

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Cr1.M.C.3284/2008

% Reserved on: 27th October, 2009
Date of Decision: 25th November, 2009

BSES RAJDHANI POWER LTD. Petitioner

! Through: Mr. Sandeep Sethi, Sr.
Adv. with Mr. Anupam Varma and
Mr. Mahit Jolly, Advs.

Versus

\$ STATE N.C.T. OF DELHI & ANR. Respondents

^ Through: Mr. R.N. Vats, APP for the
State, Mr. S.D. Ansari, I. Ahmad
and Mr. G.D. Ahmad, Advs. for R-2

+ Cr1.M.C.3454/2008

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Versus

\$ STATE N.C.T. OF DELHI & ANR. Respondents

^ Through: Mr. R.N. Vats, APP for the State, Mr. V.K. Goel, Adv. for R-2

+ Cr1.M.C.3453/2008

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! Through: Mr. Sandeep Sethi, Sr. Adv. with Mr. Anupam Varma and Mr. Mahit Jolly, Advs.

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* **CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

: V.K. JAIN, J.

1. These are five petitions under Sections 482 of the Code of Criminal Procedure, involving the same question of law. Complaints under Section 135 of Electricity Act were filed by petitioner-BSES Rajdhani Power Limited in all these cases, alleging theft of electricity by the respondents. Besides seeking trial and punishment of the respondents, the petitioner also made a prayer to the Special Court to determine the civil liability in terms of Section 154(5) of Electricity Act.

2. An application was filed by the respondents under Section 154(5) of Electricity Act read with Section 7 of Court Fee Act for directing the complainant to pay ad valorem Court fee on the amount claimed by it. The Special Court held that the petitioner/complainant was bound to pay Court fee under Section 7(1) of Court Fee Act, on the amount which it was claiming as the civil liability. He accordingly directed the complainant/petitioner to pay ad valorem on the amount for which bill was raised by it against the respondents.

3. Section 154(5) of Electricity Act, 2003 reads as under:

“(5) The ¹ [Special Court shall] determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of

theft of energy or the exact period of theft if determined whichever is less and the amount of civil liability so determined shall be recovered as if it were a decree of civil court.”

4. In support of his contention that no Court fee is payable on such a request contained in the complaint filed before the Special Court, the learned senior counsel for the petitioner has relied upon the interpretation given by Supreme Court to similar provision contained in State Financial Corporations Act, 1951.

Section 31 of that Act, to the extent it is relevant, provides as under:

“31. (1) Where an industrial concern, in breach of any agreement, makes any default in repayment of any loan or advance or any instalment thereof or in meeting its obligations in relation to any guarantee given by the Corporation or otherwise fails to comply with the terms of its agreement with the Financial Corporation or where the Financial Corporation requires an industrial concern to make immediate repayment of any loan or advance under Section 30 and the industrial concern fails to make such repayment, then, without prejudice to the provisions of Section 29 of this Act and of Section 69 of the Transfer of Property Act, 1882, any officer of the Financial Corporation, generally or specially authorised by the Board in this behalf, may apply to the district judge within the limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business for one or more of the following reliefs, namely :-

(a) for an order for the sale of the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance; or

(2) An application under Sub-section (1) shall state the nature and extent of the liability of the industrial concern to the Financial Corporation, the ground on which it is made and such other particulars as may be prescribed.”

5. Section 32 of the Act prescribes the procedure of District Judge in respect of the applications under Sections 31. To the extent it is relevant, it reads as under:

“(5) If no cause is shown on or before the date specified in the notice under sub-sections (2) and (4), the District Judge shall forthwith make the ad interim order absolute and direct the sale of attached property or transfer the management of the industrial concern to the Financial Corporation or confirm the injunction.

(6) If cause is shown, the District Judge shall proceed to investigate the claim of the Financial Corporation in accordance with the provisions contained in the Code of Civil Procedure, 1908, in so far as such provisions may be applied thereto.

(8) An order of attachment or sale of property under this section shall be carried into effect as far as practicable in the manner provided in the Code of Civil Procedure, 1908, for the attachment or sale of property in execution a decree as if the Financial Corporation were the decree-holder.”

