IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(106)

RSA-2819-2022 (O&M)
Date of Decision:-20.12.2022.

DHBVN Panchkula and another

……Appellants

Versus

Basic India Ltd.

……Respondent

CORAM: HON'BLE MR. JUSTICEALOK JAIN

****

Present: Mr. Surinder K. Mahajan, Advocate for the appellants.

****

ALOK JAIN, J. (Oral)

CM-9707-C-2022

Prayer in this application is for condonation of delay of 06 days in filing the present appeal.

For the reasons recorded in the application, the same is allowed and delay of 06 days in filing the appeal stands condoned.

RSA-2819-2022 (O&M)

The present defendants second appeal, raises challenge to the Judgment and Decree dated 26.08.2022 passed by the learned Additional District Judge, Jind, whereby, the appeal against the Judgment and Decree dated 24.04.2017 was dismissed and the suit filed by the respondent was decreed.

The brief facts of the case as narrated by the learned counsel for the appellants are that the respondent-company filed a suit for mandatory injunction inter alia praying for directing to the respondents to refund ₹19,23,892/- alongwith interest on the premise that the defendant purchased the land, building, plant and machinery in an open auction vide sale certificate dated 21.09.2013 from Bank of India Consortium i.e. State Bank of India, Union Bank of India & Bank of India. It has been averred by the respondent-plaintiff that it applied for new industrial electricity connection from the appellants-defendants but during the process of application, the appellant-defendant no. 2 apprised the respondent-plaintiff that M/s R.K.S.K Overseas Pvt. Ltd had electricity connection bearing No. LS-3 and there was a default in payment of electricity bill to the tune of ₹20,93,892/- against said firm. The appellant-defendant no. 2 also asked respondent-plaintiff that unless respondent-plaintiff deposits the said defaulting amount of ₹20,93,892/-, the new connection would not be issued to respondent-plaintiff. It was further averred by the respondent-plaintiff that since it was badly in need of electricity connection, the appellant-defendant no. 2 forced respondent-plaintiff to deposit the default amount of ₹20,93,892/- which was due against M/s R.K.S.K Overseas Pvt. Ltd. It has been further averred by the respondent-plaintiff that however, he was not liable to pay the said default amount but under compelling circumstances respondent-plaintiff agreed to deposit the defaulting amount and thus deposited a sum of₹19,23,892/- with the appellant-defendant no. 2.The respondent-plaintiff pleaded that there was no liability of respondent-plaintiff to pay the above sum of ₹19,23,892/- to the appellant-defendant no.2 but the respondent-plaintiff paid this amount under forceful circumstances. It has been further averred by the respondent-plaintiff that it transpired that the appellants-defendants had not taken any step for recovery of defaulting amount from M/s R.K.S.K Overseas Pvt. Ltd. The claim of the appellants-defendants against M/s R.K.S.K Overseas Pvt. Ltd had also become barred by time. It has been further averred by the respondent-plaintiff that it was under no obligation to pay the said defaulting amount and in this way the appellants-defendants are liable to refund the said amount of ₹19,23,892/- to the respondent-plaintiff. It has been further averred by the respondent-plaintiff that the appellants-defendants are also liable to pay interest@ 12 % per annum from the date of respective payment upto the date of realization and repeated requests coupled with the legal notice was not responded, which led to filing of the suit.

The said suit was contested by the appellant and a defence was raised that the default was in respect of the premises and hence the respondent-plaintiff rightly deposited the said amount to which the appellants were entitled to. Both the learned Courts below returned a finding that the said amount in question was actually due towards earlier owner and not towards the respondent-plaintiff and therefore the recovery affected by the appellant was held to be bad and consequently a decree for refund of amount with interest was drawn.

Feeling aggrieved, the appellants preferred the First Appeal which also came to be dismissed.

