

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11474 OF 2019

Maharashtra State Electricity
Distribution Co. Ltd & Ors.

..Petitioners

V/s.

M/s.Supreme Industries Proprietary
Firm & Anr.

..Respondents

Mr.Rahul Sinha and Mr.Pruna Gandhi i/b DSK Legal for the
Petitioners.

Mr.N.V. Sawant, AGP for Respondent No.1.

CORAM : C.V. BHADANG, J.

DATE : 21st JANUARY 2020

P.C.

1. Heard for some time.

2. The challenge in this petition is to the order dated 04th February 2019 passed by the Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai as a Special Court under the Electricity Act, 2003 ('Act' for short). By the impugned order, an application under Section 154(5)(6) of the said Act for determination of civil liability being MA No.830 of 2018 is allowed. Consequently, the petitioners have been directed to refund an

amount of Rs.8,71,510/- to the respondent Nos.1 to 3, along with interest, within three months of the passing of the said order.

3. The learned counsel for the respondent has raised a preliminary objection to the maintainability of the petition on the ground of availability of a remedy under Section 156 of the said act. It is contended that the order passed by the Special Court is amenable to a remedy under Chapter XXIX and XXX of the Code of Criminal Procedure ('Code' for short), as if the Special Court is a Court of Sessions.

4. The learned counsel for the petitioners contended that by the impugned order the Special Court has not decided any liability. It is also submitted that the order would be of an interlocutory nature and therefore, appeal or a revision under the procedure of the Code may not be available. Reliance for the purposes placed on the decision of the Hon'ble Supreme Court in the case of *Bhaskar Industries Ltd V/s. Bhiwani Denim & Apparels Ltd. & Ors.*¹ and in particular paragraph 8 thereof.

1 (2001)-7-SCC-401

5. I have considered the submissions made. This Court (Shri.Ujjal Bhuyan, J.) by an order dated 02nd December 2019 has observed that *prima facie* having regard to the provisions as contained in Section 156 of the said Act, a petition under Article 227 of the Constitution of India may not be maintainable.

6. Section 156 of the Act, which is relevant for the purpose reads thus :-

“Section 156 :- Appeal & Revision—The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 (2 of 1974), as if the Special Court within the local limits of the jurisdiction of the High Court is a District Court, or as the case may be, the Court of Session, trying cases within the local limits of jurisdiction of the High Court”.

6. It can thus be seen that this Court can exercise so far as may be applicable the powers conferred by Chapter XXIX and XXX of the Act against the orders of the Special Court as if the Special Court is a Court of Sessions. It is not in dispute that it is a Court of Sessions which is clothed with the powers of the Special Court under the said Act. A bare perusal of the impugned order shows

that the order is passed by an Additional Sessions Judge. Thus, in my considered view the petitioner would have a remedy against the impugned order, under Section 156 of the said Act. *Prima facie* the contention that the order is interlocutory cannot be accepted, as it determines the substantive rights and liabilities of the parties. The Supreme Court in the case of ***Madhu Limaye V/s. State of Maharashtra***² has held that an interlocutory order is not the converse of final order. There can be certain orders which may not be final and still may not be interlocutory. In that view of the matter *prima facie* the contention about the impugned order being an interlocutory order cannot be accepted. I am expressing this view only in a *prima facie* manner inasmuch as the petitioner is being relegated to the remedy under Section 156 of the Act and therefore this aspect is left open.

7. The reliance placed on the decision in the case of *Bhaskar Industries Ltd V/s. Bhiwani Denim & Apparels Ltd. & Ors (Supra)* to my mind is misplaced. The Supreme Court in paragraph 8 of the said judgment has held thus :-

“The interdict contained in [Section 397\(2\)](#) of the Code of Criminal Procedure (for short [the Code](#)) is that the powers of revision

2 AIR 1978 SC 47

shall not be exercised in relation to any interlocutory order. Whether an order is interlocutory or not, cannot be decided by merely looking at the order or merely because the order was passed at the interlocutory stage. The safe test laid down by this Court through a series of decisions is this: If the contention of the petitioner who moves the superior court in revision, as against the order under challenge is upheld, would the criminal proceedings as a whole culminate? If it would, then the order is not interlocutory in spite of the fact that it was passed during any interlocutory stage."

7. In the present the impugned order itself would show that the proceedings in MA No.830 of 2018 have been finally disposed of.

8. At this stage the learned counsel for the petitioner states that the petitioner shall avail of the remedy under Section 156 of the said Act and he may be granted protection for limited period which is opposed on behalf of the respondent Nos.1 to 3.

9. Considering the overall circumstances in my view the petitioner can be granted limited protection in order to enable the

petitioner to take recourse to the alternate remedy under Section 156 of the said Act. In such circumstances, I decline to entertain the petition, which is accordingly dismissed, with no order as to costs. The impugned order is stayed for a period of three weeks, in order to enable the petitioner to take recourse to the alternate remedy.

Nilam
Kamble

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Nilam Kamble
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C.V. BHADANG, J.