

(2010) 09 BOM CK 0077
In the Bombay High Court
Case No : First Appeal No. 397 of 2003

G.T. Iron and Steel Works

APPELLANT

Vs

Maharashtra State Electricity Board

RESPONDENT

Date of Decision : 23-09-2010

Acts Referred:

Conditions and Miscellaneous Charges for the Supply of Electrical Energy Rules — Rule 27
Electricity (Supply) Act, 1948 — Section 49
Electricity Act, 1910 — Section 24(1), 53
General Clauses Act, 1897 — Section 27
Limitation Act, 1963 — Article 14, 15, 18
Sales of Goods Act, 1930 — Section 2(7)

Citation : (2011) 2 BomCR 393

Hon'ble Judges : A.M. Khanwilkar, J;A.A. Sayed, J

Bench : Division Bench

Advocate : Vishal Kanade, Shreevardhini Parchure, instructed by, Negandhi Shah and Himayatullah, for the Appellant; A.R.S. Baxi, for the Respondent

Final Decision : Dismissed

Judgement

A.A. Sayed, J.—The above appeal is directed against the judgment and decree dated 15th June, 2002, passed by the Civil Judge, S.D., Kalyan, whereby the suit filed by the Respondents/original plaintiffs came to be decreed with costs. By the impugned judgment and decree the Appellants/original defendants were ordered to pay to the Respondents/original plaintiffs a sum of Rs. 18,40,000/- with interest thereon at the rate of 18% p.a. from the date of filling of the suit till realization.

2. The facts of the case need to be briefly stated:

The suit was filed by the Maharashtra State Electricity Board, which was an autonomous statutory Board constituted under the provisions of Electricity (Supply) Act, 1948 for the purpose of generating and supplying electricity for various purposes throughout the State of Maharashtra. During the course of

hearing of the present Appeal, Maharashtra State Electricity Distribution Company (MSEDCL) was brought on record, having replaced the Board pursuant to the transfer scheme of the State Government and the Electricity Act 2003. The Appellants/original defendants are a proprietary firm and one Shri G.S. Kyal is the proprietor thereof. The Appellants' factory is situated at plot No. C-14, Dombivali Industrial Estate Area, Tal. Kalyan, Dist. Thane, where they were manufacturing M.S. Round Flats and Angles. On 20th March, 1970, the Appellants, then a partnership firm, entered into an agreement with the Respondents/original plaintiffs for electricity supply for their factory. The constitution of the firm of Appellants was changed to proprietary concern and Mr. G.S. Kyal became the sole proprietor of Appellants. Pursuant thereto, a new Agreement was executed on 13th July, 1973 between Respondents and the Appellants and the electricity supply was continued as per the terms and conditions of the said Agreement dated 13th July, 1973. The initial period of the Agreement expired on 31st March, 1977 and thereafter the said Agreement was in force from year to year ending on 31st March of each year. Under the said Agreement, the Appellants were liable to pay to the Respondents the charges for electricity supply as per the tariff rates revised from time to time.

3. The Appellants became a sick unit and fell in arrears of payment for supply of energy amounting to Rs. 4,06,443.61p from 1st January, 1982 to 31st October, 1985. The sole proprietor of Appellants then filed Writ Petition being Writ Petition No. 3511 of 1986 in this Court for quashing the minimum charges and delayed payment charges amounting to Rs. 3,51,819.09p. This writ petition was filed sometime on 18-12-1986. Since the Appellants did not pay the energy charges and remained in arrears, the supply to the Appellants factory was temporarily disconnected on 10th March, 1987 for non-payment of energy charges. The Respondents also addressed a notice dated 11th March, 1987 to the Appellants to pay the amount of arrears plus interest at the rate of 18% p.a. The notice stated that if the amount was not received within 7 days from the Appellants, the electric supply would be permanently disconnected.

4. The electricity supply ultimately came to be disconnected permanently on 02-12-1988. The Appellants vide their letter dated 8th March, 1989 requested the Respondents for reconnection and undertook to abide by the Government orders dated 20th January, 1989 and 24th January, 1989 which granted the Appellants certain concessions. Accordingly, the Respondents by their letter of even date viz. 8th March, 1989 granted installments to the Appellants for payment of the arrears of Rs. 3, 91,981.31p and interest amounting to Rs. 81,864.06p accrued thereon till 31-03-1989. The Appellants gave an Undertaking on 4th May, 1989 that they would pay the amount of arrears as stated above in 12 monthly installments of Rs. 39,487.11p, the first installment of which was paid on 28-03-1989 as reflected in the Undertaking itself. The Undertaking also set out that the Respondents would have full right to appropriate the payment made by the Appellants against the future bills. The Appellants also agreed to pay delayed payment charges as per rules. However, despite the Undertaking the

Appellants failed to pay the amount as stated in their Undertaking.

5. The Respondents sent a final bill dated 18th January, 1993 in respect of electric supply under cover of their letter of even date and called upon the Appellants to pay the amount of arrears within 7 days. As per the final bill dated 18th January, 1993, the amount claimed by the Respondents was Rs. 18,40,000/- which included interest at the rate of 18% p.a. On the Appellants' failure to pay the amount, the Respondents filed the suit on 6-02-1993.

