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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 5333 OF 2011
WITH
CIVIL APPLICATION NO. 5334 OF 2011
IN/WITH
SECOND APPEAL (ST) NO.32343 OF 2010**

1. Maharashtra State Electricity
Distribution Company, through
its Executive Engineer,
MSEDCL, Near Bus stand,
Hingoli, Dist. Hingoli.

2. Maharashtra State Electricity
Distribution Company,
through its Junior Engineer,
MSEDCL, Sub Station, Near
Civil Hospital, Tofkhana,
Hingoli, Dist. Hingoli.

..APPLICANTS/
APPELLANTS

VERSUS

1. Mr. Dattarao Punjaji Thorat,
Age: 45 years, Occ: Agri.,

2. Mr. Ramji Punjaji Thorat,
Age: 52 years, Occ: Agri.,

Both R/o. Balsond,
Tq. & Dist. Hingoli.

..RESPONDENTS

Mr A.S. Bajaj, Advocate for applicants/appellants;
Mr S.S. Deshmukh, Advocate for respondents

CORAM : N.W. SAMBRE, J.

DATE : 12th JUNE, 2017

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ORAL ORDER :

. Civil Application No. 5333 of 2011 is for condonation of delay in preferring the second appeal. For the reasons stated in the application, the delay of 146 days in preferring the second appeal stands condoned. Civil Application stands allowed.

2. With consent, the appeal is taken up for final disposal at admission stage.

3. It is the case of respondents-plaintiffs that on 27th January, 2007, because of loose shunting of live electric wires by the respondent Company, sparking took place, resulting into fodder stored in the field caught fire and resulted into loss of Rs.75,000/-.

4. Accordingly, Regular Civil Suit No.157 of 2007, filed in the Court of Civil Judge Junior Division, Hingoli came to be decreed against the appellants with direction to pay compensation of

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Rs.75,000/- with interest @6% p.a. from the date of filing of the suit.

5. In appeal, being Regular Civil Appeal No. 42 of 2008 at the behest of present appellants-original defendants, learned District Judge modified the judgment and decree and reduced the amount of compensation of Rs.50,000/-. As such, present second appeal.

6. The claim as was sought to be put forth before the learned Trial Court was resisted by the appellants-defendants by filing written statements and denied all the factual matrix. They have examined Junior Engineer as their witness so as to prove that the incident of accident has never taken place.

7. In the aforesaid background, learned Counsel for the appellants who invites attention of this Court to the provisions of Section 161 of the Electricity Act, 2003 so as to submit that neither

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any notice in appropriate format nor compliance thereof is reflected in the plaint. According to him, for non-compliance of Section 161 of the Electricity Act, 2003, the judgments of both the Courts below are not sustainable. In addition, he would invite attention of this Court to the findings of the appellate Court so as to submit that there was hardly any evidence to infer the story of storage of fodder and because of negligence of present appellants, same caught fire causing loss and damage.

8. Per contra, learned Counsel for the respondents-plaintiffs while inviting attention of this Court to the evidence of two witnesses of the plaintiffs and also evidence of the defence witness, would urge that the alleged accident was very much reported to the police and also to the fire brigade station. According to him, police have registered Accident in the matter and spot panchnama was very much proved by examining P.W.2. According to him, once it was established that

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there was accident and there was damage, the burden shifts on the appellants to prove that the accident have never taken place. According to him, burden was never discharged. He would urge that once provisions of Section 161 of the Electricity Act, 2003 provides for parallel remedy to the present respondents of lodging claim before the Electrical Inspector. According to him, it is admitted fact on record that the appellants were served with notice, which was responded by them and at no point of time, defence particularly based on provisions of Section 161 of the Electricity Act was raised. He would then urge that in absence of pleadings, the issue need not be considered by this Court at this stage.

9. Having considered the rival submissions, it is required to be noted that the plaintiffs-respondents examined Dattarao Thorat as P.W.1 at Exh.21 and Baban Thorat as P.W.2 at Exh.22. So far as the evidence of P.W.1 Dattarao is concerned, with assistance, I have perused the deposition in

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which he has disclosed about passing of electricity line from his field and there is loose shunting of live wires. He has also established accident in question. The registration of accident by the police authorities is also proved.

10. P.W.2 – Baban, in his evidence has proved the panchnama of accident and has also deposed in support of alleged accident and damage to the fodder which was stored in the field.

11. Once such an accident was proved by placing oral and documentary evidence, the claim of the appellants-defendants that such accident had never taken place was required to be proved by them. So as to discharge such burden, the present appellants have examined D.W.1 Junior Engineer Mr Gautam Khandudeo Ranveer. However, said witness could narrate only about nature in which the system will respond if loose wires gets in touch with other. His evidence does not disclose total denial of happening of the incident.

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12. In the aforesaid background, learned trial Court and appellate Court have rightly appreciated the evidence and inferred findings of fact that in the accident in question the respondents-plaintiffs have suffered damage.

13. While determining quantum of damage, though trial Court has awarded compensation of Rs.75,000/-, however, lower appellate Court upon re-appreciation, reduced the same to Rs.50,000/-.

14. The respondents are agriculturists, which fact is not in dispute. To keep exact account of fodder and prove the value of the same, is rightly inferred by the appellate Court to be not expected of. The appellate Court proceeded to do some guess work based on oral evidence and awarded compensation of Rs.50,000/-.

15. Though reliance is sought to be placed on the purchase of fodder by the respondents-

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plaintiffs to the tune of Rs.25,000/- after the incident, however, from the said submission, it cannot be inferred that the fodder worth only Rs.25,000/- was stored by the respondents and remaining was not available for sale at their behest.

16. This takes me to the next submission as regards non-compliance of Section 161 of the Electricity Act.

17. Remedy under Section 161 of the Electricity Act appears to be additional statutory remedy. By taking recourse to the provisions of "Doctrine of Election", the party has every right to choose one of the several remedies available. The respondents-plaintiffs, as such, in my opinion, have rightly chosen remedy of filing of the suit. Perusal of Section 161 of the Electricity Act does not put an embargo on the rights of the parties, like plaintiffs as regards maintainability of the suit. At least, no such statutory provision or

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piece of law to that effect is brought to my notice so that this Court to draw conclusion that suit itself was not maintainable.

18. Apart from above, though Section 161 of the Electricity Act contemplates issuance of notice in appropriate format to a competent authority including that of notice to the Electrical Inspector. There appears to be notice issued by respondents-plaintiffs to the appellants-defendants, which was duly responded by the appellants by denying the accident in question. Apart from above, I hardly see any pleadings in support of such plea, which was sought to be raised before this Court for the first time.

19. In the wake of above, in my opinion, there is hardly any substance in the submission so as to infer involvement of substantial question of law in the present appeal. Second Appeal lacks merits and stands dismissed.

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20. In view of dismissal of second appeal,
Civil Application for stay stands dismissed.

(N.W. SAMBRE, J.)

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