending. It is therefore stated in the application Exh. 38 filed by the respondent for supply of electric connection subject to the order that may be passed in the litigation. The court below having considered the rival submissions passed an

order. It is required to be mentioned that earlier also this very application Exh. 38 seeking electric connection was heard by the learned Principal Sr. Civil Judge allowing the application. Against that, Appeal from Order No. 318/2011 with Civil Application No. 2348/2011 has been preferred by the appellant original plaintiff DGVC Ltd. The High Court, in the aforesaid Appeal from Order No. 318/2011 with Civil Application No. 2348/2011, vide order dated 18.6.2012 set aside the order below Exh. 38. Further, as per the order passed by the court when the arbitration award has been made in favour of respondent company, the same has been carried by way of First Appeal No. 2512/2000 by the appellant original plaintiff challenging the arbitration award. No stay has been granted and it refers to the same amount and it is also touching the contentions and the issues in Special Civil Suits Nos. 290/2001 and 192/2002.

3. It is therefore contended that merely because the appellant plaintiff is having a monopoly cannot act in such a manner and refuse to comply with the orders and directions that, though the arbitration award is in favour of the respondent and though in the appeal filed by the appellant plaintiff no stay has been granted, it cannot refuse to grant the electric connection under an excuse of Electricity Supply Code and related matters, the terms and conditions of tariff.

4. Learned advocate Ms. Bhaya for the appellant pointedly referred to the aforesaid Rules and particularly Clause 4.1.11 to emphasise that unless the dues are cleared and paid, the appellant-original plaintiff Company cannot be directed to supply the electricity. It was submitted that as per the provisions of the erstwhile Electricity Act, Conditions of Supply, Rule 2 would be attracted and the consumer would be bound by such provision. Learned advocate Ms. Bhaya submitted that as stated in the affidavit-in-reply, the appellant plaintiff is justified in not granting the electric connection. She pointedly referred to the application Exh. 38 and submitted that the name of the company has been changed from Ashok Organics Industries Ltd. to Kumaka Industries Ltd. She submitted that Ashok Organics was a sick unit way back in 2010 and considering the provisions of the Conditions of supply, if the dues are not paid, electricity supply cannot be granted. Sue further submitted that the respondent has not come with clean hands. She submitted that though the earlier civil suit and other proceedings are pending, the application Exh. 38 is decided. She submitted that instead thereof, the whole suit could have been decided. Therefore, learned advocate Ms. Bhaya submitted that the impugned order is erroneous and is required to be quashed and set aside.

5. She submitted that the present proceedings are barred by the principles analogous to res judicata. In support of her submission, she has referred to and relied upon the judgment of the Hon''ble Apex Court in a judgment in the case of Haryana State Electricity Board Vs. Hanuman Rice Mills and Others, . She has pointedly referred to the observations made in para 9 and 10 to support her submission that if the statutory rules provide for clearance of the dues from purchaser of a property before the re-connection of electricity could be granted,

it is just and proper and the respondent cannot be claiming any undue advantage by not making the payment. She has also referred to and relied upon the judgment of the Hon''ble Apex Court in the case of Paschimanchal Vidyut Vitran Nigam Ltd. and Others Vs. DVS Steels and Alloys Pvt. Ltd. and Others, . She emphasised that the purchaser or the lessee has to exercise necessary care that dues up to the date of such purchase are cleared. She pointedly referred to the observations made in para 12 which reads as under:

12. But the above legal position is not of any practical help to a purchaser of a premises. When the purchaser of a premises approaches the distributor seeking a fresh electricity connection to its premises for supply of electricity, the distributor can stipulate the terms subject to which it would supply electricity. It can stipulate as one of the conditions for supply, that the arrears due in regard to the supply of electricity made to the premises when it was in the occupation of the previous owner/occupant, should be cleared before the electricity supply is restored to the premises or a fresh connection is provided to the premises. If any statutory rules govern the conditions relating to sanction of a connection or supply of electricity, the distributor can insist upon fulfillment of the requirements of such rules and regulations. If the rules are silent, it can stipulate such terms and conditions as it deeds fit and proper to regulate its transactions and dealings. So long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable, courts will not interfere with them.

6. Learned counsel Shri Bijal Chhatrapati appearing for the respondent company referred to the application Exh. 38, the affidavit-in-reply in the present Appeal from Order referring to the past background and submitted that in fact earlier in a dispute or a litigation between the same parties, the Division Bench of the High Court has passed an order in Civil Application No. 9819 of 2000 in First Appeal No. 2512 of 2000 dated 26.2.2001. Learned counsel Shri Chhatrapati pointedly referred to the observation made which reads,

...The effect of the stay of the award would be that the original bills will revive. Such a course cannot be adopted at this sage.

Learned counsel Shri Chhatrapati, therefore, submitted that the Arbitrator, Shri B.K. Patel, Ex. Member (Technical), Gujarat Electricity Board, was appointed as an Arbitrator who has passed an award in favour of the respondent company with complete details and though it has been challenged by way of aforesaid First Appeal No. 2512 of 2000, the stay has not been granted. He, therefore, submitted that, in fact, no such suit could have been filed for recovery when the Division Bench of the High Court had declined to interfere. However, as it has been observed in the earlier order of the High Court in Civil Application No. 9819 of 2000 in First Appeal No. 2512 of 2000 that it will be open for GEB to effect recovery in accordance with law, the suit has been filed. Learned counsel Shri Chhatrapati referred-to the same as well as the reply filed by the appellant plaintiff to the application Exh. 38 in Special Civil Suit No. 26/99. He submitted that name of the company has been changed according to the procedure required to be followed under the companies law and the certificate has also been issued. He submitted that necessary applications which have been filed also contained necessary details and only the name of Ashok Organics has been changed to Kumaka Industries and therefore in the new name the electric connection is sought. Learned counsel Shri Chhatrapati submitted that merely because the name has changed, the same has been interpreted as if the respondent is a purchaser or a successor of the earlier defaulter company and based on that they are insisting for clearance of the dues of Ashok Organics. Learned counsel Shri Chhatrapati however submitted that as stated it is the same company and only the name has been changed. He further emphasised and submitted that the suit has been filed by the appellant plaintiff in respect of the same amount and the same bill issued to the erstwhile Ashok Organics which is a matter of litigation in the past and the Arbitrator has passed an award in favour of the respond company.