6. The Appellants filed their written statement resisting the claim of the Respondents. The Appellants firstly, contended that the suit was barred by law of limitation. The Appellants next contended that the arrears of demand was not properly computed and denied that they were in arrears of Rs. 4,06,443.61p from 1st January, 1982 to 31st October, 1985. According to the Appellants, the Respondents had not given particulars as to how the Respondents had arrived at the figure which was being claimed in the suit. The Appellants also disputed the demand for payment of interest. The Appellants admitted that the Respondents vide their letter dated 8th March 1989 had made offer for payment of alleged arrears and interest by installments. The demand, however, according to the Appellants, was not correct and was not justified. The Appellants admitted the Undertaking, however contended that the Undertaking was not to be acted upon. The Appellants averred that the contract between the Respondents and the Appellants was terminated by the Respondents by permanent disconnection of supply on 2nd December, 1988, when the meter was removed from the Appellants' factory premises by the Respondents. The Appellants denied that the Respondents had prepared the alleged final bill dated 18th January, 1993 or that the said final bill was sent to them along with alleged letter dated 18th January, 1993.

7. At the trial, the Respondents examined two witnesses. The Appellants also examined two witnesses, one of them being Mr. G.S. Kyal, the sole proprietor of the Appellants. On the basis of the pleadings and evidence, the trial Court by the impugned judgment and decree ordered the Appellants to pay a sum of Rs. 18,40,000/- with interest thereon at the rate of 18% p.a. to the Respondents from the date of filing of the suit till realization. It is this judgment and decree which is the subject matter of the present appeal.

8. We have heard the learned Counsel for the parties. In light of the rival contentions and considering the oral and written submissions of the Id. Counsel for the parties, the points arising for determination in this Appeal and our findings and reasons therefore are set out hereinafter.

Reasons

Point No. 1

9. The point of limitation is the principal challenge of the Appellants in this Appeal. It is not in dispute that in the present case the period of limitation would

be 3 years from the date when the cause of action arose. The question really to be addressed is when did the cause of action in the present case accrue in favour of the Respondents to file the suit. The Id. Counsel for the Appellants would contend that the cause of action arose sometime on 1st December 1988 when the last electricity bill dated 1st December 1988 (Ex 120) was raised and sent to them; and at best the cause of action arose on 4th May 1989 when the Appellants had given their Undertaking dated 4th May 1989 (Ex 58) to pay the arrears in installments. It is contended that inasmuch as the suit is filed on 6th February 1993, which is beyond the period of 3 years even from 4th May 1989, the suit would be barred by limitation by virtue of Article 15 of the Limitation Act 1963. The Id. Counsel for the Appellants placed reliance on the decisions of Ld. Single Judge of Delhi High Court in the case of New Delhi Municipal Council Vs. Ashok Kumar Ahuja, and Ld. Single Judge of Karnataka High Court in the case of Commissioner of Wealth-tax Vs. K. Ravindranathan Nair, . in support of his contention that the period of limitation in the present case would be 3 years from the accrual of the cause of action. It is submitted that the alleged final bill dated 18-01-1993 (Exh 61) was a fabricated document and prepared only for the purpose of bringing the suit within limitation. According to the Appellants, this alleged final bill was not sent to them by the Respondents and the Respondents had failed to prove delivery of the said final bill dated 18-01-1993 to them. The Id. Counsel submitted that the contract between the parties does not contemplate the issuance of a running bill and that each bill constitutes a separate and distinct cause of action and once a bill is sent, the period of limitation would commence. In support of the contention that the period of limitation would commence upon the raising and sending of the bill, the Id. Counsel placed reliance on the decisions of the Division Bench of Delhi High Court in the case of North Delhi Power Ltd. Vs. Delhi Bottling Co. Ltd., and of Ld. Single Judge of this Court in the case of Brihanmumbai Municipal Corporation v. Yatish Sharma and Ors. 2007 31 Bom.C.R. 659. The Id. Counsel submitted that before the trial Court, PW-2 in his deposition has admitted that no bill was issued after 1988 to the Appellants and there was no re-examination of the said witness by the Respondents. The Id. Counsel contended that Section 53 of the Electricity Act 1910, stipulates that service of any notice or document by the Electricity Board shall be by post and since the term "post" has not been defined in the Act, reference is required to be made to the definition of "post" as provided in Section 27 of the General Clauses Act, which defines "post" to mean "registered post". Thus, in the submission of the Id. Counsel, the alleged final bill ought to have been sent by registered post. Assuming that the said bill was sent by regular post, it is argued that the Respondents ought to have lead evidence by producing their dispatch register which would have indicated that the alleged final bill was sent to them. According to the Id. Counsel, in absence of any cogent evidence having been led in respect of delivery of the alleged final bill, the veracity of the said bill was very much in doubt particularly when it was the categorical stand of the Appellants in their written statement that they had not received the said final bill and the Respondents had not discharged their burden in proving service of

the alleged final bill upon the Appellants. He submitted that the Trial Court has not appreciated this plea of the Appellants and has simply observed in the impugned judgment that since earlier documents were sent by the Respondents on the same address which appeared on the final bill and covering letter dated 18th January 1993, as a corollary, the said bill must have been served on the Appellants. It is submitted that the Ld. Trial Judge had erred in casting the burden of non-receipt of the alleged final bill on the Appellants and had failed to appreciate that the Appellants could not prove the negative. The Id. Counsel contended that the alleged final bill dated 18-01-1993 (Exh 61) would have no impact on the issue of limitation and it would have to be ignored in computing the period of limitation. He therefore submitted that the starting point for calculation of limitation period would be when the bill dated 1-12-1988 was sent to the Appellants and at best the period of limitation would commence on the date of the Undertaking which is 04-05-1989, and in either case the suit is time barred, and urged that the impugned judgment and order is required to be set aside on this count alone.

