

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

%

Date of decision: 1st June, 2011

+ WP(C) No.5208/2010 & CM No.10270/2010 (for interim relief)

% **M/S RAKESH KUMAR SHARMA & SONS** **Petitioner**
Through: Mr. Laliet Kumar with Mr. Deepak
Vohra, Advocates.

Versus

BSES RAJDHANI POWER LTD & ANR. **Respondents**
Through: Mr. Sunil Fernandes, Standing
Counsel with Mr. Vipin Pillai,
Advocates.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

- | | | |
|----|---|-----|
| 1. | Whether 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 |

RAJIV SAHAI ENDLAW, J.

1. The present writ petition is a sequel to the Full Bench judgment of this Court in *BSES Rajdhani Power Ltd. Vs. Saurashtra Color Tones Pvt. Ltd.* AIR 2010 Delhi 14 and as per which, if a tenant leaves arrears of electricity charges, the landlord can be denied electricity in the premises if does not clear the said arrears.

2. The petitioner is the owner of the first floor of property bearing No.E-5, South Extension Part-II (Market), New Delhi. The said property has been let out to the respondent no.2 M/s Saraf Projects Pvt. Ltd. The respondent no.2 tenant has obtained an electricity connection in the said tenanted premises in its own name from the respondent no.1. Disputes and differences arose between the petitioner and the respondent no.2 resulting in the filing of CS(OS) No.842/2009 by the petitioner in this Court for eviction of the respondent no.2. In the said suit, a settlement was arrived at between the petitioner and the respondent no.2 and under which settlement, the respondent no.2 has *inter alia* agreed to vacate the premises on or before 7th January, 2013.

3. The petitioner has filed this writ petition averring that to the knowledge of the petitioner, the respondent no.2 has outstanding arrears of over Rs.55,00,000/- to the respondent no.1 towards electricity charges and expressing apprehension that unless the respondent no.1 recovers the said amount from the respondent no.2 immediately or disconnects electricity supply to the respondent no.2 in the tenanted premises immediately, so as to compel the respondent no.2 to make payment, the petitioner may be

saddled with the said liability upon the respondent no.2 vacating the premises.

4. The petitioner thus seeks a direction to the respondent no.1 to take appropriate steps to recover upto date dues with respect to the premises from the respondent no.2 only, to ensure that the petitioner upon being put back into possession of the premises is not saddled with liability for dues of electricity consumed by the respondent no.2.

5. Considering the nature of the controversy, need was not felt to call for the counter affidavit or to issue notice to the respondent no.2 tenant and the counsel for the petitioner and the counsel for the respondent no.1 have been heard finally on the petition.

6. The counsel for the respondent no.1 has contended that the petitioner has concealed from this Court that there is a dispute pending between the respondent no.2 tenant and the respondent no.1 with respect to the electricity dues aforesaid. It is stated that the respondent no.2 tenant had filed a complaint against the respondent no.1 before the State Consumer Disputes Redressal Forum and which was decided in favour of the respondent no.2 tenant on 16th December, 2008; the respondent no.1 preferred an appeal to the National Consumer Disputes Redressal

Commission which was decided in favour of the respondent no.1 on 7th August, 2009; the respondent no.2 tenant has now preferred a Special Leave Petition No.25343/2009 which is pending consideration before the Supreme Court. It is contended that the relief sought in this writ petition of directing the respondent no.1 to recover the dues of over Rs.55,00,000/- from the respondent no.2 tenant is contrary to the aforesaid dispute which is pending. The counsel for the respondent no.1 however on enquiry informs that there is no stay by the Supreme Court of any action by the respondent no.1 to recover the dues from the respondent no.2 tenant.

7. It is further the contention of the counsel for the respondent no.1 that the relief sought by the petitioner is contrary to Regulation 15 of the Delhi Electricity Supply Code & Performance Standards Regulations, 2007 whereunder the respondent no.1 is entitled to refuse electricity supply to the premises aforesaid after the respondent no.2 tenant has vacated the premises if any arrears of electricity dues remain. The counsel for the respondent no.1 has also taken me through paragraphs 10 to 14 of the judgment in *Paschimanchal Vidyut Vitran Nigam Limited Vs. DVS Steels and Alloys Private Limited* (2009) 1 SCC 210 in this regard.

8. The counsel for the respondent no.1 has further contended that as per paragraph 14 of the judgment of the Full Bench in ***Saurashtra Color Tones Pvt. Ltd.*** (supra), the petitioner ought to have incorporated in the Lease Deed, the obligation of the respondent no.2 tenant to pay the electricity dues up to the date of vacation of the premises. It is urged that the Lease Deed has intentionally not been filed.

