

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 647 of 1999 (O&M)

Reserved On: 09.11.2022
Pronounced on: 26.04.2023

Punjab State Electricity Board and Others

... Appellant(s)

Versus

M/s Aashima Papers Private Limited

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. P.S.Thiara and Mr. A.P.S.Virk, Advocates
for the appellant(s).

Mr. S.S.Bahl, Advocate
for the respondent.

Anil Kshetarpal, J.

CM-7983-C-2022

1. This is an application filed under Order XXII Rule 10 read with Section 151 CPC with a prayer to substitute M/s Aashima Papers Private Limited as a respondent in place of M/s Gahir Paper Mills Private Limited.

2. It is claimed that during the pendency of the appeal, the original respondent, namely the Gahir Paper Mills has sold the property along with all rights and interests to the applicant. The copies of the sale deed have been annexed as Annexure R1 and R2, respectively. In terms of the provisions of Order XXII Rule 10 CPC, the application is allowed. M/s Aashima Papers Private Limited, through Amandeep Bansal son of Jagdish Kumar Bansal is substituted in place of M/s Gahir Paper Mills Private Limited. The amended memo parties is taken on the record.

RSA-647-1999

3. On 18.10.2022, the Supreme Court, set aside the orders passed on 16.05.2011 and 02.03.2012 by the High Court while dismissing the regular second appeal as well as the review application, with the following order:-

“Delay condoned.

Leave granted.

Feeling aggrieved by orders dated 16.5.2011 and 2.3.2012 passed by the learned Single Judge of the Punjab and Haryana High Court in RSA No.647 of 1999 (O&M) and RA No.17-C of 2012, the appellants have preferred these appeals.

A reading of order dated 16.05.2011 shows that the learned Single Judge declared the second appeal as infructuous by relying upon the statement made by the counsel appearing for the respondent that his client has duly complied with the conditions enumerated in Exhibit D-6. The review application filed by the appellants which contained a specific averment that condition No. (iii) of Exhibit D-6 has not been complied was dismissed by the learned Single Judge by one line order "Heard. No ground for review is made out. Dismissed."

We have heard Shri Jayant K. Sud, learned counsel for the appellants and Shri Neeraj K. Jain, learned senior counsel for the respondent and carefully scrutinised the record. In our opinion, the learned Single Judge was not at all justified in disposing of the second appeal as infructuous without requiring the respondent to place before the Court documents showing compliance of all the conditions enumerated in Exhibit D-6. The failure of the learned Single Judge to do so has resulted in manifest injustice to the appellants because the respondent is not shown to have complied with condition No. (iii) of Exhibit D-6.

The dismissal of review petition filed by the appellants is also unsustainable. A careful reading of the averments contained in the review petition shows that the appellants had drawn attention of the Court about non-fulfilment of condition No. (iii) embodied in Exhibit D-6. The learned Single Judge did not advert to the contents of the review petition and dismissed the same by a rather cryptic order.

In the result, the appeals are allowed, the impugned orders are set aside and RSA No.647 of 1999 is restored to its original number. The High Court shall now hear the parties and decide the second appeal afresh.

It is made clear that this Court has not expressed any opinion on the merits of the rival claims and the parties shall be free to urge all legally permissible grounds before the High Court.”

4. The detailed facts are not required to be noticed because this Court is of the considered view that the matter needs to be remanded to the trial Court for a fresh decision particularly in view of the stand taken by the respective parties. However, the relevant facts are noticed succinctly in order to comprehend the controversy involved in the present case.

5. The respondent herein filed a suit for grant of decree of permanent injunction restraining the defendant (appellant) from levying peak load restrictions on the plaintiff's factory and ensure the continuous supply of electricity. The respondent claims that his factory has a sanctioned load of 785 kilovolts (KV). The plaintiff has built the entire case on the basis of the alleged decision taken in a meeting under the Chairmanship of the Secretary, Irrigation and Power which is reflected in the letter dated

07.07.1980. It is stated to have been conveyed to the appellant-Board vide

communication dated 23.08.1980, which is extracted as under:-

“Reference subject cited above.