6. In **Gujarat State Financial Corporation v. Natson Manufacturing Co.(P) Ltd. & Ors.**, 1978 SC 1765, the Hon'ble Supreme Court came to consider whether Court fee was required to be paid on an application made to the District Judge under Section 31 of the Act. The Corporation contended before the Hon'ble Supreme Court that a fixed Court fee of 65 paisa was payable in respect of such an application, as provided in Article 1(C) of Schedule II of Bombay Court Fee Act, 1951. The State Government, on the other hand, contended that such an application would be governed either by Article 1 or by Article 7 of Schedule I and the Court fee payable would be ad valorem on the amount of value of the subject matter in dispute or on the amount of monetary gain or loss to be prevented, according to the scale prescribed under Article 1 of Schedule I. In para 9 of the judgment, the Hon'ble Supreme Court, inter alia, observed as under:

“Section 31(1) prescribes a special procedure for enforcement of claims by the Financial Corporation. The Corporation is to make an application for the reliefs set out in Section 31(1). The reliefs that a Court can grant under Section 31(1) are the sale of the property mortgaged, etc. to a Financial Corporation as security for the loan or advance; transfer of the management of the industrial concern to the Financial Corporation or restraining the industrial concern from transferring or removing its machinery or plant or equipment from

the premises of the industrial concern without the permission of the Board of the Financial Corporation. An application for such a relief is certainly not a plaint in a suit for recovery of mortgage money by sale of mortgaged property.”

7. In para 11 of the judgment, the Hon’ble Supreme Court noted that if the Court Fee Act is a taxing statute, its provisions have to be construed directly in favour of the subject litigant. Relying upon its earlier judgment in **Joint Commercial Tax Officer v. Young Men’s Indian Association**, AIR 1970 SC 1212, the Hon’ble Supreme Court further noted that in a taxing statute, the strict legal position, as disclosed by the form and not the substance of the transaction is determinative of its taxability.

8. As regards sub-section (8) of Section 32, the Hon’ble Supreme Court held that it only prescribes the mode and method for executing the order of attachment or sale of property, as provided in CPC. It was also held that sub-section (6) does not expand the contest in the application made under Section 31(1) as to render the application to be a suit between a mortgagee and the mortgager for sale of mortgaged property. The Hon’ble Court further observed as under in this regard:

“It may be, as mentioned by Mr. Patel, that in the ultimate analysis the result would be that the property will be sold for repayment of the loan or advance taken by the industrial concern from the

Corporation but it could not be said that it is a substantive relief claimed by the Corporation which can be valued in terms of monetary gain or prevention of monetary loss as envisaged by Article 7 of Schedule I of Court-fees Act.”

9. The Hon’ble Court ultimately held that an application under Section 31(1) of the Act would be covered by residuary Article 1(C) of Schedule II of the Court Fee Act and should bear a fixed Court fee in the sum of 65 paisa.

10. **In Prakash Playing Cards Manufacturing Company & Ors. vs. Delhi Financial Corporation**, AIR 1980, Delhi 48, the provisions of Section 31 and 32 of State Financial Corporations Act again came up for consideration before a learned Single Judge of this Court. The question before the Court was whether after constitution of Delhi High Court, an application under Section 31 of State Financial Corporations Act, 1951 where the amount remaining due to the concerned financial corporation exceeding Rs.50,000/- should be filed in the High Court or in the Court of District Judge. The learned Single Judge noted that in a proceeding under Section 32, the Court has to go into all the questions of law and facts that may be raised by the mortgagor in defence to the application made by the Corporation. He also noted the contention that such a petition though framed as a petition seeking summary relief is, in fact, nothing short of a suit filed by the Corporation for

recovering the amounts due to it under the mortgage. But, the argument despite having been found plausible and attractive was not accepted. It was noted that an application under Section 31 does not contain several details prescribed for a plaint under the Code of Civil Procedure. Noticing Section 26 of the Code of Civil Procedure which permits initiation of a suit in a manner other than by filing of a plaint, it was noted by this Court that the same has to be in the manner prescribed in the rules framed under the Code of Civil Procedure. One example where an application could be treated as a suit was an application under Order XXXII which itself amounts to institution of a suit when permission was accorded to the petitioner to sue as an indigent person. The Court held that an application under Section 31 of the Act cannot be treated as a suit by virtue of the language of Section 26 of the Code of Civil Procedure.