9. The counsel for the petitioner states that the petitioner is not a party to the proceedings between respondent no.1 and respondent no.2 and thus no question of concealment arises. It is further stated that the electricity charges are always the responsibility of tenant and more so when the connection itself is in the name of the tenant. It is further stated that Lease Deed if required, can be filed.

10. The Full Bench of this Court in the judgment aforesaid has held that the question of *mala fides* does not arise in the enforcement of Regulation 15 aforesaid and the said Regulation is to be enforced even if the owner or subsequent transferee or purchaser of the property was unaware of the electricity dues and has no truck with the person leaving the arrears.

11. The petitioner, atleast by way of the present petition has made the respondent no.1 aware of the last date when the respondent no.2 is to

vacate the premises. The counsel for the petitioner also relies upon Regulation 49 whereunder the respondent no.1 is required to immediately disconnect the electricity supply for non-payment of the arrears. It is contended that notwithstanding there being no stay against the respondent no.1 from the Supreme Court, the respondent no.1 is not taking any steps for recovery of huge dues and which may ultimately fall on the petitioner. Both petitioner as well as respondent no.1 allege collusion of the respondent no.2 with other.

12. The counsel for the respondent no.1 states that the respondent no.1 as a matter of policy does not take coercive steps during the pendency of a litigation, even if there be no stay order.

13. It has at the outset to be examined whether the relief sought is in the face of Regulation 15 supra. The same is as under:

“15. General—(i) The Licensee shall prominently display at all offices where application for new connection is accepted, the detailed procedure for new connection and the complete list of documents required to be furnished along with the application. No other document, which has not been listed, shall be asked to be submitted by the applicant. Rate/amount of security and cost of service line to be deposited by the applicant in accordance with the stipulation in the regulations shall also be displayed.

(ii) Where applicant has purchased existing property and connection is lying disconnected, it shall be the duty of the

applicant to verify that the previous owner has paid all dues to the Licensee and has obtained “no-dues certificate” from the Licensee. In case “no-dues certificate” is not obtained by the previous owner, the applicant before purchase of property may approach the Business Manager of the Licensee for a “no-dues certificate”. The Business Manager shall acknowledge receipt of such request and shall either intimate in writing outstanding dues, if any, on the premises or issue “no-dues certificate” within one month from the date of application. In case the Licensee does not intimate outstanding dues or issues “no-dues certificate” within specified time, new connection on the premises shall not be denied on ground of outstanding dues of previous consumer.

(iii) Where a property/premises has been sub-divided, the outstanding dues for the consumption of energy on such premises, if any, shall be divided on prorata basis based on area of sub-division.

(iv) A new connection to such sub-divided premises shall be given only after the share of outstanding dues attributed to such sub-divided premises is duly paid by the applicant. A Licensee shall not refuse connection to an applicant only on the ground that dues on the other portion(s) of such premises have not been paid, nor shall the Licensee demand record of last paid bills of other portion(s) from such applicants.

(v) In case of complete demolition and reconstruction of the premises or the building, the existing installation shall be surrendered and agreement terminated. Meter and service line will be removed, and only fresh connection shall be arranged for the reconstructed premises or building, treating it as a new premises after clearing the old dues on the premises by the consumer(s).”

14. It would thus be seen that Regulation 15 imposes an obligation on a purchaser of existing property electricity connection wherein is lying disconnected. The present is not a case of sale-purchase of property. The

petitioner is the owner having inducted respondent no.2 as the tenant and the dues subject matter of this writ petition are the dues of electricity connection obtained by the respondent no.2 tenant himself in its own name in the premises.

15. Both *Saurashtra Color Tones Pvt. Ltd.* and *Paschimanchal Vidyut Vitran Nigam Limited* also were concerned with sale-purchase of property and not with a case of tenancy as the present case is, though I must record that in the order of reference to Full Bench in *Saurashtra Color Tones Pvt. Ltd.*, there indeed is a reference to “previous tenant”. *Saurashtra Color Tones Pvt. Ltd.* however does not refer to Regulation 15 (supra) but bases the entitlement to recover outstanding dues against the premises and/or disconnected connection on General Conditions of Supply of electricity which were held to be binding and statutory in nature. It was held since as a condition of supply in Delhi the consumer is bound to pay / deposit outstanding dues, the consumer could not be heard to contend otherwise. The Division Bench of this Court in *Madhu Garg Vs. North Delhi Power Ltd.* 129 (2006) DLT 213 approved by the Full Bench in *Saurashtra Color Tones Pvt. Ltd.* had also held that whenever a person purchases a property, it is his duty to find out whether there are

outstanding electricity dues in relation to the premises and he cannot be allowed to say later that he was unaware that there were dues of the previous occupant.

