OD-02

ORDER SHEET
APO/451/2014
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

BAL KISHAN KEDIA & ORS.
-VS-
CESC LIMITED & ORS.

BEFORE:
HON'BLE JUSTICE RAJASEKHAR MANTHA
HON'BLE JUSTICE SUPRATIM BHATTACHARYA
DATE: 11TH JULY 2023.

APPEARANCE:
Mr. S. Nag, Adv.; Mr. D. Basu Mallick, Adv.; Ms. A. Mukherjee, Adv., appear for appellants.
Mr. S. Sanyal, Adv., Mr. S. Bose, Adv., for respondents.

RAJASEKHAR MANTHA, J. :-

1. THE COURT: This intra-court appeal is directed against a judgment and order dated November 12, 2014, passed by a Single Judge of this Court in WP/1008/2013 (Bal Kishan Kedia & Ors. –vs- CESC Limited & Ors.).

2. The facts relevant to the appeal are that the appellant no.1 was admittedly a karta of an HUF called Sitaram Bal Kishan HUF. The HUF was a consumer of electricity at premises no.544, Andul Road, Podra, Howrah-711109.
3. For theft of electricity detected against the consumer (HUF), a provisional assessment order was made by the licensee CESC Ltd. on July 16, 2003 for a sum of Rs.5,07,166/- and communicated to the consumer.
4. The Consumer filed WP/11563(W)/2003 before this Court challenging the said provisional assessment. The writ petition was disposed of by a Single Bench on August 13, 2003, directing the consumer to file an objection before the Appellate Authority. The writ petition was affirmed by the appellant no.1 herein.
5. The order dated August 13, 2003 was carried in appeal, being MAT/2456/2013, which was disposed of by order dated September 24, 2003. The consumer HUF was granted liberty to pay 50% of the provisionally billed amount as a pre-condition for restoration of electricity supply. Other portions of the order dated 13th August 2013 was not interfered with.
6. The consumer HUF neither paid 50% of the assessed amount, nor filed any appeal.
7. The said Consumer filed another writ petition bearing WP/16523(W)/2004, seeking opportunity to file an objection to and contest the provisional assessment order dated July 16, 2003. The said writ petition was affirmed by the appellant no. 1. The said writ petition was disposed of by another Single Bench of this Court granting liberty to the appellants to file objection to the provisional assessment order by November

19, 2007. The provisional assessment order was directed to be re-considered upon such filing.

8. The appellants filed such objection on November 22, 2007, beyond the time granted by the order dated November 16, 2007. The provisional assessment order was therefore not reopened.

9. In course of inspection conducted by the licensee on September 7, 2013, it was found that the said three writ petitioners/appellants were respectively the karta and the other members of the same consumer HUF assessed for the theft of electricity in 2003. It was also found that they were enjoying an independent electricity connection at the new premises at Taratolla Road.

10. The appellant no.1, Bal Kishan Kedia, along with his grandson Abhuyoday Kedia and daughter-in-law Anita Kedia, the other appellants, had relocated their plastic business to a new premises at 13, New Taratolla Road, Kolkata-700088.

11. By applying regulation 3.4.2 of the West Bengal Regulatory Commission (Electricity Supply Code) Regulations, 2013, the licensee found and established a nexus between the Consumer HUF and the appellants and one M/s. Popular Plastics and Packaging.

12. A demand of Rs.5,07,166/- was raised by the licensee, on two of the appellants and one Popular Plastics and Packaging, the sole proprietorship of Bal Kishan Kedia, on September 14, 2013.

13. The said demand came to be challenged before a Single Bench in the writ petition being WP/1008/2013. This writ petition was also affirmed by Bal Kishan Kedia, the appellant no.1 herein.

14. After initial orders and affidavits, the impugned judgment dated 12th November 2014, came to be passed by the Single Bench dismissing the writ petition and hence this appeal.

15. Mr. Subhankar Nag, learned counsel appearing for the appellants, would argue before this Court as follows:

a) Section 56 of the Electricity Act, 2003, particularly sub-section (2) thereof, mandates that any disconnection of supply can be made only if the outstanding dues are shown continuously as recoverable as arrears charges in the monthly bills of a consumer for the last two years and the demand itself ought to be raised within two years from the date when such sum became first due.

b) Regulation 3.4.2 of the said Regulations can be invoked by the licensee only if the nexus between a previous defaulting consumer is established "in respect of the same premises".

c) The appellants and M/s. Popular Plastics and Packaging have no nexus with the HUF. The nexus sought to be established by the licensee, even if existing, is not in respect of the same premises.

