

**(2013) 04 GUJ CK 0102**

**In the Gujarat High Court**

**Case No :** Letters Patent Appeal No. 1367 of 2012 in Special Civil Application No. 162 of 2012 with Civil Application No. 12320 of 2012 in Letters Patent Appeal No. 1367 of 2012

M/s. Sachdeva Industries Ltd. and Another

APPELLANT

Vs

Paschim Gujarat Vij Company Ltd.

RESPONDENT

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**Date of Decision :** 09-04-2013

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2013) 04 GUJ CK 0102

**Hon'ble Judges :** V.M. Sahai, J;S.G. Shah, J

**Bench :** Division Bench

**Advocate :** D.G. Chauhan, No. 1-2, for the Appellant; Dipak R. Dave, Advocate for the Respondent No. 1, for the Respondent

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**Judgement**

S.G. Shah, J.—Heard learned advocate Mr. D.G. Chauhan for the appellants and Mr. Dipak R. Dave, learned advocate for respondent. Though the matter is listed for admission, both the learned counsel have agreed to decide it finally at this stage.

2. Hence, admit. Mr. Dipak R. Dave, learned advocate waives service of notice of admission for respondent.

3. Before we discuss the merits of the case, it would be necessary to recollect the chronology of events, so as to arrive at the conclusion without describing the same details in lengthy paragraphs.

4. On perusal of above list of events, it becomes clear that the issue regarding liability of the present appellants to pay 10% difference of concession benefit and delayed payment charges is under adjudication since 7.11.1995, initially under the common law, whereby present appellant No. 1 has preferred a suit before the Civil Court and though it was successfully at first step, practically at present, the effective order is by way of a judgment of the District Judge, Bhavnagar in

Regular Appeal No. 163 of 2002 whereby the respondent was permitted to recover the full energy charges and delayed payment charges without extending the benefit of 10% concession after 4.9.1998 i.e. the date when a policy decision was taken to withdraw the concession to new industries during its operative period between 1990 to 2000. Though said order is under challenge by way of Second Appeal No. 260 of 2009 before the High Court, considering the fact that practically appellant No. 1 was the original appellant in such appeal and appellant No. 2 herein was joined as appellant No. 2 in such appeal subsequently, it could not be said that the interim order by the High Court in such Second Appeal is also applicable to such newly added appellant No. 2, who was never party during the proceeding till such implementation by an order dated 14.3.2011 in Second Appeal only. It is admitted fact that appellant No. 1 has sold the entire property and unit to appellant No. 2 on 25.9.2009 and, therefore, on and after 25.9.2009, practically consumer of electricity was changed from appellant No. 1 to appellant No. 2. The issue regarding liability of previous consumer or new purchaser of the property for payment of electricity charges by the previous consumer is debatable i.e. it is still sub-judice, as such point is pending before the Hon'ble Apex Court for consideration and, therefore, it would be difficult to extend the benefit of original consumer to the new consumer without following applicable rules and binding decision of the competent Courts. It is not disputed that though Second Appeal No. 260 of 2009 was filed on 10.9.2009, and though entire unit was sold out by appellant No. 1 to appellant No. 2 on 25.9.2009, such fact was not disclosed to the concerned Court, which was hearing the Second Appeal on 10.11.2009. Such appeal was admitted with a direction in Civil Application for stay, restraining the respondent from demanding delayed payment charges. However, at the same time, appellant was directed to deposit the outstanding amount being difference of 10% concession amount. Therefore, practically when appellant No. 1 has sold the unit to appellant No. 2 in September 2009, they are bound to disclose such fact on record, which they have failed. Moreover, appellant No. 1 has remained silent on the record of Second Appeal till 27.10.2010, date of application to implead appellant No. 2 as party in Second Appeal, and such application was allowed on 14.3.2011. Thereafter, by joining as appellant No. 2 in the Second Appeal, now, the new consumer is trying to argue to take advantage that since he becomes appellant in Second Appeal, he is entitled to the benefit of interim orders passed in such Second Appeal against the respondent so far as delayed payment charges etc. are concerned. Surprisingly before seeking such benefit in Second Appeal, appellant No. 1 has on 9.12.2009 filed an undertaking in Second Appeal that if appellant fails in Second Appeal, the appellant would make payment of delayed payment charges as determined by Court, subject to further appeal to the higher forum. If appellant No. 2 wants to take advantage of the interim orders in Second Appeal, then practically, they have to pay delayed payment charges in view of such undertaking whereas instead of disclosing such fact of sale transaction before the Court, appellant No. 2 has in between i.e. in the year 2010, preferred Special Civil Application No. 5992 of 2010 before this High Court