11. In **Maharashtra State Financial Corporation vs. Ashok K. Agarwal and Ors.**, AIR 2006 SC 1584, the provisions of Section 31 and 32 of State Financial Corporations Act again came up for consideration before the Hon'ble Supreme Court. The argument before the Hon'ble Supreme Court was that an application under Section 31 is in the nature of execution proceedings, and therefore, Article 136 of Limitation Act applies to such applications. Repelling the contention, the Hon'ble Court, inter alia, held as under:

“Section 31 of the Act contains special provisions for enforcement of claims by State Financial Corporations. It is by way of a legal fiction that the procedure akin to execution of decrees under the Code of Civil Procedure has been permitted to be invoked. But one cannot lose sight of the fact that there is no decree or order of a civil court when we are dealing with applications under Section 31 of the Act. The legal fiction at best refers to a procedure to be followed. It does not mean that a decree or order of a civil court is being executed, which is a sine qua non for invoking Article 136. The proposition set out in the case of Gujarat State Financial Corporation (supra) found support in Everest Industrial Corporation and Ors. v. Gujarat State Financial Corporation [1987]3SCR607. Again in Maganlal etc. v. Jaiswal Industries Neemach and Ors.[1989]3SCR696 this Court noticed that an order under Section 32 is not a decree stricto sensu as defined in Section 2(2) of the Code of Civil Procedure, the financial Corporation could not be said to be a decree holder. This makes it clear that while dealing with an application under Sections 31 and 32 of the Act there is no decree or order of a civil court being executed. It was only on the basis of a legal fiction that the proceedings under Section 31 are treated as akin to execution proceedings. In fact this Court has observed that there is no decree to be executed nor there is any decree holder or judgment debtor and therefore in a strict sense it cannot be said to be a case of execution of a decree. Article 136 of the Limitation Act has no application in the facts of the present case. Article 136 specifically uses the words "decree or order of any civil court". The application under Sections 31 and 32 of the State Financial Corporation Act is not by way of execution of a decree or order of any civil court.”

12. Section 15 of Indian Arbitration Act, 1899, which came up for consideration before the Hon'ble Supreme Court in *Paramjeet Singh Patheja v. ICDS Ltd.* JT 2006 (10) SC 41 reads as under:-

“15. Award when filed to be enforceable as a decree (1) An award on a submission, on being filed in the court in accordance with the foregoing provisions, shall (unless the court remits it for reconsideration to the arbitrators or umpire, or sets it aside) be enforceable as if it were a decree of the court.”

13. After noticing the definition of 'decree' given in Section 2(2) of Code of Civil Procedure, the Hon'ble Supreme Court noted as under in para 30 of the judgment:-

“30. The words 'court', 'adjudication' and 'suit' conclusively show that only a court can pass a decree and that too only in suit commenced by a plaint and after adjudication of a dispute by a judgment pronounced by the court. It is obvious that an arbitrator is not a court, an arbitration is not an adjudication and, therefore, an award is not a decree.”

14. In para 36 of the judgment, the Hon'ble Court held as under:-

“36. It is settled by decisions of this Court that the words 'as if' in fact show the distinction between two things and such words are used for a limited purpose. They further show that a legal fiction must be limited to the purpose for which it was created.”

15. The Hon'ble Supreme Court noted that the provisions of Section 36 of Arbitration and Conciliation Act, 1996 are in *pari materia* with Section 18 of 1899 Act and in fact go further than that making it clear beyond doubt that enforceability of the award has to be only under the Code of Civil Procedure. Dealing with the expression "court" in the context of Article 136 of the Constitution, the Hon'ble Supreme Court, *inter alia*, observed as under:-

"The Constitution recognized a hierarchy of court and to their adjudication are normally entrusted all disputes between citizens as well as between citizens and the State. These courts can be described as ordinary courts of civil judicature."

"By 'courts' is meant courts of civil judicature and by 'tribunals' those bodies of men who are appointed to decide controversies arising under certain special laws."

"All tribunals are not courts, though all courts are tribunals. The word 'courts' is used to designate those tribunals which are set up in an organized state for the administration of justice...."

16. The Hon'ble Court, *inter alia*, held as under in paras 56, 57 and 60 of the judgment:-

"56. Section 15 of the Arbitration Act, 1899 provides for 'enforcing' the award as if it were a decree. Thus a final award, without actually being followed by a decree (as was later provided by Section 17 of the

Arbitration Act of 1940), could be enforced, i.e. executed in the same manner as a decree. For this limited purpose of enforcement, the provisions of CPC were made available for realizing the money awarded. However, the award remained an award and did not become a decree either as defined in the CPC and much less so far the purposes of an entirely different statute such as the Insolvency Act.

“57. Section 36 of the Arbitration and Conciliation Act of 1996 brings back the same situation as it existed from 1899 to 1940. Only under the Arbitration Act, 1940, the award was required to be made a rule of court i.e. required a judgment followed by a decree of court.”