16. I may also notice that Regulation 46 makes a consumer of electricity liable to get a special reading done at the time of change of occupancy or on the premises falling vacant and to obtain No Dues Certificate from the Distribution Company such as the respondent no.1 herein is. The respondent no.1 is also obliged to arrange for such special reading and to deliver the final bill including all arrears till the date of billing at least three days before the vacation of the premises. Upon such final bill being raised, the Distribution Company as respondent no.1, is left with no right to recover any amounts other than those subject matter of the bill and is also required to disconnect the supply on its vacancy.

17. In my view, the right aforesaid of the respondent no.1 under General Conditions of Supply has to be harmonized with its obligations under Regulations 15, 49 & 46 supra. The respondent no.1 especially after being warned cannot be negligent in complying with its obligations and which non-compliance may be to the prejudice of the petitioner. Even if it be the policy of the respondent no.1 to not disconnect electricity

supply during the pendency of legal proceedings, the respondent no.1 can certainly in the said legal proceedings seek a direction for securing its claims. The respondent no.1 cannot afford to be complacent in the belief that its dues are secure and will be recovered if not from the respondent no.2 then in any case from the petitioner. The provisions of Regulations 15, 46 & 49 have been made in public interest and the respondent no.1 cannot use it to the detriment of the public. If the Distribution Companies such as the respondent no.1 are permitted to so allow the arrears of electricity charges to accumulate and not take timely prompt action for recovery thereof from the person liable therefor and then coerce the subsequent occupant to pay the same, it would be a serious clog on transferability of immovable properties. People would then hesitate in acquiring properties for the fear of the unknown liability of electricity dues. Cases are not unknown where the Distribution Companies have on enquiry disclosed a certain amount of dues and subsequently demanded manifold amounts. The Distribution Companies, when warned of the likely date of vacation of the property by the consumer liable for electricity dues, are obliged to ensure that the electricity charges do not accumulate and are recovered before the consumer vacates the property so

that the electricity dues do not fall on the subsequent occupant. Just like under Conditions of Supply the respondent no.1 is entitled to recover the outstanding of previous occupant from the subsequent occupant, the respondent no.1 is also entitled to (a) insist on the respondent no.2 obtaining a No Dues Certificate from the respondent no.1 under Regulation 15(ii) as well as Regulation 46(i) before leaving the premises, (b) take a special reading under Regulation 46(ii) seven days in advance of the respondent no.2 vacating the premises, (c) deliver the final bill under Regulation 46(iii) to the respondent no.2 at least three days before it vacates the property and (d) under Regulation 46(iv) disconnect the electricity supply immediately on the respondent no.2 vacating the premises. All this can be ensured by the respondent no.1 calling upon the respondent no.2 to furnish an affidavit or undertaking to comply with the aforesaid Regulations and if the respondent no.2 fails to furnish such affidavit/undertaking, to proceed to disconnect electricity supply forthwith.

18. Mention may also be made of the recent dicta in *Haryana State Electricity Board Vs. Hanuman Rice Mills* (2010) 9 SCC 145 laying down that electricity arrears do not constitute a charge over the property

and because in general law a transferee of premises cannot be made liable for the dues of the previous owner/occupier and further holding that only where the statutory rules and terms and conditions of supply which are statutory in character, authorize the supplier of electricity to demand from the purchaser of a property claiming reconnection or fresh connection of electricity, the arrears due from the previous owner/occupier in regard to supply of electricity to such premises, can the supplier recover the arrears from the purchaser. I am of the opinion that the supplier of electricity is required to enforce all its rules and cannot be selective in the same and if found to be negligent in enforcement of rules against the previous occupant and to the detriment of the subsequent occupant, the subsequent occupant would be entitled to resist such claims of the supplier of electricity.

19. The writ petition is therefore disposed of with the following directions:-

- (i) the petitioner shall immediately serve notice on the respondent no.1 of any change in terms with the respondent no.2 than as contained in the compromise/application in the suit, copy of which is annexed to the writ petition. The petitioner to, in the event

of learning of the intent of the respondent no.2 to vacate the premises prior to 7th January, 2013, immediately serve the respondent no.1 with notice of the same.

(ii) the respondent no.1 is directed to secure itself in the manner aforesaid and otherwise, qua the dues, if any from the respondent no.2 and to ensure that all its claims against the electricity meter in the name of the respondent no.2 in the premises aforesaid are paid before the stipulated date of vacation of the premises. If the respondent no.1 is found to be wanting in the same, it shall not be entitled to deny the electricity connection to the petitioner or any subsequent transferee/occupant thereof for the reason of the said dues.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

JUNE 01, 2011
bs