for direction that respondents should transfer the electric connection in their name without claiming dues of the appellant No. 1 which is disposed of recording statement of learned advocate Mr. D.G. Chauhan for the petitioner that petitioner is prepared to make payment of outstanding amount including the dues of the erstwhile owner of the said electricity connection, another Special Civil Application No. 8639 of 2010 was filed and withdrawn by the appellant No. 2.

5. In addition to above practice, if we peruse the record, it becomes clear that while admitting the Second Appeal and while restraining the respondents from demanding delayed payment charges, the Court had given reasons in detail and practically delayed payment charges was stayed only against an undertaking and only with a view to see that appellant No. 1 gets electric connection and in any case such benefit cannot be extended to appellant No. 2, who was not the party before the Court when such order was passed though it was in existence and though appellant No. 1 was very much aware about such sale transaction and existence of appellant No. 2. Therefore, practically, both the appellants have tried to get the favourable order in name of appellant No. 1 and one of them has filed an undertaking as directed by the Court and, thereafter, they wished to continue the electric connection in the name of 2nd appellant without his undertaking on record, which would result into a position whereby the appellant No. 2 will utilise the electricity without payment of previous dues for the same connection. Such practice is nothing but an attempt to take advantage of judicial proceedings and thereby it is nothing but an abuse of process of law. It is not disputed that so far as benefit of 10 % concession is concerned, appellant have realised that they have no case and they have paid such amount as per the directions of the Court. It is not disputed that for new connection of electricity, certain formalities are required to be completed which includes undertaking, depositing certain amount for security etc. and amount of connection charges is to be paid. Therefore, on 5.10.2009, both appellants No. 1 and 2 had filed an undertaking before the respondent for all the dues outstanding till then or which may arise in future for power connection in question at the given place. Appellant No. 1 has even agreed to transfer the security deposit/SS development charges paid by them in favour of appellant No. 2 which goes to show that practically appellants No. 1 and 2 are either same or appellant No. 1 has recovered such amount from appellant No. 2. Whereas, the most important fact is discussed by the learned Single Judge in his order dated 12.5.2010 in Special Civil Application No. 5992 of 2010 filed by the present appellant, which is at Annexure-Q on pages 86-87, wherein in paragraph 4, the learned Single Judge has recorded the statement of the learned advocate Mr. Chauhan, who is appearing for the appellant in present appellant also which reads as under:-

... Mr. Chauhan, learned advocate has made a statement before this Court that the petitioner is prepared to make payment of outstanding amount including the dues of the erstwhile owner of the said electricity connection.

6. Such Special Civil Application was for direction against the respondent to

transfer the electric connection from the name of respondent No. 1 to the name of respondent No. 2. Therefore, now, it is certain that practically, appellant has admitted before the Court that they are ready and willing to make payment of outstanding amount including the dues of erstwhile owner. Surprisingly, even after such admission on 12.5.2010, another Special Civil Application No. 8639 of 2010 was filed by appellant No. 2 which was ultimately withdrawn on 29.7.2010 with a view to approach appropriate Forum. It is obvious that practically the issue was already pending before the appropriate Forum being the respondent authorities which has decline to transfer the connection till the previous dues are being fully paid. It is clear from the order dated 14.3.2011 in Civil Application No. 15694 of 2010 for joining appellant in Second Appeal No. 260 of 2009 that appellant No. 2 will not get any right in its favour as a consumer of the respondent merely by joining him a party in such proceeding. The learned Single Judge has categorically discussed in such order as under:-

... In view of the fact that the applicant has purchased the Unit and the fact that the Unit has filed Second Appeal which is pending before this Court, with a view to avoid multiplicity of proceedings, the applicant is required to be joined as appellant in the Second Appeal. It is made clear that the applicant would step into the shoes of original appellant and merely joining it as a party in proceedings, no right is created in its favour to claim right as a consumer of the respondent...