“60. For the foregoing discussions we hold:

iv) An arbitration award is neither a decree nor an Order for payment within the meaning of Section 9(2). The expression “decree” in the Court Fees Act, 1870 is liable to be construed with reference to its definition in the CPC and held that there are essential conditions for a “decree”.

(a) That the adjudication must be given in a suit.

(b) That the suit must start with a plaint and culminate in a decree, and

(c) That the adjudication must be formal and final and must be given by a civil or revenue court.

(v) A legal fiction ought not to be extended beyond its legitimate

field. As such, an award rendered under the provisions of the Arbitration Act, 1996 cannot be construed to be a “decree” for the purpose of Section 9(2) of the Insolvency Act.”

17. In *Amin Chand Vs. State of H.P. and Ors.*, AIR 1974 HP 18, an application for review of a judgment disposing of a writ petition was filed before the High Court. The question before the High Court was whether court fee on such a petition was payable under Article 4 of the 1st Schedule or under Article 1(d)(iv) of the 2nd Schedule of Himachal Pradesh Court Fee Act, 1968. Article 4 of the 1st Schedule provided for payment of half of the fee leviable on the plaint or memorandum of appeal, on an application for review of judgment whereas Article 1(d)(iv) of Second Schedule provided for a fixed fee on application. The High Court held that in order to attract applicability of Article 4 of the First Schedule, the judgment of which review is sought, should have been based in a proceeding initiated by a plaint or memorandum of appeal. It was observed that in common parlance, plaint means generally the document initiating a suit and merely because a petition initiates a proceeding of an original nature does not necessarily make it a plaint. It was noted that writ petitions under Article 226 of the Constitution could not be described as a plaint since jurisdiction of the High Court under Article 226 of the Constitution is in its essential nature different from that exercised in a suit. The High Court,

therefore, held that such an application would be governed by Article 1 (d)(iv) of the 2nd Schedule.

18. In *Chief Inspector of Stamps, U.P., Allahabad Vs. Mahanth Laxmi Narain and Ors.*, AIR 1970 Allahabad 488, a Seven Judges' Bench of Allahabad High Court observed that Court Fee Act is a fiscal measure and is to be strictly construed in favour of the subject and if the language of the provision is capable of two interpretation then that interpretation should be accepted which is in favour of the subject.

19. The learned counsel for the respondents on the other hand has relied upon the decision of a Division Bench of this court in *B.L. Kantroo Vs. BSES Rajdhani Power Ltd.* 154 (2008) Delhi Law Times 56. In that case the plaintiff/appellant had filed a civil suit seeking declaration that the bill issued by the respondent/defendant was false and illegal and had also sought consequential relief of injunction against dis-connection of electricity supply. The issue before the court was as to whether civil court had the jurisdiction to try such a suit. In para 22 of the Judgment, the Division Bench observed as under:-

22. It is apparent that the cases of theft under Section 135(1) involve *mens rea*. The jurisdiction of civil court is not barred but the power to try offences punishable under Sections 135 to 139 is conferred exclusively on the Special Court constituted under Section 153 of the

Act and the provisions of Sub-section (5) of Section 154 specifically invest Special Court with the jurisdiction to determine any dispute regarding the quantum of civil liability in theft cases whether or not the allegation of theft is disputed, is still entitled to make such a challenge to the disputed bill before the Special Court, even in cases where no criminal complaint is filed against the consumer and the amount of civil liability so determined shall be recovered as if it were a decree of a civil court and it can act as civil court as well as criminal court while conducting the cases before it.

20. In para 30 of the judgment, the Division bench observed as under:-

“Although there is no specific provision in Section 145 of the Act for exclusion of jurisdiction of Civil Court to entertain any proceeding in respect of any matter which the Special Court is empowered by or under the Act to determine, we are of the view that any dispute about civil liability in theft cases is impliedly excluded from the jurisdiction of civil court in view of the provisions of Sections 153 and 154 of the Act wherein special court has got the jurisdiction to determine any dispute regarding the quantum of civil liability specifically in theft cases and the said Court can act as civil court as well as criminal court while conducting the cases before it.”