10. The Id. Counsel for the Respondents on the other hand argued that the cause of action has arisen only after the Agreement (Exh 62) between the parties stood terminated upon sending of the final bill dated 18-01-1993 (Exh 61) by the Respondents to the Appellants and until then the Agreement between the parties was valid and subsisting. Inasmuch as the suit was filed on 6th February 1993, it is contended that the same was within limitation. The Id. Counsel submitted that a bill would not become due and payable until the same was raised and limitation would commence only thereafter. To buttress this submission, the Id. Counsel has drawn support from the ruling of the Division Bench of this Court in the case of Rototex Polyester v. Administrator 2009 (5) All MR 579. It is contended that even otherwise, considering the fact that in terms of the Undertaking dated 4-05-1989 (Exh 58) of the Appellants, the last of the 12 installments fell due in May 1990 and as the suit was filed on 6-02-1993, the same was within limitation. The Id. Counsel submitted that the demand and payment of the bill was a mutual obligation as held by the Hon'ble Supreme Court in the case of Swastic Industries v. Maharashtra State Electricity Board AIR 1997 SC.

11. Insofar as the contention of the Appellants of non-receipt of the covering letter and final bill dated 18-01-93 (Exh 61), it is submitted by the Id. Counsel for the Respondents that that would have no relevance in the fact situation of the present case inasmuch as the Agreement between the parties was valid and subsisting notwithstanding the disconnection. The Id. Counsel for the Respondents submitted that in any case, PW1 and PW2 in their evidence have stated that the final bill (Exh 61) was sent at the office address of the Appellants. The Id. Counsel submitted that the bills were always sent by post on the registered address of the consumer and that the Appellants in their evidence admitted that the address shown on the final bill (Exh 61) was the correct address and the documents at Exh 53, 56, 57, 79 to 107, which bore the same address as mentioned in the final bill (Exh 61), were received by them. It is

further contended that the Appellants having admitted in their evidence that they were maintaining inward register, they ought to have produced the same to prove that the document was not received by them. Adverting to Rule 27(j) of "Conditions and Miscellaneous Charges For Supply of Electric" ("Conditions for Supply" for short) notified by the Maharashtra State Electricity Board in exercise of powers conferred by Section 49 of the Electricity (Supply) Act 1948, the Id. Counsel for the Respondents submitted that the consumer is required to notify the local office of the Respondents in case of non-receipt of bill within 20 days from the date of reading of the meter, otherwise the bill is deemed to have been received. It is pointed out that the said Conditions For Supply are statutory in character as held by the Hon'ble Supreme Court in the case of M/s Hyderabad Vanaspathi Ltd. v. A.P. State Electricity Board and Ors. 1998 (3) Supreme 454. The Id. Counsel therefore contended that the Trial Court has rightly held that the suit was within limitation.

12. In response to the argument with regard to the Conditions For Supply, the Id. Counsel for the Appellants in rejoinder submitted that reliance on the same by the Respondents is misplaced inasmuch as the said Conditions For Supply came into effect from 01-01-1976, whereas the Agreement at Exh 62 between the parties was arrived at on 13th July 1973 and therefore the said Conditions For Supply would not be attracted in the fact situation of the present case. It is further argued on behalf of the Appellants that in any event, Clause 27(j) of the Conditions For Supply is not applicable as it postulates running supply of electricity and in the present case admittedly the supply was disconnected and the meter itself was taken away after disconnection.

13. To appreciate the rival contentions of the parties, we would straight away come to the Agreement dated 13-07-1973 (Exh 62) entered into between the parties. It is common ground that it is this Agreement dated 13-07-1973 which governed the rights of the parties. Clauses 8(a), 10(a) and 11 of this Agreement are relevant for our purposes and are extracted hereinbelow:

8(a) The Consumer shall pay to the Supplier every month at the office of the Chief Engineer or as may be otherwise required, charges including the minimum charges as mentioned in the Suppliers tariff schedule referred to hereinafter for the electrical energy supplied to the Consumer during the preceding month at the tariffs specified in the Supplier's standard Tariff Schedule applicable to the class of service and in force from time to time....

10(a) Subject to provisions of Clause 11 hereof the minimum period of supply under this Agreement shall be from 13/7/73 to 31/3/77 and from year to year thereafter determinable by a six calendar months notice on either side expiring at the end of the said period or at the end of any such subsequent year and upon the expiration of any such notice, this Agreement shall determine, but without prejudice to the right and liabilities of the parties in respect of any matter antecedent to such determination.

11. In the event of the supply of electrical energy being discontinued by the Supplier in consequence of any breach or default on part of the Consumer entitling the Supplier so to do under the provisions of the Act and the Rules, the amount of charge for the electrical energy already supplied and all other moneys then payable under this Agreement shall become and recoverable forthwith provided always and it is hereby expressly agreed and declared that during the period of such discontinuance the Consumer shall continue to pay the minimum charges and minimum guarantee payable hereunder.

14. Perusal of the above clauses of the Agreement (Exh.62) reveal that after the initial period of 5 years, the Agreement between the parties would be valid and subsisting from year to year unless it is terminated by either of the parties by a 6 month advance notice and further that notwithstanding the discontinuance of the supply of electricity, the Consumer is liable to pay the minimum charges and minimum guarantee amount, payable under the Agreement. Pertinently, the Appellants in the instant case have not brought any material on record to show that the Agreement (Exh 62) was at anytime terminated by them. According to the Appellants, since the electric supply has been disconnected and the meter taken away on 2-12-1988 by the Respondents, the Agreement between the parties stood determined. We are afraid we cannot accede to this proposition. Clause 10(a) clearly stipulates that the Agreement is required to be terminated by the parties. Moreover, Clause 11 also provides that notwithstanding the discontinuance of the electricity supply the Appellants were nevertheless liable to pay the minimum/guarantee amount payable under the Agreement. Thus, merely because the supply was disconnected and the meter was taken away by the Respondents, did not bring about an end to the Agreement between the parties.