7. Thereafter, the respondent has by their letter dated 17.9.2011 reminding the appellants about their liability and interest etc. and by letter dated 11.6.2010, respondent has conveyed the appellants that since the appellants have failed to make the payment of dues, their application for change of name is not entertained. However, it was also conveyed that appellant may submit all necessary documents and clear past dues of erstwhile owner as per their assurance and statement made before the Hon"ble High Court so as to enable the respondent to change the connection in the name of appellant No. 2.

8. In above background, if we peruse the present litigation, Special Civil Application No. 162 of 2012 is preferred by the appellants for appropriate writ, order or direction to quash and set-aside the order dated 17.9.2011 of the respondent stating that by such decision respondent is not transferring the connection, whereas practically by such letter respondent has conveyed the appellants about their dues and asked them to make the payment whereas even by letter dated 11.6.2010 respondent has called upon the appellant to make the payment and submit the requisite documents so as to enable them to change the electric connection in the name of the appellant No. 2. Surprisingly, the appellants have in paragraph 20B of Special Civil Application No. 162 of 2012 prayed to take appropriate steps against the respondent by approaching contempt Court alleging that there is deliberate and willful disobedience of order dated 10.11.2009 in Second Appeal No. 260 of 2009 and for declaration that in view of stay granted by Hon"ble Court, the respondent is not entitled to recover

the delayed payment charges during the pendency of Second Appeal. Inasmuch as after making a statement before the Court in Special Civil Application No. 5992 of 2010 by learned advocate Mr. Chauhan for the petitioner that petitioner is prepared to make payment of outstanding amount including the dues of the erstwhile owner of the said electric connection and after withdrawal of Special Civil Application No. 8639 of 2010 by learned advocate Mr. Chauhan, now for appellant No. 2, and even after specific clarification by the learned Judge in order dated 14.3.2011 in Civil Application No. 15694 of 2010 in Second Appeal No. 260 of 2009 that no right is created in its favour to claim right as a consumer of the respondent, while permitting the appellant No. 2 to join as appellant in Second Appeal; the appellants herein have taken a chance to get rid of all previous (three) orders by filing a fresh petition, practically for the same cause of action, more particularly when previous two applications for direction regarding transfer of connection was not entertained by the High Court. Therefore, practically, this is nothing but a abuse of process of law.

9. Now, at present, we are concerned with the appellate jurisdiction of this Hon"ble Court under Clause 15 of the Letters Patent since before us the impugned order dated 30.4.2012 is by the learned Single Judge in Special Civil Application No. 162 of 2012 wherein the learned Single Judge has dismissed the application by assigning three reasons in detail. For coming to such conclusion, the learned Single Judge has also quoted relevant portion of previous orders which are referred herein above in different litigations as listed in the chronology in paragraph 4 herein above. For the sake of convenience, it can be recollected here that the learned Single Judge has categorically held that transfer of electric connection in the name of appellant No. 2 would amount to violating payment terms, since it would be contrary to the provisions of Condition No. 4.1.11 of the Electricity Supply Code, which is statutory in nature. It is also confirmed by learned Single Judge that practically order dated 11.6.2010 has never been challenged. Therefore, petition itself is not maintainable. The learned Single Judge has also categorically confirmed that by merely filing an appeal against the order of Civil Court, wherein appellant No. 1 has lost and when there is stay qua delay payment charges in favour of appellant No. 1, same cannot be permitted to inure in favour of new purchaser i.e. appellant No. 2 and if at all such benefit or permission is required to be taken into action, it should have been from the Second Appeal Bench where the matter is sub-judice, more particularly when such Bench has categorically made it clear that newly joined party would not get any right as a consumer. The learned Single Judge has also taken into consideration the undertaking dated 12.5.2010 that appellant is ready and willing to pay the entire outstanding amount and more particularly when such undertaking was made when the principal amount was already paid and after the stay order was passed" in Second Appeal, therefore, such statement cannot be construed in any other manner so as to allow the appellants to get rid of payment of delayed payment charges. Therefore, the learned Single Judge has declined to exercise the discretionary jurisdiction under Article 226 of the

Constitution.

10. This being intra-Court appeal, we do not find any illegality and arbitrariness or perverseness in the determination, findings and decision by the learned Single Judge so as to interfere with such order.

11. For the foregoing reasons, the Letters Patent Appeal is hereby dismissed with no order as to costs. In view of the order of the passed in Letters Patent Appeal, the Civil Application also stands disposed of.