Learned counsel for the appellants has submitted that it is the settled principle of law that where the statutory rules provide for the payment of the outstanding dues and a No Due Certificate is to be issued, before the new connection is given, the same had to be complied with being legally bound to do so, however both the learned Courts fell in error in dislodging the said contention. Learned counsel for the appellant relies upon Clause 4.3.1& Clause 4.5.11, which reads as under:

> ***"4.3.1 Purchase of existing property***
>
> *Where the applicant has purchased an existing property, whose supply has been disconnected, it shall be the applicant's duty to verify that the previous owner has paid all dues to the licenses and obtained a "**no due certificate**" from the licensee. In case such no "no due certificate" has not been obtained by the previous owner, the applicant shall request the previous owner to obtain a no due certificate from the licensee and handover the same to him. On receipt of such request from the previous owner, the licensee shall either intimate in writing the dues outstanding on the premises, if any, or issue a "no due certificate" within thirty days from the date of receipt of request. If the licensee does not issue the no due certificate or dispatch a letter intimating the dues to the previous owner within thirty days of receipt of his request, the applicant shall be absolved of any liability on account of dues against the previous owner and the licensee shall have to seek legal recourse separately against the previous owner for recovery of such dues.*
>
> *In case the licensee dispatches a letter intimating the due to the previous owner within thirty (30) days of the receipt of his request and in case these are not deposited by the previous owner, the applicant shall be liable to clear any dues*

against the previous owner before a new connection is released in his favour.

If however, subsequently at any stage, the audit points out any additional amount due on account of period of the previous owner, it shall be the liability of the new customer to pay such amount.

4.5.11

If there are outstanding dues against the applicant or the premises where temporary connection is required, temporary connection shall not be given till such dues are paid by the applicant."

On the strength of the above clause, learned counsel for the appellant assert his submissions and has further contended that even for a temporary connection, the procedure had to be followed. A perusal of the above clause makes it clear that even a temporary connection cannot be issued till the dues are paid by the applicant. Learned counsel for the appellants has also relied upon Sale Circular No.D-91 of 2001, especially Clause 21-A (b) to assert that the re-connection or new connection shall not be given to any premises where there are arrears of any account due to the Nigam, unless these are cleared in advance. Counsel for the appellants has further submitted to distinguish the judgment relied upon by the Court below in the case of ***"M/s Isha Marbles Vs. BSEB 1995 (3) LJR 296 (S.C.)"***to decree the suit and has further relied upon the judgment passed by this Hon'ble Court in ***Civil Revision No.3543 of 2018*** titled as ***"Dakshin Haryana Bijli Vitran Nigam Ltd. Vs. Prem Kumar Narang and others"***, decided on

10.02.2019, to contend that when a statute lays down the conditions precedent for installing a connection in the premises and such condition being payment of arrears due from the previous consumer, the subsequent consumer has to comply with that conditions and at the best, he can avail the remedy of recovery of such dues from the previous owner.

After hearing learned counsel for the appellant, this Court is of the view that the law laid down by the Hon'ble Supreme Court of India in M/s Isha Marbles (supra), which has been further followed by this Hon'ble Court in ***Uttar Haryana Bijli Vitran Nigam Ltd. Vs. Daulat Ram 2016 (3) PLR 656***, wherein it has been held:

> *"In conclusion, to repeat, the appellant-Corporation also not having been able to show at any stage, any statutory provision by which an allottee of a new connection can be held liable to discharge the liability foisted on the owner of a previous connection, even on the same premises, there is no merit in the arguments raised on behalf of the appellant- Corporation."*

Therefore, in light of the above, it is held that where there is no statutory provision by which the liability towards the electricity connection allotted to one person could be held to be the liability of subsequent purchaser of the land, especially with there being no family and business relation between the previous and subsequent owner of the land, the liability of the previous owner could not be fastened. The respondent-plaintiff being a diligent businessman had no option but to have deposited the said amount demanded by the appellants for the release of his new connection. The appellants have failed to demonstrate or bring on record any evidence as to what was the effort made by them to recover the amount from the previous defaulting owner of the consumer. It is a strange situation that a State instrumentality permits the arrears of outstanding dues to accumulate and they do not take any recourse or any legal action for recovery of the amount at the appropriate time but when other statutory authorities or the financial institutions initiate recovery proceedings and are successful in recovery of some of the total outstanding amount by sale of assets of the defaulter, the State instrumentalities such as the appellant, get up from the slumber and impose such conditions on the subsequent purchasers. This being the backdrop while deciding the matter of Isha Marble's case (***supra***) by the Hon'ble Supreme Court of India, wherein it was held that the outstanding dues for which the Electricity Department was claiming did not accrue towards the present owner, as he was not a consumer of the said electricity when the arrears accrue.

Finding no merit in the appeal and no infirmity in the orders passed by both the learned Courts below, the present appeal is dismissed.

Pending miscellaneous applications, if any, shall also stand disposed of.

(ALOK JAIN)
JUDGE

December 20, 2022.
sandeep

Whether speaking/reasoned:- Yes/No
Whether Reportable:- Yes/No