15. We are fortified in the view that we have taken for two other reasons:

Firstly, that even after this date viz: 2-12-1988 when the supply was disconnected, the Appellants themselves have continued to make representations to the State Govt. that since they were declared a sick unit, under the policy of the State Govt. then prevailing, they were entitled to the benefits and concessions in respect of waiver of the electricity minimum charges and delayed payment charges. Pursuant to such representations the Appellants were granted certain concessions. In that, the Appellants were granted time to pay the arrears of the demand by 12 monthly installments. The Appellants thereafter have given an Undertaking dated 4-05-1989 (Exh. 58) and undertook to pay the arrears of electricity charges in 12 monthly installments as also the future current bills from time to time. This would clearly indicate that the Agreement was very much alive and subsisting between the parties even as on 4-05-1989 when the Appellants gave the Undertaking and it was so understood even by the Appellants. Infact, on the own showing of the Appellants, they had even paid the 1st installment as recorded in the said Undertaking itself, and also paid the re-connection charges thereafter. In the circumstances we find no merit in the contention of the

Appellants that the Agreement between the parties stood terminated on 2-12-1988 when the supply was disconnected and meter taken away by the Respondents.

16. Secondly, and more importantly, the proprietor of the Appellants, Mr. G.S. Kyal (DW-1) had himself approached this Court by filing a Writ Petition being Writ Petition No. 3511 of 1986, inter alia questioning the demand by the Respondents for payment of minimum charges and delayed payment charges from the Appellants for the period from 1st January, 1982 to 31st October, 1985 on the ground that during this period their unit had become a sick unit and had closed down. The aforesaid Writ Petition came to be decided by a Ld. Single Judge of this Court by judgment and order dated 11.02.1993. This decision is reported in Gopikrishna S. Kyal Vs. Maharashtra State Electricity Board, . The Ld. Single Judge in para 1 of the judgment formulated two principal questions involved in the said petition viz:

(a) Whether the impugned demand made by the respondent for payment of minimum charges and delayed payment charges from the petitioner for the period 1st January, 1982 to 31st October, 1985 is without authority of law?

(b) Whether the petitioner is entitled to concession in respect of the said demand in view of the fact that the unit of the petitioner was a sick unit at the material time relying on Departmental Circular No. 350 dated 9th July, 1980 read with Departmental Circular No. 327 dated 23rd March, 1979, copies whereof are Exhibit No. 2 and Exhibit No. 1 to the affidavit of Shri Suresh Kashinath Behere dated 8th September, 1992 and the impugned decision of the respondent denying the benefit of such concession to the petitioner is liable to be quashed?

17. In paragraph 3 of the Judgment, the Ld. Single Judge, while dealing with the aforestated question (a), held as follows:

3. The first question which arises for consideration of the Court is whether the impugned demand for minimum charges and delayed payment charges is without authority of law. Prima facie there is no merit in the challenge of the petitioner on this aspect. In its judgments in the case of Bihar State Electricity Board, Patna and Others Vs. Green Rubber Industries and Others, and in the case of General Manager-cum-Chief Engineer, Bihar State Electricity Board and Others Vs. Rajeshwar Singh and Others, , the Apex Court held that mere disconnection of electricity supply did not lead to termination of contract and the liability to pay minimum guarantee charges under the agreement continued to subsist. Prima facie, the said agreement was never terminated and the supply is restored under the same agreement i.e. agreement dated 13th July, 1973, and not under a new agreement...

18. Thus, the Ld. Single Judge, following the two aforementioned decisions of the Hon"ble Supreme Court, had clearly held that the Agreement between the parties continued to subsist and mere disconnection of electricity supply did not lead to termination of contract. The Agreement referred to by the Ld. Single

Judge in the above judgment is none other than the Agreement (Exh 62) in question in the present suit. Though the matter was carried in Appeal by the Respondents on being aggrieved by the finding on question (b) formulated by the Ld. Single Judge, the finding insofar as question (a) is concerned, was not challenged by the Appellants. Consequently therefore, the finding on question (a) as set out in para 3 of the judgment extracted above would bind the Appellants inasmuch as the same principle would be applicable to period even subsequent to the period in question in the writ petition. Despite the finding of the Ld. Single Judge in the Writ Petition, the Appellants have chosen not to terminate the Agreement. As stated above, while arriving at his conclusion, the Ld. Single Judge had followed the exposition of law as laid down in two decisions of the Apex Court as mentioned in para 3 of the judgment. We find ourselves in agreement with the finding and reasoning of the Ld. Single Judge that mere disconnection of electricity would not bring about an end to the Agreement and the liability of the Appellants to pay minimum charges under the Agreement continued to subsist, which finding had attained finality and was not challenged by the Appellants. The action of the Respondents in taking away the meter after disconnection would not in any manner absolve the Appellants of their liability to continue to pay the minimum charges.

