(1999) 03 J&K CK 0017

In the Jammu And Kashmir High Court

Case No : Civil Revision No. 112 Of 1997

State of J & K — APPELLANT

Vs

Jammu Agroil Pvt.Ltd. — RESPONDENT

Date of Decision : 17-03-1999

Acts Referred:

Jammu and Kashmir Civil Procedure Code, 1977 — Order 39 Rule 1
Jammu and Kashmir Electricity Act, 1997 — Section 53

Citation : (2000) KashLJ 383 : (2000) SriLJ 101 : (2000) 1 SriLJ 101

Hon'ble Judges : G.D.Sharma, J

Bench : Single Bench

Judgement

1. This revision is directed against the order dated 164)81997 passed by the learned District Judge, Kathua whereby in appeal he upheld the order

dated 04011997 passed by the learned Sub Judge, Kathua. The said order was passed in an application made under O.39 R. 1 & 2 CPC.

2. These orders were passed in a suit filed by the respondent herein whereby he has sought a declaration against the petitioner herein that he

(Executive Engineer) cannot effect the recovery of the electricity charges which were due against M/S Ravi Conductors. Kathua who was tli

original allottee of C.T. Shed situate in Industrial Estate. Kathua. The electric charges to the tune of Rs. 1.26 Lakh were due. On the vacation of

the Industrial Unit by the original allottee, it was allotted in favour of the respondent who gave an undertaking before the petitioner on 01031996

(Annexure pHI) that arrears of Rs. 1.25 Lakhs on account of previous allottee would be deposited by him. At the first instance, an amount of

rupees 26,000 was deposited towards these arrears Respondent Unit had given an undertaking in writing to deposit the remaining arrears by installments. Each installment was fixed at Rupees 50,000 and the whole payment was to be made within 12 months. On the execution of such an

undertaking: the physical connection of the Electricity was given to the respondent.

3. After a period of one year respondent filed Civil Suit in the court of Sub Judge. Kathua for declaration to the effect that respondent was not

liable to pay the arrears of the electricity due to M/S Ravi Conductors. Kalhua who was the previous allottee for the Industrial Unit. Relief in the

nature of perpetual injunction was sought that electric connection may not be disconnected. Further relief of mandatory injunction was sought to

adjust the amount deposited by the respondent on behalf of M/S Ravi Conductors. Kathua in their account. In the suit an application for grant of

temporary injunction was also made. The objections were filed in the application by the applicant herein. The learned Sub Judge, Kathua on

01041997 passed the order whereby he directed the petitioner to connect the power connection of the respondent Unit forthwith till final disposal

of the main suit. This order was passed on two grounds, namely(i) that the power connection in favour of the respondent herein was a fresh

connection (ii) the amount deposited (in the stun of Rs. 26.000/ at the time of taking the physical connection of the electricity was under midue

influence of the petitioner. He had also found that there were triable issue and there is a prima facie case in favour of the respondent.

4. The petitioner herein challenged the order of interim injunction through the medium of appeal before the learned District Judge. Kathua who

dismissed the appeal and upheld the order.

5. Heard the arguments.

6. The learned counsel for the pelilioner had contended that the present case falls under clause (3) and clause 16 of the Electricity Tariff (Govt.

Order No. 85PDD of 1988 dated 30031988) read with section 53 of the Electricity Act. Clause (3) reads as under:

ClauseIll

Industrial Installations, (a) For Industrial installations minimum charges as per relevant tariff be charged if such an industrial installation remains

disconnected for consecutive 6 (six) months for any reasons, no such charges shall be, leviable thereafter and the service line be physically removed from the system network under the personal supervision of Gazetted Officer of the Department. The power sanction in such cases shall

be deemed to have been withdrawn automatically.

Any reconnect ipn of such disconnected installation for all purposes and shall be subject to liquidation of past arrears, if any. (b) In the case of

industrial installation which have been allowed power connection on the basis of financial viability criterian/mininium consumption guarantee,

provisions of ClauseII (b) shall apply. Clause XVI reads as under: ""Clause XVI Transfer of connection

(a) Any person taking over the premises where electric installation is disconnected shall enter into an agreement with the department and clear the

electricity charges outstanding against the installation before the premises is reconnected.

(b) Any person taking over a premises whether by purchase or on rent, where an installation exists and lies connected shall enter into the

agreement with the department after clearing the electricity charges outstanding against the installation without any notice.

The learned counsel has further contended that respondent herein is a consumer and if there was any due he was entitled to file a suit under the

provisions of section 53 of the Electricity Act. but that could be done after deposit of the arrears of the amount.

7. Concluding his arguments, learned counsel has contended that the suit in the present form was not maintainable until and unless the whole

amount was deposited, therefore. the.re could arise no question of having any triable issue or prima facie case in favour of the respondent (plaintiff)

and the injunction could be issued. Respondent had deposited an amount of Rs. 26,000 on 01031996 and the suit was filed.aftera gap of oneyear

i.e. on 17031997.

