

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

219

CR-2356-2020

Reserved on 03.11.2020

Date of decision: 10.11.2020

M/s T.C.Agro Pvt. Ltd. and another

... Petitioners

Vs.

UHBVNL and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Gaurave Bhayyia Gilhotra, Advocate
for the petitioners.

Mr. Deepak Manchanda, Advocate
for respondents No.1 to 3-Nigam.

Mr. Aayush Gupta, Advocate for respondent No.4.

SUVIR SEHGAL J. (ORAL)

Instant revision petition has been filed on 30.09.2020 under Article 227 of the Constitution of India for setting aside the impugned order dated 24.09.2020, Annexure P-2 passed by the Court of CJJD, Pehowa in civil suit titled as *M/s T.C.Agro Pvt. Ltd. and another Vs. UHBVNL and others* bearing civil suit No.CS No.287 of 2020. A further prayer has been made that during the pendency of the present petition, the operation of the impugned order be stayed and respondent No.1 be

directed to restore the electricity supply to the petitioner/plaintiff as claimed in the civil suit.

Facts, leading to the filing of the present petition, are that a new electricity connection bearing account No.LS-24 (5730011000) with sanctioned load of 300 KV was installed by the Uttar Haryana Bijli Vitran Nigam (for short "the Nigam") at the premises of the petitioners, which was leased out to M/s S.R. Serves-defendant/respondent No.4 from 01.01.2019 to 31.08.2019, who was bound to pay electricity charges as per the consumption. In the month of March, 2019, respondent No.4, issued a cheque for an amount of Rs.4,26,258 which was dishonoured due to insufficient funds. In April, 2019 the Nigam-respondents No.1 to 3 removed the jumper of the electricity connection and in September, 2019 they removed the connection from the premises of the petitioners. On 11.09.2020, the Nigam sent a bill for an amount of Rs.15,56,260 after imposing a surcharge of Rs.2,72,553. The petitioners challenged the said bill by filing a suit dated 16.09.2020, Annexure P-1, for declaration and mandatory injunction along with an application for ad interim injunction to restore the electricity supply. The suit and the application was contested by respondent No.1 to 3-Nigam. After considering the stand taken by the Nigam, the trial Court vide impugned order dated 24.09.2020, Annexure P-2, dismissed the application for ad interim injunction, filed by the petitioner. The said order has been challenged in the present revision petition.

Counsel for the petitioners, at the outset, has argued that as per the reply filed by the Nigam, an amount of Rs. 19,21,547/- was

outstanding up to December, 2019, which the petitioners are willing to deposit and submits that the electricity connection to the premises be restored as the paddy shelling season is about to start. He has further referred to his pleadings and argued that permanent disconnection was carried out in September, 2019 and the period of 6 months when calculated from September, 2019 ends in March, 2020 when the lock down was imposed by the Government. He has claimed benefit for the lock down period to submit that the period as provided under the Sales Circular No.U-25/2016, Annexure P-6 of the Nigam cannot be said to have come to an end. As regards, the maintainability of the petition, counsel has relied upon a judgment of a co-ordinate bench of this Court in *Uttar Haryana Bijli Vitran Nigam Vs. Harjit Singh*, 2014(1)RCR (Civil)100.

On the other hand, counsels representing the respondents have refuted the arguments and submitted that the petitioners were initially issued a notice of disconnection which was addressed individually to all the partners on 03.04.2019, giving them 15 days prior notice of disconnection. When the arrears of electricity were not deposited, disconnection of electricity was carried out immediately upon the issuance of PDCO No.39/800 on 26.06.2019. By referring to Clause 10.1.6 of the Sales Circular, Annexure P-6, it has been urged that the period of 6 months expired in December, 2019 and now at this stage, the re-connection cannot be permitted. He submits that the petitioner will now have to apply afresh and deposit not only the arrears but even charges for the fresh connection. It has been further argued that the

petitioners have a remedy of appeal under Order 43 Rule 1(r) CPC which they have not availed of and the revision deserves to be dismissed on this account alone.

I have heard counsel for the parties on the question of maintainability of the petition.

Article 227 of the Constitution vests the High Court with the power of superintendence over the subordinate courts and Tribunals within their respective jurisdiction. The scope of jurisdiction of the High Court under Article 227 of the Constitution came up for consideration before the Supreme Court in ***Mohd. Yunus Vs. Mohd. Mustaqim and others***, (1983) 4 SCC 566, wherein it was held that in exercising supervisory jurisdiction under Article 227, the High Court does not act as an Appellate Court. In ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others Vs. Tuticorin Educational Society and others*** (2019) 9 SCC 538, the Supreme Court drew a distinction between cases where remedy is available under the provisions of Code of Civil Procedure and cases where remedy is available under special enactments and held that in cases where remedy is available under the CPC and other proceedings before the civil court, there is a near total bar to the maintainability of a petition under Article 227 of the Constitution. Paras 11 to 13 of the judgment are reproduced as under:-

“11. Secondly, the High Court ought to have seen that when a remedy of appeal under [Section 104 \(1\)\(i\)](#) read with Order 43, Rule 1 (r) of the Code of Civil Procedure, 1908, was directly available, respondents 1 and 2 ought to have taken recourse to the same. It is true

that the availability of a remedy of appeal may not always be a bar for exercise of supervisory jurisdiction of the High Court. In A. Venkatasubbiah Naidu Vs. S. Chellappan & Ors. (2000) 7 SCC 695, this Court held that “though no hurdle can be put against the exercise of the constitutional powers of the High Court, it is a well recognized principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies before he resorts to a constitutional remedy”.

12. *But courts should always bear in mind a distinction between*

(i) cases where such alternative remedy is available before Civil Courts in terms of the provisions of Code of Civil Procedure, and

(ii) cases where such alternate remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasi-judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under [Article 227](#), even a decree passed in a suit, on the same grounds on which the respondents 1 and 2 invoked the jurisdiction of the High court. This is why, a three member Bench of this Court, while overruling the decision in [Surya Dev Rai vs. Ram Chander Rai](#), (2003) 6 SCC 675 pointed out that in [Radhey Shyam Vs. Chhabi Nath](#), (2015) 5

SCC 423 that “orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial/civil courts.”

13. *Therefore wherever the proceedings are under the Code of Civil Procedure and the forum is the Civil Court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under [Article 227](#) especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself.”*

In view of the settled position of law, it is clear that the petitioners, despite having the remedy of appeal, have approached this Court without exhausting the said remedy. The judgment referred to by the counsel for the petitioners does not help him as this issue was not raised therein.

Due to the aforementioned reasons and without going into the merits of the case, this petition is held to be not maintainable. However, liberty is granted to the petitioner to approach the Appellate Court by preferring an appeal by placing all the arguments that have been raised in the instant petition. Having regard to the contentions of the petitioner and the fact that the matter involves urgency, the Appellate Court shall make an endeavour and decide the appeal on merits within a period of 30 days

from the date of its preference, in case, the appeal is filed within 15 days from today.

Revision is, accordingly, disposed of.

10.11.2020

pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned : Yes/No

Whether Reportable : Yes/No