19. In absence of any material being brought on record by the Appellants that the Agreement between the parties was at anytime terminated by them, we have no hesitation in holding that the Agreement between the parties was subsisting atleast until the final bill (Exh 61) was raised by the Respondents on 18-01-1993 and the cause of action can be said to have arisen in favour of the Respondents thereafter. Being so, it is not possible for us to accept the contention of the Id. Counsel for the Appellants that for computing the period of limitation, the starting point would be 1st December 1988 when the last bill was raised or for that matter on 2nd December, 1988, when the electricity supply was disconnected and meter taken away and that the final bill dated 18-01-93 (Exh 61) would have to be ignored. Pertinently, the Appellants were made aware by the Respondents by their letter dated 8-03-1989 (Exh 57) that in case of failure to comply with the terms and conditions for reconnection, the "final bill" will be sent to them. That the said letter dated 08-03-1989 (Exh 57) was received by the Appellants is admitted by the Appellants. Thereafter on 4-05-1989, the Appellants gave an Undertaking to the Respondents that they would clear the arrears by May, 1990 in 12 monthly installments as set out in the said Undertaking. Considered in the backdrop of our finding that the Agreement between the parties was subsisting, the Respondents were well within their rights to raise the final bill. Indeed, there has been considerable delay on part of the Respondents to raise the final bill. That, however, would not enure to the benefit of the Appellants, they having failed to terminate the Agreement which was kept alive and subsisting. The existence of the final bill was not really disputed in the evidence. The case of the Appellants was that the same was raised merely to bring the suit claim within limitation and that it was not served upon them. That,

however, in our opinion, would be of no consequence in the fact situation of the present case inasmuch as the Agreement between the parties was subsisting at the relevant time as discussed above.

20. Though much has also been made out by the Appellants about the issue of the Respondents having failed to prove the "delivery" of the final bill to the Appellants, in our opinion nothing really would turn on that, having regard to our aforesaid finding that the Agreement between the parties was subsisting atleast until the final bill dated 18-01-1993 (Exh 61) was raised by the Appellants which gave a cause of action to the Respondents to file the suit. Surely, the Appellants became aware of the issuance of the final bill on which reliance was placed by the Respondents in the suit (filed by them on 06-02-1993) upon being served with a copy of the Plaint, even assuming that the final bill (Exh 61) was not received by them.

21. Having concluded that service of the final bill (Exh 61) upon the Appellants by the Respondents would not be material in the fact situation of the present case, though only academic, we may nevertheless observe that Clause 27(j) of Conditions For Supply on which reliance is placed by the Respondents which speaks about deemed service of bill would not be applicable in this case. We say this because Clause 27(j) contemplates cases where there is an electric meter in place and an obligation is cast upon the consumer that in case of non service of bill he is required to pay the bill within 20 days after "reading the electric meter" notwithstanding non receipt of the bill and that would amount to deemed service. In the instant case since the electric meter itself was taken away by the Respondents after disconnection of supply, the question of "reading the electric meter" would not arise and therefore Clause 27(j) would have no application.

22. The position in law that the computation of limitation period in respect of electricity bill is to be reckoned only after the raising and sending of the bill since it is only thereafter that the amount becomes due and payable, is conceded even by the Id. Counsel for the Appellants, for which reliance is placed by him on the decisions of North Delhi Power Ltd. v. Delhi Bottling Ltd. (supra) and Brihanmumbai Municipal Corporation v. Yatish Sharma and Ors. (supra). These rulings however have been cited by the Id. Counsel for the Appellants in the context of the bill dated 01-12-1988 (Exh 120). The law on this point is also reiterated in the case of Rototex Polyester v. Administrator (supra) which is relied upon by the Id. Counsel for the Respondents. It is also to be noted that in the present case, inasmuch as, both, the bill dated 01-12-1988 (Exh 120) and the covering letter of the final bill dated 18-01-1993 (Exh 61) have provided the period within which the amount was required to be paid, Art 15 of the Limitation Act, 1963, would be applicable as opposed to Art 14 which governs cases where no fixed period of credit is agreed upon. In both the Articles however the period of limitation provided is 3 years.

23. As to why did the Appellants not terminate the Agreement between the parties can be only within the personal knowledge of the Appellants. However it

is pertinent to note that in his cross examination DW-1 has asserted that the Central Bank of India was willing to nurse the unit of the Appellants provided that the power was restored. It seems quite probable that in the hope that that would happen, the Appellants have chosen at the relevant time not to terminate the Agreement. Before concluding the point, we may, so as to complete the record, state only to reject the alternative argument of the Respondents that the cause of action would arise on the expiry of the date when the last installment became due in May 1990 as per the Undertaking dated 4-05-1989 which was an acknowledgment of liability by the Appellants. Section 18 of the Limitation Act 1963, clearly provides that for the purposes of computing limitation in case of acknowledgment of liability in writing, a fresh period of limitation shall be computed from the time when the acknowledgment was "so signed". Understood thus, it would be the date of the Undertaking which is relevant and the date when the last installment became due under the Undertaking would have no bearing in computing the period of limitation. We also reject the argument of learned Counsel for the Appellants that as per the terms of the Undertaking, there was a reciprocal promise on the part of the Respondents to reconnect the supply after the 1st installment was paid by the Appellants and since the Respondents failed to restore the connection after the Appellants had paid the 1st installment, the Appellants were not obliged to pay any further installment amounts as stated in the Undertaking. The Undertaking was clearly a unilateral document given by the Appellants to the Respondents setting out therein the liability of the Appellants and whereunder they had undertaken to pay the dues in installments and by no stretch of imagination can it be construed as a reciprocal arrangement between the parties.

24. For the reasons aforesaid, we answer the issue No. 1 in the affirmative and uphold the finding of the Trial Court that the suit was filed within the period of limitation.

Point No. 2

25. It is the further case of the Appellants that the claim of the Respondents was not proved and therefore the decree is not warranted on that count. The Id. Counsel for the Appellants contended that the contents of the final bill (Exh 61) has not been proved. It is submitted that PW-2 had only deposed about the calculations thereof without being able to prove the correctness of the figures mentioned in the final bill, which was only rough and ready calculations. Placing reliance upon the decisions in the case of Ramji Dayawala and Sons (P) Ltd. Vs. Invest Import, and the case of Mohammed Yusuf and Another Vs. D. and Another, , the Id. Counsel contended that mere proof of the document or handwriting does not prove the contents thereof.