21. The above referred judgments in my view does not advance the cases of the respondents in any manner. The issue before the Division Bench was with respect to the jurisdiction of the civil court and not with respect to payment of court fee in

respect of determination of civil liability set u/s 154(5) of Electricity Act. As far as the observations made by the Division Bench of this Court in case of B.L. Kantroo(Supra) are concerned, that in my opinion means that the special court while enforcing the civil liability determined by it shall act as a civil court, meaning thereby that for the purpose of execution alone, the said court will act as a civil court and will follow the procedure prescribed in the Code of Civil Procedure for execution of the decree passed by a civil court.

22. Section 154 of Electricity Act which prescribes the procedure and power of special court does not say that the special court, while determining civil liability u/s 154(5) of the Act would adopt the procedure prescribed in the Code of Civil Procedure for trial of suits. It does not even say that the special court, while determining civil liability u/s 154(5) of the Act shall be deemed to be a civil court. Use of the words as if it were a decree of the civil court in Section 154 (5) of Electricity Act is a strong indicator of the legislative intent and clearly shows that the determination of civil liability by special court by itself will not be a 'decree' passed by the civil court and it is only by fiction of law that such a liability would be recovered as if it were a decree of civil court. Had the intention of the legislature been that the special court while dealing with a request for determination of civil liability, should adopt the procedure

prescribed for trial of a civil suit, it would have stated so either expressly or by necessary implication and it would not have merely said that the amount of civil liability shall be recovered as if it were a decree of civil court. The legislature would then have said that the special court while determining such a liability would act as a civil court or that the determination made by it shall be deemed to be the decree of a civil court.

23. In fact, Section 154(5) of Electricity Act casts an obligation upon the special court to determine the civil liability, even if no prayer for determination of such a liability is made by either party. Therefore, even if no request had been made by the petitioner for determination of civil liability, the special court would still have to carry out the legislative mandate given to it u/s 154(5) of the Act.

24. Article 1 of Schedule 1 of Court Fee Act provides for payment of ad valorem court fee on plaint, written statement pleading a set off or counter claim or memorandum of appeal or cross-objections presented to civil or revenue courts except those mentioned in Section 3. Unless the respondent can bring its case within the parameters of Article 1 of Schedule 1, ad valorem court fee would not be payable in respect of the amount claimed by the petitioner as civil liability of the respondents. Therefore, the question which arises is whether the complaint

filed by the petitioner can be deemed to be a 'plaint' within the meaning of Article 1 of Schedule 1 of Court Fee Act and whether the special court can be said to be a civil court for the purpose of this article. Taking into consideration the proposition of law enunciated by the Hon'ble Supreme Court in the case of Paramjeet Singh Patheja (Supra), special courts cannot be deemed to be civil court, the same having been specially set up u/s 153 of the Special Courts Act primarily for the purpose of trial of offence punishable U/ss 135 to 140 and Section 150 of Electricity Act. These special courts are not regular courts envisaged under Article 136 of the Constitution irrespective of the fact that the person who can be appointed as a Judge of a Special Court needs to be an Additional District & Sessions Judge immediately before his appointment as a Judge of a Special Court. In any case, in the absence of any specific statutory provision to this effect, a court set up primarily for the purpose of trial of the criminal offences cannot be considered to be a civil court within the meaning of Article 1 of Schedule 1 of Court Fee Act.

24. In any case, the complaint filed by the petitioner before the Special Court cannot be construed as a 'plaint' by any logical construction of the document. A bare perusal of this document, styled as a complaint u/s 135 r/w Section 151 of Electricity Act would show that the main prayer made by the

complainant/petitioner was to summon, try and punish the respondents/accused persons on the ground that they had committed theft of electricity and had thereby committed offences punishable u/s 135(1) of Electricity Act, 2003. The complaint also contains an additional prayer to the court to determine the civil liability as provided in Section 154(5) of the Act. In my view, merely because this complaint also contains a prayer for determination of civil liability that by itself does not convert it into a 'plaint'. A document cannot be said to be a criminal complaint as well as a plaint at the same time. A criminal plaint lies before a criminal court whereas the plaint lies before a civil court. The procedure prescribed in Code of Criminal Procedure for trial of a case instituted on a complaint is altogether different from the procedure prescribed in the Code of Civil Procedure, for trial of a suit instituted by filing a plaint. Therefore, this document cannot be termed as a plaint within the meaning of Article 1 of Schedule 1 of Court Fee Act.

