(2013) 03 GUJ CK 0045

In the Gujarat High Court

Case No : Appeal From Order No. 439 of 2012 with Civil Application No. 12448 of 2012 in Appeal From Order No. 439 of 2012

Executive Engineer (OandM) DGVCL — APPELLANT

Vs

M/s. Kadakia Alkalies and Chemicals Ltd. — RESPONDENT

Date of Decision : 08-03-2013

Acts Referred:

Citation : (2013) 03 GUJ CK 0045

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 impugned order passed below Exh. 41 in Special Civil Suit No. 176/2001 dated 12.7.2012 by the Principal Sr. Civil Judge, Ankleshwar on the grounds stated in the memo of appeal. As per the history of facts which have been referred to in the impugned order as well as the record, the respondent had applied for connection of electricity for the purpose of running the Institute of Management and Computer Studies. There is a background of the previous litigation where earlier the appellant original plaintiff had filed Special Civil Suit No. 133/2002 and ultimately the matter was referred to the Arbitrator. The Arbitrator has, after considering the material and the submissions of the parties, passed an award that the appellant original plaintiff is not entitled to claim any amount as there is no outstanding dues. The said award of the Arbitrator came to be challenged by the appellant-plaintiff by way of First Appeal No. 2511 of 2000 which is pending. However, no stay has been granted. In other words, in spite of the award of the Arbitrator in favour of the respondent and in spite of the fact that no stay has been granted in the aforesaid First Appeal No. 2511/2000, the appellant plaintiff is insisting for payment of the so-called outstanding dues, which has led to this controversy. In fact, the submissions have been made at length with regard to conduct of the respondent and also the same contentions have been raised. A detailed order has been passed in Appeal from Order No. 438 of 2012 with Civil

Application No. 12446 of 2012 dealing with the rival submissions at length and therefore all the submissions have not been recorded in detail as the issues involved are the same.

2. Learned advocate Ms. Bhaya for the appellant pointedly referred to the Supply Code framed by GERC 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.

3. Per contra, learned counsel Shri Bijal Chhatrapati for the respondent submitted that there are no outstanding dues for which the supply of electricity could not be granted. He strenuously submitted that in fact the arbitration award is in favour of the respondent and in spite of that illegal recovery is sought to be insisted for denying electricity supply. Learned counsel Shri Chhatrapati submitted that merely because the appellant plaintiff is a monopoly organization, it cannot be permitted to behave in a manner that the respondent and others are at their mercy and they can resort to arm-twisting for the purpose of recovering the alleged dues which are not outstanding at all. He submitted that if the amount is paid it would come to that, that in spite of the Arbitrator''s award the payment is made and the respondent has to succumb to their pressure. It is in this background when the impugned order came to be passed, it cannot be said to be erroneous.

4. In view of the rival submissions and having regard to the facts and circumstances, it is required to be considered whether the impugned order is erroneous which would call for any interference or not.

5. The Court below has considered the provisions of GERC Supply Code and the Regulations and the emphasis which has been given referring to Clause 4.1.11 that if the dues are outstanding, the electric connection cannot be granted, has to be considered in background of the facts. The appellant plaintiff cannot be permitted to take shield behind such rule ignoring the relevant facts and the background as discussed above. Therefore, the impugned order directing to supply electricity cannot be said to be erroneous which would call for any interference.

6. It is well-accepted by catena of judicial pronouncements that normally the appellate court would not interfere with the discretionary orders passed by the trial court unless it can be said to be perverse or without considering the relevant material or is totally misdirected. In the facts of the present case, as is evident from the impugned order, the court below has considered all the relevant aspects including the criteria for grant of injunction, and having considered the background of the facts with regard to the nature of the outstanding dues with

reference the arbitration award, the order has been passed which cannot be said to be erroneous, much less perverse.

7. Moreover, a useful reference can be made to the judgment of the Hon''ble Apex Court in the case of Wander Ltd. and Another Vs. Antox India P. Ltd., , wherein it 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, the observations have been made that the appellate court would not interfere with a discretionary order even if, on the basis of the material, a different view is plausible. In other words, merely because a different view is plausible, it would not justify interference with the discretionary order unless it can be said to be perverse.

8. In the facts of the present case, as discussed above, where there are serious disputes about any outstanding amount, and in fact there is an award by the Arbitrator in favour of the respondent, it could hardly be claimed that there are any outstanding dues and therefore such rule cannot be applied to deny electric connection to the respondent. Resorting to such rule as a shield is rather unfortunate and the submission made by learned counsel Shri Chhatrapati that it is merely an arm-twisting only because the appellant is a monopoly is well-founded. It is also required to be mentioned that though the appellant plaintiff may be a monopoly, it is functioning under the statutory provision or the Act and they are required to function as per the law and not in an arbitrary manner.

9. Therefore, the present Appeal from Order does not call for any interference and 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.