

Dusane

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

**SECOND APPEAL NO.101 OF 2020
WITH
CIVIL APPLICATION NO.71 OF 2020**

Kamlakar Yashwant Sawant ...Appellant

V/s.

Maharashtra State Electricity Board ...Respondents
& Ors.

Mr. Swapan Samdani for Appellant/Applicant.

Mr. Bhavesh Wadhwani i/by M.V. Kini for
Respondents.

**CORAM: MADHAV J. JAMDAR, J.
DATE: 5th APRIL 2023**

P.C.:

1. Heard Mr. Samdani, learned Counsel appearing for the Appellant and Mr. Wadhwani, learned Counsel appearing for the Respondents.

2. The Respondent i.e. Maharashtra State Electricity Board filed Regular Civil Suit No. 50 of 2003 for recovery of Rs.36,594.52. The suit was filed on 17th June 2003. The suit was filed against Respondent No. 2- Company, the present

Appellant and one Mr. Ashok Madhusudan Palkar. The present Appellant and said Ashok Madhusudan Palkar were the Directors of the Defendant No. 1- Company.

3. Inspite of service of summons, Defendant Nos. 1 and 2 have not filed their written statement. As far as Defendant No. 3 is concerned i.e. the present Appellant although he was served, he did not appear and therefore suit was proceeded against him *ex parte*.

4. The learned Trial Court decreed the suit on 22nd November, 2005 directing that the Defendants are jointly and severally liable to pay the amount of Rs.36,594.52 to the Plaintiffs. The said decree was challenged by the present Appellant i.e. Defendant No. 3 by filing Regular Civil Appeal No. 199 of 2015 and the same was dismissed with costs by the learned Principal District Judge, Sindhudurg-Oros, by judgment dated 13th June 2018 passed in Regular Civil Appeal No. 199 of 2015.

5. It is the main contention of Mr. Samdani that the Appellant, who is merely the Director is not liable to pay the decretal amount and it is the Respondent No. 2 i.e. the Company who is liable to pay the decretal amount. The learned Trial Court as well as the learned First Appellate Court has rejected the said contention. It has been held by both the Courts that the

Defendants will not escape from the liability of outstanding against Defendant No.1- Company. It has been held that the evidence of the witness which has been examined on behalf of the Plaintiffs clearly shows that all the Defendants are liable. Both the Courts have held that his testimony has remained unchallenged and therefore rejected the contention raised by the Appellant.

6. Mr. Samdani has fairly admitted that the Appellant has not appeared in the suit inspite of service of summons and failed to file written statement. He also admitted that the evidence of the Plaintiff has remained unchallenged. He however, relied on the judgment of the Delhi High Court dated 16th August 2010 passed in RFA No. 14/2010 and CM No. 495 of 2010 in the case of **Mukesh Hans & Anr. Vs. Smt. Uma Bhasin & Ors.** He more particularly relied on paragraph nos. 18 to 20 of the said judgment.

7. As far as the said judgment of Delhi High Court is concerned, that case is arising out of the application seeking leave to defend filed by the Defendants in the Summary Suit. The parameters to be considered as far as such application is concerned are totally different than the parameters to test a concurrent finding recorded by both the Courts in the Second Appeal. In the facts and circumstances of that case, the Delhi

High Court has come to the conclusion that it could not have been held that the Directors are jointly and severally liable to pay the amount invested by the Respondents in the Company. In this particular case, the Plaintiff is the Maharashtra State Electricity Board and as the amounts have remained unpaid, the suit was filed against the Company as well as its Directors. None of the Defendants have filed the written statement.

8. The learned Courts have specifically recorded the finding that the evidence of the Plaintiffs have remained unchallenged. Thus, there is no substance in the Second Appeal. The Second Appeal is dismissed with no order as to costs.

9. In view of dismissal of the Second Appeal nothing survives in the Civil Application and the same is also disposed of.

(MADHAV J. JAMDAR, J.)