25. Section 26(2) of Code of Civil Procedure provides that in every plaint, facts shall be proved by affidavit. On the other hand, Section 154 of Electricity Act, 2003 provides that the special court may try the offences referred to in Section 135 to 140 and Section 150 in a summary way in accordance with the procedure prescribed in the Code of Criminal Procedure and the provisions of Section 263 to 265 of the Code of Criminal

Procedure shall, so far as may be, apply to such trial. It does not prescribe any separate procedure for determination of civil liability. The Electricity Act does not envisage application of two procedures, by special court, one for the purpose of trial of offences referred to in Section 135 to 140 and Section 150 of the Act and the other for determination of civil liability u/s 154(5) of the Act. Had the legislative intent been that for the purpose of determination of civil liability, the special court would adopt the procedure prescribed in the Code of Civil Procedure for trial of a suit, it would have expressly stated so in the Act. In any case this is not the case of the respondents that the Special Courts, are conducting two independent proceedings, one in accordance with the procedure prescribed in Cr.P.C. for trial of the offences of which the complaint has primarily been filed and the other in accordance with the procedure prescribed in CPC for trial of civil suits, for determining civil liability u/s 154(5) of Electricity Act.

26. Order V Rule 1(2) of the Code of Civil Procedure provides that every plaint shall comply with the rules contained in Order VI and VII so far as they are applicable. Order VI prescribes the requirement in respect of pleading. Rule 3 of Order VI provides that the form in Appendix A when applicable and where they are not applicable forms of the like character shall be used for all pleadings. Admittedly the complaint filed by the petitioner

before the special court does not confirm to this requirement. Rule 15 of Order VI provides that every pleading shall be verified at the foot by the parties or one of the parties pleading or by some other person acquainted with the facts of the case. The verification is required to be signed by the person making it. A perusal of the complaint filed by the petitioner before the special court shows that it does not meet this requirement of the Code of Civil Procedure.

27. Order VII Rule 1 of the Code of Civil Procedure prescribes the particulars which are required to be contained in a plaint. Those particulars admittedly are not given in the complaint filed by the petitioner before the special court. Rule 14 of Order 7 provides that where the plaintiff relies upon a document in his possession or power he shall enter such documents in a list and shall produce it in court when the plaint is presented by him. If not produced, such a document cannot be produced later without the leave of the court. Admittedly, the complaint filed before the special court does not meet this requirement.

28. The scheme of the Code of Civil Procedure for trial of a suit instituted by presenting a plaint is altogether different from the procedure prescribed in Section 154 of Electricity Act for trial of offences u/s 135 to 140 and 150 of the Act. Order V of the Code of Civil Procedure provides the mode of service of summon in a

civil suit. Order VIII provides for filing of a written statement by the defendant within 30 days from the date of service of summons upon him. If the written statement is not filed within the prescribed period, the court is required to pronounce a judgment against the defendant as provided in Rule 10 of Order VIII of the Code of Civil Procedure. Order IX of the Code of Civil Procedure for dismissal of a suit, if the plaintiff does not appear when the suit is called on for hearing. Rule 6 of Order IX provides for making an ex-parte against the defendant if he does not appear despite service of summon upon him. A suit dismissed in default under Rule 8 of Order IX precludes the plaintiff from brining a fresh suit on the same cause of action. The final determination of a civil suit results in passing of a decree. No decree, however, is envisaged in Section 154(5) of Electricity Act.

29. The entire procedure for trial of a civil suit instituted by presentation of a plaint as prescribed in the Code of Civil Procedure is altogether different from the procedure prescribed for dealing with the complaints in respect of the offences referred to in Section 135 to 140 and Section 150 of Electricity Act. Neither adoption of such a procedure has been prescribed by Section 154 of Electricity Act nor is such a procedure otherwise implicit in that Act.

30. The interpretation given by the Hon'ble Supreme Court in the case of Gujarat Industrial Finance Corpn. (Supra), followed by this court in Prakash Playing Cards Manufacturing Co. (Supra) equally applies to Section 154 (5) of Electricity Act, 2003. The view being taken by me also finds full support from the decision of the Hon'ble Supreme Court in, Paramjit Singh Patheja (Supra), interpreting Section 15 of Arbitration Act of 1899 and Section 36 of Arbitration and Conciliation Act, 1996.

31. For the reasons given in the preceding paragraphs, I am of the considered view that ad valorem court fee is not payable on the complaints filed by the petitioner before the Special Courts. The view taken by the learned Judge of the Special Court is not sustainable in law and is liable to be set aside. Hence, the impugned order is hereby quashed and the Special Court is directed to proceed further in the matters without insisting upon payment of ad valorem court fee.

(V.K.JAIN)
JUDGE

NOVEMBER 25, 2009
bg/sk