26. The Id. Counsel for the Respondents on the other hand invited our attention to the Undertaking of the Appellants dated 04-05-1989 (Exh 58) and submitted that the said Undertaking is an acknowledgement of liability of the dues on part of the Appellants in a sum of Rs. 4,73,845.37p and there is no evidence

produced by the Appellants of having paid the same to the Respondents. The Id. Counsel pointed out that even the admitted minimum charges and delayed payment charges of Rs. 3,51,819.09p for the period from 01-01-1982 to 31-10-1985 of which the Appellants were claiming waiver and which was subject matter of Writ Petition filed by the Appellants, and the further minimum charges and delayed payment charges after 31-10-85 has not been paid by them, even after the decision of the Division Bench of this Court in Appeal No. 1034 of 1993. The Id. Counsel argued that the final bill (Exh 61) is an account of the arrears of the Appellants which were carried forward from time to time as running bills and which cause of action was a continued one. She submitted that not only the final bill (Exh 61) but also the documents at Exh 80 to 107 and 109 which are the account extracts of the running bills of the Appellants, have been proved in the evidence.

27. At the outset, we may advert to the Undertaking dated 04-05-1989 given by the Appellants which is an admitted document. In the said Undertaking, the Appellants have acknowledged their liability to the extent of Rs. 4,73,845.37p i.e. Rs. 3,91,981.31p plus Rs. 81,864.06p being the interest component, as on 4-05-1989 and agreed to pay the same in 12 monthly installments. Out of this amount, only an amount of Rs. 39,487.11p being the 1st installment was paid by the Appellants. As can be discerned from the 1st para of this Undertaking, the amount agreed to be paid as per the Undertaking, was exclusive of the amount of arrears of minimum charges and delayed payment charges which was the subject matter of Writ Petition filed by the Appellants in the year 1986. In the Writ Petition, the Appellants were impugning the demand of Rs. 3,51,819.09p for the period from 01-01-1982 to 31-10-1985. This amount of minimum charges and delayed payment charges and the interest thereon has since accumulated and has remained to be paid by the Appellants to the Respondents even after the judgment and order dated 16-08-1994 of the Division Bench of this Court in Appeal No. 1034 of 1993, by which order, the Division Bench had set aside that order of Id. Single Judge which had held that the Appellants were entitled to waiver of the minimum charges and delayed payment charges under the scheme of the State Govt. for sick units. Really speaking therefore, there can be no dispute about the liability of the Appellants atleast to the extent of the aforesaid amounts.

28. The Respondents to prove their claim, have examined one Uttam Vishwanath Kale PW-1, Asst. Accountant employed with the Respondents who has produced the final bill (Exh 61). The Respondents thereafter examined one Ramesh Narayan Salunke PW-2, who is also an Asst. Accountant and was at the relevant time working in the billing section of Kalyan Circle, previously known as Bombay Urban Circle. In the course of examination in chief of PW-2, the bills at Exhibit 80 to 106 are produced and marked as Exhibits by consent of the Advocate of the Appellants. Exhibits 107 to 110 are also produced during the course of his examination in chief. Exh 107 is a Statement of Bill amounts for the period from August 1986 to March 1987. Exh 108 is a Statement of Bill amounts from April

1987 to November 1988. Exh 109 is a Statement of Interest due from the Appellants. PW-2 has deposed that the said Statements are prepared by him and are in his handwriting. Exh 110 is Statement of calculation of the final bill. PW-2 has deposed that he had made some erroneous calculations and the figure of Rs. 3,80,829/- was corrected by the Auditor and shown as Rs. 3,64,134/-. PW-2 has stated in his evidence that this Statement was prepared by him and is in his handwriting and the same is signed by him and the Auditor. He has stated that the contents of the same are correct. He has also stated that the original copy of the final bill (Exh 61) was sent to the Appellants by post at the office address of the Appellants. In the circumstances, when the author of the aforesaid documents has been examined who has vouchsafed the truth and contents of the documents including the final bill, we are of the view that the principles stated in *Ramji Dayawal and Sons (P) Ltd. v. Invest Import (supra)* and *Sir Mohamed Yusuf and Anr. v. D and Anr.(supra)*. have been followed with regard to proving documents and the aforesaid documents including the final bill (Exh 61) have been satisfactorily and duly proved by the Respondents. Indeed PW-1 has not been able to say on which principal amount the interest component was calculated. The Respondents have, however, later examined PW-2, who has produced all the bills and the Statements including the Statement of calculations referred to above on the basis of which the amount reflected in the final bill has been arrived at. He has satisfactorily explained the documents produced and withstood the test of cross-examination. Notably, there is no suggestion put to PW-2 in his cross-examination with regard to any entry being incorrect or excessive, or any statement in his evidence as being false. There is also nothing brought on record by the Appellants in their evidence to show how, if at all, the entries in the aforesaid documents were incorrect or exaggerated. Despite the overwhelming evidence of the liability of the Appellants, a bald statement is made by DW-1 in his evidence that according to him no amount is payable. It is noticed that DW-1 has admitted in his evidence that they were maintaining account of payment of bills and that he can produce the same. That however was not done. In our view, once the bills, letters, Undertakings and Statements were duly proved, the burden clearly shifted upon the Appellants to show how the amounts were inaccurate, if at all or that no amount was due from them. No attempt in that direction has been made by the Appellants in their evidence.