7. He further submitted that though the award is in favour of the respondent, the same is challenged by way of appeal and though no stay has been granted, refund or the amount of the respondent company are not paid. He therefore submitted that it is only an arm-twisting that if the electricity supply is required then they must succumb to the pressure because they are having the monopoly and therefore one after another litigation is used as and by way of an abuse and therefore the present Appeal from Order may not be entertained.

8. Learned counsel Shri Chhatrapati has also referred to the order in Special Civil Application No. 2582 of 2012 passed by the Full Bench of the High Court consisting of the Hon''ble Chief Justice and A.L. Dave and V.M. Sahai, JJ.

9. In rejoinder, learned advocate Ms. Bhaya has also referred to this judgment and emphasised the observations and submitted that the subsequent purchaser cannot be foisted with the liability would not have any relevance in view of the statutory rules governing the conditions regarding sanction for connection of electricity supply where it could be insisted that requirement of the rules should be complied with. She therefore submitted that the rules provide for clearance of all dues before the supply to be made. She therefore submitted that the present Appeal from Order may be allowed and the impugned order below Ex. 28 in Special Civil Suit No. 26/99 may be quashed and set aside.

10. In view of rival submissions, it is required to be considered whether the present Appeal from Order can be entertained or not.

11. As is evident from the chequered history and the rival submissions the respondent company has only changed the name and there were outstanding dues for which earlier a suit was filed. It is not in dispute that the Arbitrator was appointed and has made an award in favour of the respondent company. Further, when the issue was joined with regard to the bills for the same period which was referred to the Arbitrator and the Arbitrator has, on the contrary, passed an order in favour of the respondent, the contentions which have been raised by

learned advocate Ms. Bhaya for the appellant cannot be readily accepted. In fact, whether the subsequent suit No. 26/99 filed for recovery of the so-called outstanding dues would be maintainable, is a question which is required to be considered on the basis of the material and evidence at the trial. Further, it is not in dispute that the respondent Ashok Organics has changed the name to Kumaka Industries. It is very evident and to the knowledge of the appellant that it is the change of name, but the liability for consumption of electricity in the past continues. In fact, the Arbitrator has considered all the disputes with regard to supply of electricity and has passed an award in favour of the respondent company that they are not liable to pay and some amount is required to be refunded. This award is a subject-matter of First Appeal No. 2512 of 2000 before the high Court where the High Curt has declined to grant any stay, meaning thereby the award has to be complied with when the stay has not been granted by the High Court As against that, the appellant plaintiff has, on the contrary, filed the aforesaid Special Civil Suit No. 26/99 for alleged recovery of the same outstanding dues and in the name of outstanding dues as provided in the statutory rules it has been made a shield or an excuse to deny the supply of electricity.

12. Therefore, the submissions made by learned counsel Shri Chhatrapati that merely because the appellant is having a monopoly under the Electricity Act, they cannot be permitted to resort to such arm-twisting and the citizens cannot be permitted to be at their mercy. The court below having considered the rival submissions has therefore specifically passed an order directing the supply of electricity which cannot be said to be erroneous.

13. Though the submission has been made that a mandatory order is made contrary to the statutory provisions, it has to be considered in background of the facts. It is well-settled that any rule or law has to be applied in context and background of the facts. Therefore, considering the scope of the Appeal from Order for the purpose of disturbing the discretionary order passed by the court below, the present Appeal from Order cannot" entertained. It is well-accepted that normally the appellate court would not interfere with the discretionary order unless it can be said to be perverse or misdirected or contrary to the material and evidence. In the facts of the present case, it cannot be said that the court below has not considered the relevant aspects and the material including the criteria for grant of injunction and background of the facts. Therefore, it does not call for any interference.

14. Further, the Hon''ble Apex Court in a judgment in the case of Wander Ltd. and Another Vs. Antox India P. Ltd., , has observed,

The appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court''s exercise of discretion.

Thus, it has been observed that even if the appellate court, on appreciation of material, may come to a different conclusion, still, it would not be justified in interfering with a discretionary order merely because the other view is plausible.

15. In view of the discussion and considering the events and the conduct of the parties, it cannot be said that the order is erroneous, much less perverse. It is required to be mentioned that the authorities or the bodies like the appellant who are performing under a statute are under an obligation to function within the bounds of law and cannot resort to pressure tactics by applying or rather abusing the statutory provision whether such provisions are attracted or not. Though the regulation provides for clearance of the outstanding dues, it has to be considered in background of the facts like in the present case where there is a serious dispute as to whether there are any outstanding dues or not. Therefore, merely to deny or disentitle the respondent from claiming the electric connection pressure tactics should not be applied for alleged recovery which is subjected to the round of litigation and in fact it has not been finally claimed that there is any outstanding dues.

16. Therefore, there is no justification to interfere with the impugned order and the present Appeal from Order deserves to be dismissed and accordingly stands dismissed. In view of dismissal of the Appeal from Order, the Civil Application would not survive and the same is accordingly disposed of.