102 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3545 of 2015
Date of Decision: November 28, 2017

Prem Chand

..... Appellant

Versus

Dakshin Haryana Bijli Vitran Nigam Limited and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Rose Gupta, Advocate
for the appellant.

DEEPAK SIBAL J. (ORAL)

The appellant, who was the original plaintiff has preferred the present second appeal to challenge therein the judgments and decrees of the trial Court as also the Appellate Court through which the appellant's contention have been concurrently rejected.

The case set up by the appellant-plaintiff before the trial Court was that he was a consumer of electricity under the Dakshin Haryana Bijli Vitran Nigam Limited (for short 'the Nigam') as he was using the electricity supplied by the Nigam in his commercial premises in Barwala. On 04.06.2002, inspection conducted by the officers of the Nigam found everything in order and a checking report in that regard was made by them to which the appellant appended his signatures. However, later such report was changed at the back of the appellant as per which the appellant was found to have committed theft of electricity. A false criminal case was also got registered against the appellant in which

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initially the appellant was arrested but later released on bail. The above checking report dated 04.06.2002 was stated to be illegal being in gross violation of the principles of natural justice as according to the appellant no show cause notice or opportunity of hearing had been granted to him before the same had been made. On the basis of the above checking, through a summon dated 11.12.2007 issued by the Collector, Hisar, the appellant was directed to pay to the Nigam a sum of Rs.12,05,883/- as arrears of land revenue. It was the case of the appellant that such demand was illegal and in any case beyond limitation.

On being put to notice, the Nigam submitted that on 04.06.2002, the electricity connection installed in the premises of the appellant had been permanently disconnected as on that date, on checking done by the enforcement wing of the Nigam, the appellant was found indulging in theft of electric energy. During the course of such checking, the enforcement wing found that the appellant had taken direct supply of electricity by providing three number single core cable from LT Tube system of the transfer to fuse-system after the meter. In this way, he had bye-passed the meter. At the time of checking, a total load of 83,942 KW was found connected with the grid system of the Nigam. The checking report so made at the spot was in the presence of the appellant, who as a token of its correctness had appended his signatures thereto. It is on the basis of above that a notice of assessment was served upon the appellant to deposit the dues with an option to him that in case he was aggrieved by such demand, he was at liberty to challenge the same before the Appellate Authority. The appellant neither deposited the assessed amount nor availed the remedy of appeal. A FIR was also lodged against the appellant

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for theft of energy. The premises of the appellant was again checked on 06.12.2007 and he was again found to be committing theft of electricity in the same manner as he was found to be doing so in the year 2002. Resultantly, again a checking report was made in the presence of Smt. Meena, a representative of the appellant, who appended her signatures to the same as a token of its correctness. Notice under Section 135 of the Electricity Act, 2003 was served on the appellant asking him to make a deposit of Rs.39,877/-which was paid by him, thus accepting his guilt. Since the dues of the checking done in the year 2002 still remain unpaid, taking recourse to the provisions of the Haryana Government Electrical Undertakings (Dues Recovery) Act, 1970 (for short 'the Act'), a notice of demand through the Collector, Hisar was got served on the appellant.

Respondents No.2 and 3 also appeared before the trial Court and adopted the written statement filed by the Nigam.

The trial Court dismissed the appellant's suit. His appeal against such dismissal met the same fate as his suit giving him a cause to knock the doors of this Court through the present second appeal.

The solitary ground raised by learned counsel for the appellant to challenge the impugned judgments and decrees is that the impugned demand was beyond the period of three years from the initial date of checking and therefore being barred by limitation was liable to be set aside. In support of his submissions, a Division Bench judgment of the Allahabad High Court in '***Narendra Kumar and another vs. Collector, Bulandshahar and others', 2004 SCC online All 1863***, was cited.

The above submission does not deserve a favouarable consideration.

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The recovery sought to be made from the appellant is under the provisions of the Act. The preamble and the statements of objects and reasons as also Section 4, 5, 6 and 9 of the Act which are relevant, read as under:-

> *"**Preamble:-***
>
> *"An Act to extend the period of limitation and to provide for the expeditious recovery of certain sums due to the State Government or to the Haryana State Electricity Board.*
>
> ***Statement of Objects and Reasons:-***
>
> *Before the formation of the Electricity Board, the dues from consumers could be recovered upto 30 years. With the formation of the Electricity Board this advantage has been lost because of the limitation of 3 years within which the dues can be recovered by them. This Bill will give the Board the powers to recover the arrears even after the expiry of limitation period as arrears of land revenue, which will be in public interest.*
>
> ***Section 4***
>
> ***Notice of demand for dues and penalty not paid:-***
>
> *Where the dues are not paid by a debtor by the date specified in the bill therefor, the prescribed authority may at any time serve or cause to be served upon him a notice of demand in the prescribed form, stating the name of the debtor, the amount payable by him on account of the various dues, penalty and costs of recovery and the undertaking to which it is payable.*
>
> ***Section 5***
>
> ***Suit to challenge liability to payment:-***
>
> *(1)Where a notice of demand has been served on the*

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debtor or his authorised agent under Section 4, he may, if he denies his liability to pay the dues, penalty, or costs or any part of any of them, and after depositing with the prescribed authority the aggregate amount specified in the notice of demand under protest in writing that he is not liable to pay the same, institute a suit for the refund of the dues or part thereof so deposited.

(2)A suit referred to in sub-section (a) may be instituted in civil Court of contempt jurisdiction at any time within six months from the date of deposit with the prescribed authority and subject to the result of such suit, the notice of demand shall be conclusive proof of the various dues, penalty and cost mentioned therein.