29. Apart from the above, we find that DW-1 in his examination in chief has himself produced the document marked as Exh 120, which is the last energy bill dated 1-12-1988 issued by the Respondents (before the issuance of the final bill). This bill Exh 120 clearly reflects an amount of Rs. 6,84,838/- payable by the Appellants. It is noticed that PW-2 in his evidence has stated that this figure as reflected in the Statement of calculation is arrived at after adjusting the amounts paid by the Appellants. It is also worthy to note that this bill though admittedly received by the Appellants and also produced by them, the same was never protested or objected to by the Appellants. Infact, DW-1 has admitted in his cross examination that he has not challenged this bill.

30. We may also advert to letter dated 31-10-88 (Exh 53) addressed by the Respondents to the Appellants. This letter is also referred to by the Appellants in their letter dated 30-01-1989 in the subject caption. We deem it appropriate to reproduce this letter in its entirety. The same reads thus:

HTB/294/9086

To,

M/s G.T. Iron and Steel Works,

Lotus House, New Marine lines,

Bombay -400 020.

Sub: Notice of disconnection of electric supply u/s 24(1) of I.E. Act, 1910

Dear Sirs,

It is seen from our records that you have not paid the energy bill, arrears for the electric consumption of your factory situated at MIDC, Dombilvali (Con. No. 02033-900294-1) as per details given below:

You are therefore requested to please pay the above amounts Rs. 6,10,107.86 (amount of arrears excluding court case) within 7 days from the date of issue of the Notice, failing which we would be compelled to disconnect the electric supply to you factory, on the expiry of notice period and without any further notice to you. This notice is being sent to you as per Sub-section 1 of Section 24 of the I.E. Act, 1910.

"In the event of disconnection, the supply will be reconnected only after the payment of the dues and reconnection fees."

Further it may also please be noted that we will reluctantly be forced to take the legal action against you in Court of Law for recovery of our dues unless the arrears are cleared within 7 days from receipt of this notice.

Therefore you are requested to please pay the arrears of Rs. 6,10,107.86 within 7 days to avoid unpleasant action of disconnection of your H.T. energy supply of your factory.

Yours faithfully, Dy. Chief Engineer (BUC)

Copy s. wr. to:

1) The Chief Engr. (Com)

Prakashgad, Bandra, Bombay.

2) Copy to:

The Ex. Engr., MSEB,

Kalyan (U).

The C.E. (Com.), Bombay, has intimated this office that Govt. has permitted the Board to disconnect the power supply of M/s G.T. Iron and Steel Works for non-payment of arrears. Hence the power supply to above consumer should be disconnected permanently and the compliance report sent accordingly within 7 days from further needful.

3) The Dy. E.E., MSEB, Sub-Dn. II, D.V. Building Station Road, Kalyan.

For necessary action as stated above.

31. The above notice of disconnection u/s 24(1) was issued to the Appellants by the Respondents clearly setting out therein the amounts payable by them as on 31-10-88. Though the Appellants' liability as on 31-10-1988 was clearly set out in this letter the same was not protested or objected to by the Appellants.

32. In the letter dated 08-03-1989 (Exh. 57) written by the Respondents to the Appellants, it is stated that if the amount demanded was not paid before 31-03-89 the final bill would be sent to the Appellants for payment of all dues and necessary legal action would be taken for payment of the dues. When shown this letter in his cross examination, DW-1 has admitted that this letter (Exh 57) was received by him on 08-03-89. When confronted with another letter of the Respondents dated 17-03-89 (Ex 56) the DW-1 has stated in his cross examination that after going through this letter, he had come to know the terms and conditions for restoration of supply of electricity. Ultimately, under cover of the letter dated 18-01-1993, the final bill (Exh 61) for Rs. 18,08,288.10 which was raised by the Respondents was sent to the Appellants. The said final bill (Exh 61) sets out the break up of the amounts payable as well as interest. We have already observed above that this final bill dated 18-01-1993 (Exh 61) has been duly proved by the Respondents in their evidence. No doubt, the Appellants have disputed the receipt of this letter and final bill. Even so, that would not in any manner affect or dilute the claim in the suit filed on 06-02-1993 by the Respondents, wherein the said final bill dated 18-01-1993 is relied upon.

33. It was sought to be contended on behalf of the Appellants that PW-2 has admitted in his cross examination that the supply of electricity was permanently disconnected on 02-12-1988 and thereafter no bill was issued to the Appellants, which would, in the absence of any re-examination, mean that admittedly there was no final bill dated 18-01-1993. This argument does not commend to us in the least inasmuch as the case of the Respondents is based of the final bill as is evident from the plaint itself and PW-2 has categorically stated in his evidence that the original copy of the final bill (Ex 61) was sent to the Appellants by post at their office address. The aforementioned statement of PW-2 relied upon by the Appellants, has to be read in the context that after disconnection, no bill was sent, except the final bill. The evidence is required to be read as whole and cannot be read by picking up one or two sentences here or there.

34. In view of the above, the Issue No. 2 is also answered in the affirmative and we hold that the claim of the Respondents was duly proved by them and the

finding of the Trial Court cannot be faulted on that count.

Point No. 3

35. According to the Appellants, the Trial Court had erred in awarding interest to the Respondents. The Id. Counsel for the Appellants contended that the Agreement (Exh 62) between the parties did not provide for payment of any interest, much less at the rate of 18% p.a. and this position was admitted by PW-1 in his evidence. It is further submitted that PW-1 in terms has admitted in the cross examination that he could not indicate on what principal amount was the interest component calculated. It is therefore contended the Trial Court had erred in granting interest to the Respondents.

