

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

WRIT PETITION NO. 5992 OF 2004

1. Sambhaji Maharaj Spinning Mill Pvt.
Ltd. Having it's registered office at
"Anujitvarsha", Plot No. 68,
Anand Nagar, Nanded – 431602
Through it's Director,
Shri Ajit Ramchandra Jadhav,
Age : 40 Years, Occu. : Director,
R/o Vijay Nagar, Biloli,
Tq. Biloli, Dist. Nanded.
2. Shri Ajit Ramchandra Jadhav,
Age : 40 Years, Occu. : Director
of the petitioner No. 1 Mill,
R/o Vijay Nagar, Biloli,
Tq. Biloli, Dist. Nanded. .. Petitioners

Versus

1. The State of Maharashtra,
Through the Principal Secretary,
Co-operation & Textile Department,
Maharashtra State,
Mantralaya, Mumbai – 32.
2. The Collector, Nanded,
Dist. Nanded, The Liquidator,
Nanded Sahkari Sootgirni
Maryadit, at Vajegaon,
Tq. & Dist. Nanded.
3. The Chairman,
Maharashtra State Electricity Board/

Maharashtra State Electricity
Distribution Company Ltd.,
04th Floor, Prakash Gad,
Bandra (East), Mumbai – 51.

4. The Executive Engineer/MSEDCL
M.S.E.B. Vidyut Bhavan,
Nanded, Tq. & Dist. Nanded. .. Respondents

Shri R. N. Dhorde, Senior Advocate i/by Shri V. R. Dhorde,
Advocate for Petitioners.

Shri N. T. Bhagat, A.G.P. for Respondent Nos. 1 and 2.

Shri A. S. Bajaj, Advocate for Respondent Nos. 3 and 4.

**CORAM : S. V. GANGAPURWALA AND
S. M. GAVHANE, JJ.**

DATE : 31ST AUGUST, 2018.

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

. The gravamen of the dispute is, “whether the auction purchaser is liable to pay the electricity dues of the previous owner?”.

2. Mr. Dhorde, the learned senior advocate for petitioners submits that, the respondent No. 2 Sut Girni was under liquidation. The liquidator placed the property of the respondent No. 2 for auction. Pursuant to the tender notice dated 06.02.2000, the petitioners were the highest bidders. The bid was confirmed in favour of the petitioners for Rs. 8,11,00,000/-. On 18.09.2000 agreement to sale was executed and subsequently sale deeds were executed in favour of the petitioner No. 1. The

petitioner No. 1 purchased the entire movable and immovable properties of the respondent No. 2.

3. The learned senior advocate further submits that, upon purchase of the property, the petitioner No. 1 made an application to respondent Nos. 3 and 4 for supply of electricity connection. The respondent No. 4 intimated that certain dues are payable and electricity connection can only be given after the dues are paid. The learned senior advocate submits that, Clause 8 of the agreement for sale is explicit. The electricity bill and dues were to be borne by the vendor viz the respondent No. 2. The covenant No. 4 in the sale deed also clearly provides that vendor would be liable to pay the Government and non government dues. The liquidator of the respondent No. 2 under letter dated 07.11.2000 also communicated with the respondent Nos. 3 and 4 that, it is the duty of the respondent No. 2 to pay the electricity dues. The District Deputy Registrar under its letter dated 07.04.2004 also intimated that the petitioner No. 1 is not liable to pay the dues. The learned senior advocate further submits that, there are no rules of respondent Nos. 3 and 4 stating that dues of previous owner would be charge over the property. The learned senior advocate relies on the following judgments of the Apex Court and this Court.

i. Ahmedabad Electricity Co. Ltd. Vs. Gujrat Inns Pvt. Ltd

and others reported in AIR 2004 SC 2171.

- ii. (1995) 2 SCC 648.
- iii. 2006(1) Mh. L. J. 457.

4. Mr. Bajaj, the learned advocate for respondent Nos. 3 and 4 submits that, the property is sold pursuant to the tender notice dated 06.02.2000. The tender notice states that the property would be sold on “as is where is basis”. The petitioner No. 1 is a purchaser of the movable and immovable assets of the respondent No. 2 pursuant to the tender notice inter alia with all the standing dues over it. In view of that, the petitioner cannot absolve of its liability to pay electricity dues standing in the name of the respondent No. 2. The learned advocate relies on the judgment of the Apex Court in a case of **Dakshin Haryana Bijli Vitaran Nigam Ltd. Vs. Paramount Polymers (P) Ltd.** reported in (2006) 13 SC 101.