8. Rebutting his arguments the learned counsel for the respondent has contended that clause III of Electricity Tariff is applicable to the same

connection in case the earlier connection has to be reconnected. This clause would have been attracted in case of Ravi Conductors for taking

another connection. Respondent herein is a separate identity. Clause 16 (b) would have been attracted if the installation had existed at the time of

taking over the possession of the premises, but that was not the case in the present case as the earlier connection stood disconnected 10 years

before. Clause (a) have been applied in case the same connection i.e. P23/173 would have been restored in favour of the respondent, whereas, in

the present case the respondent was granted fresh connection under No. 143 dated 11031996. Section 53 of the Act is not applicable.

9. Concluding his argument, the learned counsel has contended that the revision petition is not maintainable because the trial court has passed the

impugned order in exercise of the jurisdiction vested in it and no failure of justice has been caused. Even in case where the order is drawn but has

been passed in exercise of the jurisdiction the revisional power vested under section 115 CPC cannot be exercised. The petitioner lias not

explained the delay of one day in filing the revision petition and even on this account the petition fails.

10. After hearing the contentions of the learned counsel for the parties and perusing the record it becomes necessary to determine whether the

respondent had a prima facie case and the balance of convenience lies, in bis favour and thus was entitled to issuance of the impugned order . It is

an admitted fact that he got the fresh connection of the Industrial Unit after making a part payment in the sum of Rs. 26,000 towards the arrears of

the original allottee of the Industrial Unit and had also given an undertaking to pay the arrears within a period of 12 months by paying an installment

of Rs. 50,000 each which he has not done. His case is that such an undertaking was taken from him under undue influence. It is a cardinal principle

of law that the factum of undue influence, fraud, misrepresentation etc. vitiates any proceedings, but the requirement of law is that they have to be

pleaded and proved specifically and there should be cogent and convincing evidence in proof thereof. The present case does not depict at this

stage as to how and in what manner undue influence was exercised upon the respondent. It is a simple case of committing a volte face after getting

an electric connection of the industrial Unit which was in default on account of nonpayment of the previous silottee. Section 53 of the Electricity

Act envisages that on failure of any person to pay any sum due from him in respect of the supply of electrical energy, any sum declared to be

recoverable and every fee leviable under this Act, on the specified date, the Electrical Engineer or any other Officer authorised in this behalf by the

Electric Department shall cause a writ of demand to be served on the default or delivered at or affixed to his place of residence and addressed by

post to such place of residence or any other place where he may be known to reside. In other words, the section provides the procedure how the

recovery of any sum due from a person in respect of the supply of the electrical energy or any sum declared to be recoverable and every fee

leviable under this Act has to be made. The proviso added to this section mandates that any person who disputes his liability to pay the arrears of

electrical energy, charges or fee or disputes the correctness of the amount demand, he has to pay the amount demanded from him under protest in

writing and can bring a suit in the civil court to contest his liability and for refund of the amount not due from him. In the present case, the

respondent has disputed the correctness of the amount demanded from him on the main plea that the supply of the electrical energy was not made

to him. The import of section 53 is very wide and it covers any dispute where the same has been declared to be recoverable from a person who

disputes such recovery. In the instant case by the execution of the agreement and accepting a part of the amount recoverable the department had

declared that the whole amount is recoverable from the respondent who after making a part payment has thrown a challenge in a Civil Court and

under these circumstances the deposit of the whole amount so demanded was a prerequisite for bringing a suit. During the trial, the trial court could

determine whether in the present case section 53 of the Electricity Act was attracted or not, but prima facie in the presence of the law on the

statute book the deposit of the money was a stepinaid in taking cognizance of the suit. The trial court is also required to give interpretation to clause

III (a) of Govt. Order No. 85PDD of 1988 dated 30031988 where it is Sjjecifically provided ""any reconnection of such disconnected installation

shall be deemed to be a fresh connection for all purpose and shall be subject to liquidation of past arrears, if any.

11. It is thus established that without addressing itself to the aspect 'whether the suit in the present form was maintainable or not as well as the

balance of convenience was in favour of the issuance of temporary injunction, the trial court had issued the same and in this view of the matter it

can be said that the trial court exercised its jurisdiction illegally. The law cited by the counsel for the respondent AIR 1973 SC 76 has no application to the facts and circumstances of the case. On this view of the matter, the revision petition is accepted and the orders passed by the

learned District Judge, Kathua as well as by the learned Sub Judge, Kathua are set aside. It is stated here that any observation made for the

disposal of this revision petition shall have no effect on the merits of the case and the trial court shall determine whether the provisions of section 53

of the Electricity Act are applicable or not and whether there was coercion or undue influence as is being pleaded. Any other relevant question

which falls for determination may be adjudged independently without any reference made in this order.

12. Office is directed to send back all the record of the court below immediately and the counsel for the parties are directed to appear before the

learned trial court on 19041999