36. To counter the aforesaid contention, the Id. Counsel for the Respondents, placed reliance upon the decision of the Division Bench of this Court in the case of M/s. Mahavir KHandsari Sugar Mill and Others Vs. Maharashtra State Electricity Board and Others, . In that decision, this Court, whilst alluding to the Sale of Goods Act, 1930 observed that electric energy being "goods" within the meaning of Section 2(7) of the Sale of Goods Act, 1930, interest could be allowed at reasonable rates. The Court then went on to award interest at the rate of 6% p.a. The Id. Counsel then invited our attention to Clause 27 (d) of Conditions For Supply, which provides that "the rate of interest for other categories of consumers (Low Tension as well as High Tension) shall be 18% per annum". Relying upon the aforesaid clause, the Id. Counsel for the Respondents submitted that in the present case, the parties being clearly governed by Conditions For Supply, the Trial Court was justified not only in awarding interest, but @18% p.a. at that.

37. Having heard the Counsel for the parties on this point, we find ourselves in agreement with the contention of the Id. Counsel for the Respondents that the Trial Court has rightly awarded interest @ 18% p.a. The argument of the Id. Counsel for the Appellants that the said Conditions For Supply would not be applicable in the fact situation of the present case since the same came into effect from 01-01-1976 whereas the Agreement (Exh 62) between the parties was arrived at 13-07-1973, is clearly unsustainable. In that, it clearly overlooks Clause 1(b) and Clause 14(a) of the Agreement (Exh 62) between the parties, which clauses read thus:

1(b) "the Rules" shall mean the rules and regulations in force from time to time.

14(a) Conditions and Miscellaneous Charges for supply of electrical energy of the Supplier for the time being in force and as amended by Supplier from time to time as set out in the Second Schedule hereto shall be deemed to be part of the Agreement and shall govern the parties hereto in so far as applicable. A copy of the current Conditions and Miscellaneous Charges for supply is set out in the second schedule hereto

38. Though the Agreement which is produced on record and marked as Exh 62

does not contain any annexure, whether or not the second schedule was infact annexed and formed part of the original Agreement is not clear. In any event that would really not matter, the parties having clearly agreed in writing to be governed by the Conditions For Supply for the time being in force as reflected in Clause 14(a) of the Agreement. Being so, Clause 27 (d) of Conditions For Supply, which provides that the rate of interest @18% p.a. would be clearly attracted in the instant case.

39. That apart, we find that the Appellants were informed by the Respondents by their letter dated 8-03-1989 (Ex 57) that interest charges as per rules shall be payable by them. Subsequent thereto, in their Undertaking dated 4-05-1989 (Exh 58), the Appellants had themselves agreed and undertaken to pay interest and had quantified that amount of the interest component therein. In the last line of this Undertaking the Appellants have stated - "The interest and delayed payment charges as per rules are also payable by us". In their earlier Undertaking dated 14-01-1988 (which is part of the record) also the Appellants had agreed to pay interest on similar lines. We may also extract the relevant portion of para 8 of the cross examination of DW-1 with regard to his deposition in connection with interest. It reads thus:

8.... The plff-Board has not charged interest in previous bills from me, hence, I have not challenged the interest except the present proceeding. I am shown undertaking at Ex 46. There is a statement about interest in this undertaking. In Ex 53 there is a mention about interest in para 2. In Ex 56 the amount of Rs. 81,864.6 is claimed towards interest. In undertaking at Exh 58 there is mention about payment of interest....

40. It is also noticed that even in the Writ Petition, which was filed by the sole proprietor of the Appellants in 1986, besides seeking waiver of minimum charges and delayed payment charges, the Appellants had also sought waiver of interest on the same. Though the sole proprietor of Appellants was granted reliefs by the Ld. Single Judge, he eventually did not succeed, inasmuch as in the Appeal filed by Respondents, the judgment and order of the Ld. Single Judge came to be set aside. To put it simply, even the relief relating to waiver of interest on the minimum charges and delayed payment charges was denied to him. Suffice it to observe that the Appellants were all along aware of their liability to pay interest. Merely because PW-1 was not able to say in his evidence as to what was the principal amount on which the interest was calculated cannot absolve the Appellants of their liability to pay interest, which liability was clearly flowing from the documents referred to hereinbefore. In any event, thereafter, the Respondents had examined PW-2 who had placed all the Statements on record, including the Statement of Interest. The Appellants, however, did not put any questions to PW-2 in his cross-examination on the said Statement relating to the calculation of interest. The interest amount is also reflected in the correspondence between the parties including the final bill (Exh 61). Really speaking, there can be hardly any scope for the Appellants to dispute the levy of

interest having regard to the facts and circumstances noted above.

41. In the circumstances, even point No. 3 is answered in the affirmative and we hold that the Appellants were liable to pay interest @ 18% per annum and the finding of the Trial Court pertaining to interest warrants no interference.

42. Before concluding, we may observe that the fact that the Appellants were undergoing financial crises and had failed to discharge their liability towards dues of electric supply, was written all over. Even the Division Bench of this Court, in its judgment and order dated 16-08-1994 in the Appeal filed by the Respondents (referred to by us hereinabove), has set out that the unit of the Appellants had closed down atleast on three occasions and was declared a sick unit each time. Except to the limited extent of claiming waiver of minimum charges and delayed payment charges and interest thereon in the Writ Petition filed by them as stated earlier, the claim of the Respondents was never disputed by the Appellants at anytime, until the filing of the suit.

43. The upshot of the above discussion is that the impugned judgment and decree of the Trial Court will have to be sustained. The Appeal therefore fails and is dismissed with costs. Ordered accordingly.