In the meeting held on 7.7.80 under the Charimanship of Secretary, Irrigation and Power, it has been decided that power to pesticides and paper mills may be given on continuous basis. They have also conveyed the above decision to the Chairman, Punjab State Electricity Board, Patiala, vide their letter No. 13/50/79-IW(2)/5453, dated 23.9.80 (copy enclosed) for taking further action accordingly.

You are requested kindly to give wide publication to this important decision.”

6. It is also the case of the plaintiff that other mills and the paper mills in the State were given option to opt for the payment of ₹1/- per unit extra on a prorata basis to avoid the peak load restrictions, but the similar benefit was not extended to the plaintiff. The plaintiff claims that they have been directed not to run the industry between 6.00 p.m. to 9.00 p.m. on daily basis.

7. The appellant-Board contested the suit while claiming that the State has no power to regulate the supply of electricity and the decision dated 07.07.1980 was never adopted by the Board. The paper mills are not included in the continuous process industry and the exemption from the peak load restrictions is available to the consumer with the connected load of 1 MW or above who are getting the supply through the independent feeder cadre.

8. The trial Court as well as the First Appellate Court have decreed the suit. The regular second appeal filed before this Court was

dismissed as infructuous on 16.05.2011 with the following order:-

“Learned senior counsel for the respondent has submitted that the appeal has been rendered infructuous as the conditions mentioned in Ex. D-6 have been duly complied with by the respondent-plaintiff and an independent feeder has been provided to the respondent by the appellants.

The case of the appellants was that they could not give continuous supply of electricity to the respondent due to non compliance of conditions, mentioned in Ex. D-6. As per the learned senior counsel for the respondent-plaintiff, the conditions mentioned in Ex. D-6 have been duly complied with by the plaintiff and an independent feeder has been provided to the respondent, during the pendency of the appeal.

In these circumstances, this appeal is rendered infructuous and is disposed of accordingly.”

9. A review application was also dismissed. In the review application, it was contended that the conditions stipulated in Ex.D6 have not been complied with by the plaintiff. The violation of the following conditions was alleged:-

“3. That the conditions for peak load exemption Exhibit D-6 are reproduced below for kind consideration of this Hon’ble Court:-

CONDITIONS FOR PEAK LOAD EXEMPTION:

After the manufacturing process has been declared a continuous process by this office, the following further conditions are to be fulfilled:-

- i) The consumer must opt for an independent feeder to be erected at his own cost to cater to his entire load.*
- ii) In case he is presently being fed from separate/mix feeder, he must opt for getting it converted into an*

independent feeder at his own cost.

iii) He must give an undertaking that peak load exemption charges would be paid by him.”

10. While referring to the relevant regulations No. 168.1.2.1 and 168.1.2.2, it was alleged that for some time, the plaintiff duly complied with the instructions (Ex.D6), however, after passing the decree of the trial Court on 25.05.1998, the plaintiff did not pay the peak load violation charges till 28.05.2010. No reply to the review application was filed.

11. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

12. It would be noted here that the issue of compliance of the conditions embodied in the instructions (Ex.D6) was neither debated nor decided by the trial Court or the First Appellate Court. In these circumstances, this Court is of the considered view that the matter is required to be remitted back to the trial Court after framing the following issue:-

“Whether the plaintiff has complied with the conditions embodied in the instructions (Ex.D6). If the answer is in affirmative, to what extent?”

13. In the opinion of the Court, the issue of the enforceability and the binding effect of the decision dated 07.07.1980 pales into insignificance because the plaintiff has continued to enjoy the continuous power supply all this while. However, it may be noticed that the decision dated 07.07.1980 which was communicated to the Director of Industries by the Secretary, Irrigation and Power, nowhere provides that the electricity supply during the

applicable to the various other industries.

14. Consequently, the judgments and decrees passed by both the Courts below are set aside with the direction to the trial Court to decide the issue extracted above expeditiously, after granting an opportunity of hearing to the parties, preferably within a period of nine months, from today because the suit was instituted on 10.04.1995. The parties, through their learned counsel, are directed to appear before the Court of Civil Judge (Senior Division) on 15.05.2023.

15. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

April 26, 2023
“DK”

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No