16. Mr. Nag would rely upon a decision of a Division Bench of this Court in the case of **CESC Ltd. –vs- Shiva Glass Co. Ltd., reported in (2012) 5 CHN Calcutta 213,** particularly paragraph 18 thereof. The said decision is placed in support of the

argument that section 24 of the Indian Electricity Act, 1910 stands on a different footing from that of section 56(2) of the Electricity Act of 2003 and therefore not pari materia.

17. Mr. Nag next relies upon a decision of the Supreme Court in the case of **Prem Cottex –vs- Uttar Haryana Bijli Bitaran Nigam Ltd. & Ors., reported in (2021) SCC OnLine SC 870,** particularly paragraph 17 thereof. It is argued that the limitation period under sub-section (2) of section 56 is binding, and no demand can be raised by a licensee beyond the period of two years of the dues accruing.

18. Reference is also made by Mr. Nag to a recent decision of the Supreme Court in the case of **K.C. Ninan –vs- Kerala State Electricity Board & Ors., reported in (2023) SCC OnLine SC 663,** particularly paragraphs 118 and 125 thereof, indicating that the provisions of section 56(2) and the limitation period thereof are binding on a licensee. Reference is also made to paragraph 47 thereof. On the definition of "consumer" as set out in section 2(15) of the Electricity Act, 2013, the factual arguments raised on behalf of the appellants are also supported in law, argues Mr. Nag.

19. Per contra, Mr. Subir Sanyal, learned counsel for the licensee CESC Ltd., submits that the power of disconnection under section 56(2) is only one of the powers conferred upon the licensee against non-payment of dues by a consumer of regular outstanding dues. The period of limitation specified therein must be restricted only to the right of disconnection that too in cases of non-payment of regular dues. The right to recover dues on account of pilferage and theft stand on a different footing.

20. Reliance is placed on a decision of the Supreme Court in the case of **M.P. Electricity Board, Jabalpur –vs- Harsh wood Product & Anr.**, **reported in (1996) 4 SCC 522,** particularly paragraph 8 thereof. Mr. Sanyal would argue that section 24 of the Electricity Act, 1910, particularly sub-section (1), is pari materia to sub-section (1) of section 56 of the 2003 Act. The restrictions under the proviso under sub-section (2) of section 56 in the context of the right to disconnect supply, cannot be applied to a case of theft and/or pilferage of electricity.

21. This Court has heard arguments advanced by learned counsel for the parties over a period of two days.

22. Indeed, the right of disconnection conferred on a licensee under Section 24 of the Act of 2010 and Section 56 of the 2003 Act, is only one of the remedies available to a licensee. Sub-section(1) of the aforesaid two Sections in the two Acts are indeed pari materia. Sub-section (2) and its proviso to Section 56 have been introduced for the first time in the year 2003.

23. Section 126 of the Electricity Act of 2003 is, however, an omnibus provision conferring rights on the assessing authority to assess outstanding dues of a consumer, both in cases of pilferage as well as other outstanding.

24. The reliance placed on **M.P. Electricity Board, Jabalpur (supra)**, particularly paragraph 8, to the extent that it says that Sub-section (1) of Section 24 of the 1910 Act cannot apply to pilferage, must be accepted by this Court.

> ***"8.*** *The learned counsel for the respondent placed strong reliance on Section 24 of the Indian Electricity Act, 1910 which contemplates seven days' notice before disconnection. Section 24 does not apply to demand on detection of pilferage. It would*

> *apply to a case of regular supply made and prior demand for payment of electricity charges with a notice of seven days to be made and for failure to pay within the given time, after expiry of seven days, the appellant as a licensee would get the right to disconnect the supply of electrical energy. It would thus be seen that disconnection will be in the course of regular supply of electricity for non-payment of the usual bills but not to any case demand after detection of pilferage"*

25. It would, therefore, follow that the limitation period of two years may not apply for recovery of pilfered dues or dues arising from theft of electricity. It is not for Courts to rewrite or read into the statutes, provisions of the limitation of two years to all cases of electricity dues. The Golden Rule of interpretation of Statutes must be applied in the instant case to interpret Section 56 and restrict its application to cases, other than pilferage and theft.

26. The argument of the appellants that the dues arising beyond the period of two years in the instant case in 2003 when the theft was detected cannot be enforced beyond 2005 against the appellants would lead to an absurd interpretation of the object and the purpose of Section 56 in particular and the Electricity Act of 2003 as a whole. To accept the argument of the appellants would amount to putting a judicial seal on a consumer's fraud in committing theft of electricity at one place and obtaining a new connection and enjoying electricity afresh, without paying for the stolen supply.