5. According to the learned counsel, the electricity dues would run with the property and as such the auction purchaser would be liable to pay the dues of previous owner. The learned counsel relies on the rules namely Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 (for short “Rules of 2005”) and submits that, rule 10.5 of the Rules of 2005 provides that, any dues for electricity which remains unpaid by the erstwhile

owner/occupier of any premises would be a charge on the premises transmitted to the legal representatives/successors-in-law or transferred to the new owner/occupier of the premises. On this count also the petitioner is liable to pay the amount.

6. We have considered the submissions canvassed by the learned counsel for respective parties.

7. Charge over a property is by an act of party or operation of law, may be security for payment of money to another or by a decree of the Court. In order to create a charge by act of parties, consent is essential.

8. The judgment in a case of Dakshin Haryana Bijli Vitaran Nigam Ltd. Vs. Paramount Polymers (P) Ltd. (supra) relied by respondent Nos. 3 and 4 would not be helpful to respondents in view of the fact that, in the said case before the Apex Court, there was specific clause with regard to the liability to be borne by the successor. In the present case, the covenant in the sale deeds and the agreement to sale pursuant to tender notice are otherwise. The whole liability is taken over by the liquidator.

9. The Apex Court in the case of Haryana State Electricity Board Vs. Hanuman Rice Mills, Dhanauri and

others reported in (2010) 9 SCC 145 has observed thus :

12. The position therefore may be summarised thus:

(i) Electricity arrears do not constitute a charge over the property. Therefore in general law, a transferee of a premises cannot be made liable for the dues of the previous owner/occupier.

(ii) Where the statutory rules or 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 by the previous owner/occupier in regard to supply of electricity to such premises, the supplier can recover the arrears from a purchaser.

10. The petitioner/auction purchaser is in no way concerned with the previous owner and is a stranger to the agreement that may have been executed between the electricity company and the previous owner.

11. Privity of contract does not exist between the petitioner and the electricity company vis-a-vis dues of the erstwhile owner. In absence of privity of contract, the electricity company cannot

enforce the liability of the erstwhile owner upon the petitioner. In absence of the statutory charge or charge of any nature, dues of the electricity company as against the erstwhile owner cannot be fastened over the auction purchaser.

12. In the present case, charge does not run with the property, the auction purchaser is not under any obligation to pay arrears towards the electricity dues of the previous owner. The agreement to sale executed pursuant to the auction specifically the clause 8 in agreement reads thus :

8. It will be the responsibility of the vendor to clear all the legal financial dues and electric bills due from the mill till the date of handing over of the possession of the assets and properties to the purchaser as per this agreement.

13. The electricity company has introduced Maharashtra Electricity Regulatory Commission (Electricity Supply Code and other Conditions of Supply) Regulations 2005. The said regulations have come into effect from January 20, 2005. Regulation 10.5 of the said regulations of 2005 reads as under :

"10.5 Any charge for electricity or any sum other than a charge for electricity due to the Distribution Licensee which remains unpaid by a deceased consumer or the erstwhile owner/occupier of any premises, as a case may be, shall be a charge on the premises transmitted to the legal representatives/successors-in-

law or transferred to the new owner/occupier of the premises, as the case may be, and the same shall be recoverable by the Distribution Licensee as due from such legal representatives or successors-in-law or new owner/occupier of the premises, as the case may be.

Provided that, except in the case of transfer of connection to a legal heir, the liabilities transferred under this Regulation 10.5 shall be restricted to a maximum period of six months of the unpaid charges for electricity supplied to such premises."

14. Under Regulations of 2005 provision is made of statutory charge over the property of the consumer for non payment of electricity dues. However, the said regulation would not benefit the respondent/electricity company in as much as the said regulation has come into effect from 20th January, 2005 and the transaction herein is of the year 2000, much prior to the enforcement of the regulations. Said regulations does not have a retrospective operation.

15. At the relevant time the dues of the erstwhile owner did not amount to a statutory charge over the property, nor the petitioner/auction purchaser under the terms and covenant of the auction had agreed to pay the electricity dues of its erstwhile owner to the electricity company. The liquidator of the erstwhile owner had specifically agreed to bear the electricity dues till the date of auction. The petitioner/auction purchaser cannot be

remotely saddled with liability of payment of electricity dues of its erstwhile owner.

16. In view of the above, the writ petition is allowed. Rule is made absolute in terms of prayer clauses “B” and “C”. No costs.

Sd/-

[S. M. GAVHANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

bsb / Aug. 18

Bhalchandra
Sudhakar
Bodke

Digitally signed
by Bhalchandra
Sudhakar Bodke
Date:
2018.09.25
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