**(2003) 01 OHC CK 0046**

**In the Orissa High Court**

**Case No :** Writ Petition (C) No. 810 of 2002

Sunil Rajgarhia APPELLANT

Vs

Orissa State Financial Corporation and Another RESPONDENT

**Date of Decision :** 22-01-2003

**Acts Referred:**
Electricity Act, 1910 — Section 24

**Citation :** AIR 2003 Ori 131 : (2003) 3 CivCC 474 : (2003) 1 CivCC 431 : (2003) 1 OLR 260

**Hon'ble Judges :** P.K. Misra, J;A.K. Patnaik, J

**Bench :** Division Bench

**Advocate :** B.S. Mishra-1, K. Pattanaik, M.R. Mishra, P.K. Mohanty, R.N. Panda, P.R. Mishra, S.K. Nanda and S. Satapathy, for the Appellant; S.L. Patnaik, for No. 1 and B.K. Nayak, for No. 2, for the Respondent

**Final Decision :** Allowed

## Judgement

1. M/s. Shrivally Synthetics Pvt. Ltd. owned an industry in D-2/11, Sector -A, Zone-D, Mancheswar Industrial Estate, Bhubaneswar. The said industry was financed by the Orissa State Financial Corporation, (in short, ''OSFC''). The aforesaid industry of M/s. Shrivally Synthetics Pvt. Ltd. was taken over by the OSFC u/s 29 of the State Financial Corporation Act, 1951 and sold to the petitioner at a price of Rs. 18 lakhs. The sale agreement was executed between the OSFC and the petitioner on 21-1-2002. The assets of the aforesaid industry comprising of land and building were given in possession of the petitioner on 25-1-2002. On 5-2-2002, the Branch Manager, OSFC, Bhubaneswar Branch informed the Chief General Manager, IDCO that the aforesaid industrial land and building of M/s. Shrivally Synthetics Pvt. Ltd. have been sold to the petitioner, the proprietor of M/s. Auro Agencies, located at Puspa Market, Room No. 1, Cuttack Road, Bhubaneswar-6 and the petitioner has taken over physical possession of the assets on 25-1-2002. By the said letter dated 5-2-2002, the Branch Manager of OSFC, Bhubaneswar Branch also requested the Chief General Manager, IDCO to transfer the land and building in favour of the petitioner. A

 

copy of the said letter dated 5-2-2002 was also marked to the Executive Engineer, City Distribution Division, Unit-8, Bhubaneswar with a request to restore power connection to the petitioner without insisting on payment of arrear dues as per the provisions of the I. P. R. The petitioner thereafter applied for supply of electricity in the form for requisition for supply of electrical energy for domestic and commercial purposes to the Junior Engineer, City Distribution Division of CESCO, Bhubaneswar. But the petitioner was not supplied power. Aggrieved, the petitioner has filed this writ petition under Articles 226 and 227 of the Constitution of India for a direction to CESCO, opposite party No. 2 to restore power supply to the unit of the petitioner.

2. Mr. B.S. Mishra, learned counsel for the petitioner submitted that the counter affidavit filed on behalf of opposite party No. 2 would show that opposite party No. 2 has refused to supply electricity to the petitioner on the ground that a sum of Rs. 1,23,541/- is due and payable for supply of electricity by CESCO from the previous owner of the industrial unit, namely, M/s. Shrivally Synthetics Pvt. Ltd. He submitted that the aforesaid liability of M/s. Shrivally Synthetics Pvt. Ltd. cannot be thrust on the petitioner, who has purchased the industry from the OSFC pursuant to take over of the industry by the OSFC u/s 29 of the State Financial Corporations Act, 1951. In support of his aforesaid contention, Mr. Mishra relied on the decision of the Supreme Court in Isha Marbles Vs. Bihar State Electricity Board and Another, in which the Supreme Court held that the liability of the previous contracting party cannot be enforced against the auction purchaser, who is a third party and is in no way connected with the previous owner/occupier of the industrial premises. In the said decision, Mr. Mishra pointed out that the Bihar State Electricity Board was trying to recover the dues towards electricity charges of the previous contracting party with the aforesaid Board from the auction purchaser, but the Supreme Court held that this cannot be done. According to Mr. Mishra, therefore. CESCO cannot enforce the liability of the previous consumer M/s. Shrivally Synthetics Pvt. Ltd. from the petitioner, who has purchased the industrial assets of M/s. Shrivally Synthetics Pvt. Ltd. in auction purchase from OSFC.

3. Mr. B.K. Nayak, learned counsel appearing for CESCO, on the other hand, submitted that the counter affidavit of CESCO is as well as the annexure enclosed thereto, would show that the Executive Engineer. Commercial, CESCO, has informed the Branch Manager of OSFC, Bhubaneswar Branch that electricity supply to M/s. Shrivally Synthetics Pvt. Ltd. has been disconnected on 28-1-2000 for non-payment of arrear dues of Rs. 1,23,541/-, and yet the OSFC did not ensure that the said amount due from M/s. Shrivally Synthetics Pvt. Ltd. is paid to CESCO. He vehemently argued that after take over of the industry of M/s. Shrivally Synthetics Pvt. Ltd. by the OSFC, the OSFC had become the owner of the said industry by virtue of Sub-section (5) of Section 29 of the State Financial Corporations Act and the OSFC was liable to be sued as such owner for the dues that were payable by M/s. Shrivally Synthetics Pvt. Ltd. to CESCO. He tried to persuade the Court to issue appropriate directions to the OSFC to make payment

 

of the aforesaid amount of Rs. 1,23,541/- out of the sale proceeds recovered by the OSFC from the petitioner in the auction sale.