27. Coming to the next argument of the appellants that such dues must be reflected for a particular period of two years or thereabouts in the running electricity bill of a consumer to entitle the licensee to disconnect electricity supply, is equally unacceptable. Admittedly, the appellants, who were part of the HUF, carried on business from a new premises i.e. at 13 Taratolla Road, Calcutta 700088 and that too,

under a new name. The dues of the HUF could not very obviously be reflected in the electricity bills of the appellants or M/s. Popular Plastics and Packaging as the licensee did not know of the nexus between the appellants and the HUF until 2013. The said argument of the appellants must also be rejected.

28. The appellants in their pleading have not denied the fact that they are the actual members of the HUF. The appellant No. 1 and the writ petitioner no. 1 is the Karta of the HUF. The licensee has discovered the same only in the year 2013 in course of an inspection. Even assuming that the limitation period of 2 years is applicable, it would start to run from the date of knowledge of the licensee, of the new location and the identity of the appellants i.e. 2013. The licensee has raised its demand within a month of such discovery and knowledge.

29. We may now address the third and last limb of the argument of nexus between the original consumer HUF and the appellants. Indeed it is true that the Regulation 3.4.2 mandates not only a nexus between the old and new consumer but prescribes that the dues arise "at the same premises", i.e. 544 Andul Road, Howrah 711109.

30. This Court is of the view that a Regulation cannot be interpreted as strictly as one would interpret a principal statute. The Regulations of 2013 (supra) have been framed under powers conferred under Sub-section (1) and Clause 10 of Sub-section (2) of Section 181, read with Section 50 of the Electricity Act, 2003.

31. The expression "at the same premises" cannot and should not stand in the way of a licensee, in the facts of the case i.e. the appellant, members of the original consumer HUF changing location and enjoying electricity under a new name without

paying the unchallenged and quantified dues of theft of electricity under their previous avatar and/or identity i.e. a HUF. Regulation 3.4.2 may therefore be read down to include cases of this instant nature to enable the licensee to establish nexus between consumers accused of pilferage or theft, even at a different premises.

32. An element of fraud being perpetrated on the licensee by the appellants in the facts of the case cannot also be ruled out. It is now settled that fraud unravels all.

33. To allow a consumer to leave unpaid electricity dues at one premises and carry on business in a new premises under a new name would definitely border on an otherwise tortious act of fraud and/or deceit. As already stated earlier to accept the appellants argument would amount to putting a judicial seal on a fraudulent act.

34. There are other vital facts that cannot be ignored for holding the appellants liable for the outstanding dues of the erstwhile Consumer HUF. All the three writ petitions and appeals mentioned hereinabove have been affirmed and signed by the karta of the erstwhile consumer HUF i.e. Bal Kishan Kedia.

35. Leverage and concessions obtained from this Court, particularly in the order of a Division Bench of this Court dated September 24, 2003 (supra), have also not been availed i.e. reconnection of electricity upon payment of 50% of the charges at the old premises at 544 Andul Road, Howrah 711109. The factum of theft and/or pilferage as found by the licensee, remains uncontroverted till date. Opportunity given by the two single Benches in two several writ petitions to the erstwhile consumer HUF to participate in the provisional and/or final assessment of the pilfered electricity was not availed by the persons behind the HUF Consumer i.e. the appellants herein.

36. In the facts and circumstances of the case, this Court is of the view that the appellants are liable for the dues of the erstwhile consumer HUF. The decision of **Prem Cottex (supra)** cannot be applied in this case since in the facts of the said case the Hon'ble Supreme Court was concerned with a case of tariff change and consequent increase in liability of the consumer. Theft of pilferage of electricity was not the subject matter of the said decision.

37. The decision of the Division Bench of this Court in **Shiva Glass Company Limited (supra)** cannot also come to the aid of the appellants since the decision of the Supreme Court in **Harsh Wood Products (supra)** was not addressed by the Division Bench. The facts of the said case are also quite different from the instant case.

38. The **K.C. Ninan decision (supra)** would not come to the aid of the appellant as in the said case the Supreme Court was dealing with a case of liability of a third party auction purchaser in a sale of assets on an "as is where is" basis.

39. For the reasons stated hereinabove and those recorded by the Learned Single Bench, this Court is of the unequivocal view that the impugned judgment and order dated 12th November, 2014 calls for no interference whatsoever. The appeal fails and is hereby dismissed.

40. There shall, however, be no order as to costs.

41. The appellants pray for stay of operation of this order. Since there is an interim order subsisting between the parties since 3rd October, 2013, the operation of the impugned judgment shall remain stayed for a period of three weeks from date.

(RAJASEKHAR MANTHA, J)

I agree.

(SUPRATIM BHATTACHARYA, J)

tk/SN