Section 6

Recovery of dues, etc., if not paid:-

(1)If the aggregate amount of various dues, penalty and costs mentioned in the notice of demand served under Section 4, is not deposited with the prescribed authority within sixty days of the date of such service or such extended period as the prescribed authority may from time to time allow, the debtor shall be deemed to be in default in respect of such amount and the same shall be recoverable as an arrear of land revenue, notwithstanding anything contained in any other law or instrument or agreement to the contrary.

(2)For the purpose of such recovery, the prescribed authority may forward to the Collector a certificate under his signature in the prescribed form stating the amount and details, of the demand and the name and the description of the debtor in default and the Collector shall on

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receipt of such certificate, proceed to recover from the debtor the amount of the demand as if it were an arrear of land revenue.

Section 9

Extension of period of limitation:-

Notwithstanding anything contained in the Limitation Act, 1963, or any other law for the time being in force, the period of limitation in respect of any suit filed or that may be filed by or on behalf of the Board-

(a) by virtue of sub-section (10 of section 60 and section 60 A of the Electricity (Supply) Act, 1948 (Central Act 54 of 1948), for the recovery of any dues which have accrued before the date of the first constitution of the Board shall be, and shall always be deemed to have been, six years from the date of the first constitution of the Board;

(b) for the recovery of any amount accruing after the date of first constitution of the Board, shall be, and shall always be deemed to have been, six years from the time from which the period of limitation began or would begin to run under this said Act against a like suit by a private person."

(Emphasis supplied)

The preamble of the Act clearly reveals that the Act was promulgated to extend the period of limitation beyond the period of three years in the recovery of dues by the State and the Electricity Board (now Nigam). Such intention is further found in the statement of objects and reasons in which it is stated that before the formation of the Electricity Board, the dues from the consumers could be recovered upto 30 years. However, with the formation of the Electricity Board, this advantage has been lost because of the limitation of three years within which the dues

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could be recovered and therefore the Act was being promulgated to give the Board the power to recover arrears even after the expiry of the period of three years as arrears of land revenue as the same was considered to be in public interest.

Section 4 of the Act further goes on to show the intention of the legislature through the usage of the words 'at any time'.

Section 6 of the Act further strengthens the hands of the Nigam/Board for recovery of its dues which remain unpaid on demand raised under Section 4 of the Act as the same provides that notwithstanding anything contained in any other law or instrument or agreement to the contrary such dues can be recovered as arrears of land revenue.

Section 9 of the Act which starts with a non-obstante clause, provides that notwithstanding anything contained in the Limitation Act, 1963 or any other law for the time being in force, the period of limitation for any suit to be filed by or on behalf of the Board/Nigam for the recovery of any dues which have accrued before the date of the first constitution of the Board shall be, and shall always be deemed to have been six years from the time from which the period of limitation began or would begin to run.

A harmonious reading of the preamble, statements of objects and reasons as also the other afore-quoted provisions of the Act leave no manner of doubt that the Act was promulgated with the object to give a remedy to the Electricity Board (now Nigam) to recover its dues from its defaulters even beyond the period of three years. The underlining object is found to be only in public interest as what is to be recovered through such

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proceedings would be public dues. However, the words 'at any time' as used in Section 4 of the Act would mean reasonable time depending on the facts and circumstances of each case.

The Apex Court in '***Dakshin Haryana Bijli Vitran Nigam Limited vs. M/s Paramount Polymers Private Limited***', ***AIR 2007 SC 2***, while interpreting the provisions of the Act has opined as under:-

> "*We find that the High Court has also not referred to the Haryana Government Electrical Undertakings (Due Recovery) Act, 1970 which came into effect on 27.10.1970. <u>The said Act enabled the Electricity Board, of which the appellant is the successor, to recover the dues to the Board on account of consumption of electrical energy and other charges as defined in that Act to be recovered as an arrears of land revenue notwithstanding anything contained in any other law or instrument of agreement to the contrary</u>.*"
>
> *(emphasis supplied)*

After applying the above interpretation to the facts of the present case, no fault is found in the concurrent views expressed by both the Trial Court as also the Appellate Court. The appellant was found to be indulging in repeated acts of theft of electricity. He was found to have bye-passed the electricity meter installed in his premises and by taking direct supply from LT fuse system of the transformer both in the year 2002 as also in the year 2007. For these thefts of electricity, criminal cases were also lodged against him, the outcome of which is neither deciphered from the record nor is disclosed by learned counsel for the appellant. For the act of theft in the year 2007, in pursuance to the demand made by the respondent-Nigam, the appellant made the payment without any protest thus accepting the Nigam's stand. The allegations against the appellant of indulging in theft of electricity are also not challenged in the present

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appeal. In the facts of the present case, the period of four years for seeking the impugned recovery from the appellant cannot be held to be unreasonable.

Narender Kumar's case (supra) cited by learned counsel for the appellant would have no application as that case was not a case of theft and the delay in that case in seeking to recover the amount from the petitioners therein was 18 years. The provisions of the U.P. Public Moneys (Recovery of Dues) Act, 1972 have also not been shown to be similar to the provisions of the Act.

In view of the above, the concurrent findings arrived at by both the Trial Court and the Appellate Court warrant no interference and no question of law, much less a substantial question of law is found to arise in the present appeal.

Dismissed.

On a query posed, learned counsel for the appellant feigned ignorance with regard to the fact whether during the pendency of the present litigation the appellant had deposited the demanded amount. Thus, if no deposit has been made, then the appellant would now make the deposit along with simple interest at the rate of 6% per annum from the date of the demand till deposit.

November 28, 2017 **(DEEPAK SIBAL)**
rittu **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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