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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA 326/2015 & CM 18209/2015**

PRAKASH CHAND

.....Appellant

Through: Mr. B.P. Agarwal, Advocate.

versus

TATA POWER DELHI DISTRIBUTION LIMITED

.....Respondent

Through: Mr. Manish Kumar Srivastava, Mr.
Moksh Arora and Mr. Yash
Srivastava, Advocates.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

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05.11.2024

1. Having heard learned counsel appearing on behalf of the parties, it is seen that the learned Trial Court, *vide* judgment and decree dated 28.08.2012, decreed the civil suit in part, whereby, a bill of Rs.2,41,450/- was declared to be null and void to the extent that the misuse charges of Rs. 1,73,604/- is being time barred. The learned Trial Court further restrained the respondent-defendant from disconnecting the supply of the appellant-plaintiff on the basis of the non-payment of the aforesaid bill.
2. Against the judgment and decree dated 28.08.2012, an appeal was preferred by the respondent-defendant. The first Appellate Court, *vide* judgment dated 05.05.2015, has reversed the findings of the learned Trial Court, against which the appellant-plaintiff has preferred the instant regular



second appeal.

3. *Vide* order dated 01.12.2015, this Court has framed the following substantial questions of law:-

“(i) Whether the provisions of the Electricity Act, 1910 or the provisions of the Electricity Act, 2003 would be applicable in respect of the claim for misuse charges raised by the respondent for the period 1999-2001.

(ii) Whether the bill raised by the respondent was barred by limitation.

(iii) Whether the misuse charges could be levied by the respondent for a period of two years only for a period of six months.”

4. During the course of the hearing, the parties have apprised the Court with respect to the principle of law enunciated in LPA 724 of 2011 and connected matters *vide* order dated 10.01.2023. In the aforesaid decision, the Court has taken note of the notification dated 16th/19th May, 2008 issued by the GNCTD, wherein, certain bills came to be waived off. Paragraph nos.9 and 10 of the said decision read as under:-

“9. The learned Senior Advocate for the appellant submits that this case pertains to the misuse of the electricity connection, therefore, the impugned order does not cover that aspect. However, as noted in para no. 3 of the impugned order in W.P.(C)8568/2009 apropos M/s Modelama Exports, New Delhi had impugned bills placed by the Delhi Vidyut Board ('DVB.') including certain amounts under the heading “Misuse/excess charges”. The impugned order has dealt with this issue as well.

10. The Notification has rightly been seen in the larger context for the purpose it sought to achieve i.e., write-off of all stale claims, some of which related to a period almost a decade before the bills were raised. That objective cannot be denied to the petitioners who have approached court and have litigated in terms of what they thought was the legal remedy. In any case, the issue of misuse or excess charges as may be, has not yet been proven. Therefore, those claims also would be covered under the said Notification and would need to



be waived off. There is no reason to interfere with the impugned order.”

5. It is thus seen that the findings rendered by the learned Trial Court are in consonance with the object of the notification, as well as the observations made by the Division Bench of this Court in the decision dated 10.01.2023 in LPA 724 of 2011 and connected matters. Furthermore, the Supreme Court in S.L.P [Civil] No. 863 of 2024, has affirmed the decision in LPA 724 of 2011, with the Supreme Court refusing to interfere in the decision. The rationale behind the findings and conclusion rendered by the learned Trial Court mainly rested upon the delay on behalf of the respondent-defendant in raising the bill. Therefore, the findings of the learned Trial Court deserved to be restored.

6. Accordingly, this Court is of the considered opinion that the first Appellate Court has gravely erred in not appreciating the facts and circumstances in right perspective, and has therefore, erred in setting aside the judgment and decree passed by the learned Trial Court. Therefore, the instant appeal stands allowed to the extent of setting aside the impugned judgment and decree passed by the first Appellate Court and restoring the impugned judgment and decree passed by the learned Trial Court.

7. The impugned judgment and decree stands modified to that extent.

8. Ordered accordingly.

9. With the aforesaid observations, the instant appeal stands disposed of, along with pending application.

PURUSHAINDRA KUMAR KAURAV, J

NOVEMBER 5, 2024

nc/sp