**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR-1244-2021
Reserved on: 01.12.2023
Date of decision: 05.12.2023**

DAKSHIN HARYANA BIJLI VITRAN NIGAM LTD. AND ANOTHER **..Petitioners**

Versus

M/S JAKHAR EDUCATIONAL AND WELFARE SOCIETY AND ANOTHER **..Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Sh. R.S. Longia, Advocate
for the petitioners.

Mr. Sumit Batra, Advocate
for respondent No.2.

ANIL KSHETARPAL, J(Oral)

1. ‘Dakshin Haryana Bijli Vitran Nigam Limited’, a power supply company and ‘another’ in the present revision petition challenge the correctness of the order passed by the learned Additional District Judge. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

2. Sant Gyaneshwar Sr. Secondary School, Palwal, was issued an electric connection by the petitioner. There was a default in the payment of electricity consumption charges by the school. Moreover, an additional sum was outstanding due to the allegations of energy theft, resulting in penal charges. According to the learned counsel representing the petitioner, the total dues are more that Rs.6 crore as of now. Allahabad Bank took over the assets of Sant Gyaneshwar Sr. Secondary School, Palwal, and sold it in accordance with the provisions of Securitization and Reconstruction of

Financial Assets and Enforcement of Security Interest Act, 2002. The respondent-plaintiff namely M/s Jakhar Educational and Welfare Society purchased the property in a Court auction. When new connection was applied by the auction purchaser, the petitioner insisted on the deposit of the arrears. Thus, the respondent filed a suit for grant of decree of declaration that it is not liable to pay the amount and temporary mandatory injunction should be issued to the petitioner to release the electricity connection. The trial Court dismissed the application to grant temporary injunction in the form of mandatory injunction. However, the First Appellate Court has reversed the order passed by the trial Court and issued a direction to the petitioner to release the connection without insisting on payment of arrears of the previous owner.

3. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

4. It may be noted that respondent No.1 (M/s Jakhar Educational and Welfare Society) appeared in revision petition through Sh. Amit Choudhary, Advocate, but later on stopped appearing. Taking note of the aforesaid fact, a fresh notice was directed to be issued to respondent No.1. Despite once again having been served, respondent No.1 has chosen not to enter appearance.

5. The First Appellate Court has passed the order without referring to either the basic provisions or various judgments passed by the Courts from time to time on the subject. The Court has observed that life without electricity in contemporary times seems like a fiction, resembling a tale from primitive ages. Thereafter, the Court held that the classes in the school

cannot operate without electricity. The education and career of the students needs to be saved. Hence, there is a dire need of an electricity connection and the functionaries of the petitioners are not expected to behave and act like a crooked money lender and astute businessman. It has also been observed that in the sale letter issued by Allahabad Bank, there is no stipulation regarding the payment of the arrears of the electricity bill by the highest bidder or auction purchaser. The learned counsel representing the petitioners contends that the Supreme Court in more than one of it's judgments has consistently held that a person purchasing the property in a public auction or Court auction is liable to clear the statutory electricity dues of the previous owner if the new connection is not released on account of default of payment of previous owner. He relies upon the judgment passed in ***Paschimanchal Vidyut Vitran Nigam Limited and others Vs. DVS Steels and Alloys Private Limited and others, (2009) 1 SCC 210 and Dakshin Haryana Bijli Vitran Nigam Ltd. Vs. M/s Paramount Polymers Pvt. Ltd., 2006 (13) SCC 101 and a recent judgment of the Supreme Court in K.C. Ninan Vs. Kerala State Electricity Board and others, 2023(3) RCR (Civil) 227***.

6. This Court has considered the submissions of the learned counsel representing the parties.

7. The First Appellate Court has erred in overlooking the law laid down by the Supreme Court, which is binding. It is evident that the First Appellate Court has reversed the order passed by the trial Court while making general observations based on morality. The First Appellate Court

has passed the impugned order merely on conjectures and surmises without appreciating law on the issue.

8. The Court while granting temporary injunction is expected to apply the following three golden tests:-

i) Prima facie case;

ii) Balance of convenience; and

iii) That the applicant will suffer irreparable loss and injury if injunction is not granted in his favour.

9. In fact, the Court has granted temporary injunction in a mandatory form. Such relief can be granted in cases where there is a *prima facie* strong case in favour of the applicant. Thus, the First Appellate Court has erred while passing the impugned order.

10. Consequently, the impugned order is set aside and the order passed by the trial Court is restored.

11. The revision petition is allowed

12. All the pending miscellaneous applications, if any, are also disposed of.

December 05th, 2023 **(ANIL KSHETARPAL)**
Ay **JUDGE**

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