4. Ms. S.L. Patnaik, learned counsel appearing for the OSFC, opposite party No. 1, however, submitted that under the scheme of Section 29 of the State Financial Corporations Act, 1951, the OSFC has to realize first the amount that is due to OSFC from M/s. Shrivally Synthetics Pvt. Ltd. and if the amount realized in sale is not sufficient to meet the clues of the OSFC. the OSFC is not liable to pay the said amount of Rs. 1,23,541 /- which was payable by M/s. Shrivally Synthetics Pvt. Ltd. to CESCO. She further submitted that the remedy of CESCO, if any, is to recover the said amount from M/s. Shrivally Synthetics Pvt. Ltd. by way of suit or any other legal process.

5. In this writ petition, we are not concerned as to how CESCO would realize the amount of Rs. 1,23,541/- that was due from M/s. Shrivally Synthetics Pvt. Ltd. We are only called upon to decide as to whether CESCO is entitled to refuse power supply to the petitioner who has purchased the industrial assets of M/s. Shrivally Synthetics Pvt. Ltd. on the ground that electricity due amounting to Rs. 1,23,541/- was payable from M/s. Shrivally Synthetics Pvt. Ltd. to CESCO. In M/s. Isha Marbles v. Bihar State Electricity Board and another (supra), the Supreme Court has clearly held that when premises come to be owned or occupied by the auction purchaser, and such purchaser seeks supply of electric energy, he cannot be called upon to clear the past arrears as a condition precedent to supply.

"From the above, it is clear, the High Court has chosen to construe Section 24 of the Electricity Act correctly. There is no charge over the property, where that premises comes to be owned or occupied by the auction purchaser, when such purchaser seeks supply of electric energy, he cannot be called upon to clear the past arrears as a condition precedent to supply. What matters is the contract entered into by the erstwhile consumer with the Board. The Board cannot seek the enforcement of contractual liability against the third party. Of course, the bona fides of the sale may not be relevant."

The aforesaid decision of the Supreme Court in the case of Isha Marbles Vs. Bihar State Electricity Board and Another, has been taken note of by a Division Bench of this Court in the case of Madhu Savories Private Limited v. CESCO and another (OJC No. 4621 of 2002) and the Division Bench has held that :

"Whatever be the merits of the contentions raised on behalf of opposite parties 1 to 3 and the interesting aspect sought to be projected before us, we are not in a position to appreciate or accept this contention in view of the clear pronouncement of the Supreme Court in Isha Marbles Vs. Bihar State Electricity Board and Another, . In an almost identical case, when the State Financial Corporation has proceeded against the mortgager in terms of Section 29 of the State Financial Corporations Act and a similar situation arises, the Supreme Court noticed the consequences of its decision and the loss that may be caused to the exchequer, but still held that the Electricity Board could not insist on the clearing of the arrears liable to be paid by the original owner of the Undertakings as a condition for grant of a fresh connection to a purchaser through the instrumentality of the State Financial Corporation. Their Lordships pointed out that the matter of supply of energy was a matter of contract between the consumer and the supplier and unless Section 24 of the Supply Act provided for a charge, the Board could not insist that the arrears should be cleared before a fresh connection is given. In the light of the said decision, we are not in a position to uphold the contention raised by the opposite parties. Whether the Board has the right to proceed against the Undertaking or against the State Financial Corporation is not a matter for adjudication in this proceeding. We are concerned only with the question whether opposite party No. 1 can insist on clearing of the energy charge incurred by the prior owner of the Undertaking as a condition for giving a fresh connection to the purchaser. Since that aspect is squarely covered by the decision of the Supreme Court referred to above, this writ petition has only to be allowed. We therefore, allow the writ petition and direct opposite parties 1 to 3 to give a fresh connection to the petitioner on its regular terms."

6. In view of the aforesaid well-settled position of law that an auction-purchaser like the petitioner cannot be made to pay the liability of the previous contracting party for supply of electricity, such as M/s. Shrivally Synthetics Private Limited, we allow this writ petition and direct opposite party No. 2 to forthwith supply electricity to the petitioner on the petitioner complying with all the required formalities. This direction will be complied with within a period of 15 days from the date of receipt of the certified copy of this order by the opposite party No. 2 from the petitioner. We make it clear that we have not expressed any opinion on the right of CESCO to recover the dues of M/s. Shrivally Synthetics Private Limited either from OSFC or from M/s. Shrivally Synthetics Private Ltd., and it is open for the CESCO to take such remedy against either of the aforesaid parties, as it is advised.

 