HARYANA VIDYUT PARSARAN NIGAM LTD. & ORS. A

v.

M/S. SUPER STAR GRIT UDYOG

(Civil Appeal No. 6618 of 2008)

NOVEMBER 11, 2008 B

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM SHARMA, JJ.]

Electricity Act, 1910 – s.24 and 24A(i)(3) – Theft of electricity – Electricity Board demanded penalty from consumer – Consumer filed suit for declaration with consequential relief of mandatory and permanent injunction – Preliminary objection by Electricity Board as regards maintainability of the suit in view of Haryana Amendment in the Electricity Act – Trial Court over-ruled the objection and held the demand memo as illegal and void – First appeal as well as second appeal dismissed – Held: Though all through, the Electricity Board was challenging maintainability of the suit, the Courts below did not consider the effect of the said amendment in the Electricity Act – Also High Court did not consider the applicability and relevance of two relevant decisions of this Court – Hence, matter remitted back to High Court – Electricity (Haryana Amendment) Act, 1998. C D E

Appellant-Electricity Board demanded penalty from Respondent-consumer for committing theft of electricity. Respondent challenged the said demand and filed suit for declaration with consequential relief of mandatory and permanent injunction. Appellants raised preliminary objection that the suit was not maintainable in view of the Electricity (Haryana Amendment) Act, 1998 whereby s.24 of the Electricity Act, 1910 was amended. F G

The Trial Court over-ruled the preliminary objection and held that the demand memo raised was illegal, null

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A **and void. Appeal thereagainst was dismissed by the First Appellate Court which held that notice was required before any action was taken and further that reference to the electrical inspector was necessary; and in absence of evidence of some technical person regarding** B **commission of theft, the plea relating to theft could not be gone into. Appellants filed second appeal which was dismissed by the High Court. Hence the present appeal.**

Allowing the appeal and remitting the matter to High C **Court, the Court**

HELD: Though all through, the appellants have been taking the stand about the maintainability of the suit, the effect of the said amendment in the Electricity Act, 1910 was not considered either by the trial court or by the first D **appellate court or the High Court. The applicability and relevance of decisions of this Court, wherein it was held that in case of theft, notice was not required and reference to the electrical inspector was not necessary, were not considered by the High Court. Thus, the order** E **of High Court is set aside and matter is remitted back to High Court for considering issues relating to maintainability of the suit filed by Respondent. [Paras 5, 7 and 8] [1048-G; 1050-C-E-F]**

F *M.P. Electricity Board, Jabalpur v. Harsh Wood Products* **(1996) 4 SCC 522 and** *Sub-Divisional Officer (P) UHBVNL v. Dharam Pal* **(2006) 12 SCC 222, referred to.**

Case Law Reference:

G **(1996) 4 SCC 522**	**referred to**	**Para 7**
(2006) 12 SCC 222	**referred to**	**Para 7**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6618 of 2008.

H From the final Judgment and Order dated 7.3.2005 of the

High Court of Punjab and Haryana at Chandigarh in Regular Second Appeal No. 931 of 2005 (O&M). A

Neeraj Kumar Jain, Sanjay Singh, Sandeep Chaturvedi and Ugra Shankar Prasad for the Appellants.

Manoj Swarup, Akshat Goel, Uday Gupta and Kamal Mohan Gupta, for the Respondent. B

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted. C

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Punjab and Haryana High Court dismissing the Second Appeal filed by the appellants in terms of Section 100 of the Code of Civil Procedure, 1908 (in short the 'Code'). D

3. Background facts, as projected by the appellants, are as follows:

The respondent was given electric connection bearing No.LLS-42 by the appellant-Nigam on 11.10.2002. The premises of the respondent were checked by the officials of the appellant-Nigam. It was found that the respondent was committing theft of electricity by providing bolt under the CT Chamber of the meter. On removing the earth strip from the bolt and isolating the bolt from the CT Chamber, it was noticed that there was disconnection of earth/neutral wire which caused the stoppage of the meter. Checking Report in this regard was prepared by the officials. This being a case of theft of electricity, the respondent was charged Rs.11,37,222/- as penalty. Challenging the aforesaid demand by memo dated 12.10.2000, respondent filed a Suit for declaration with consequential relief of mandatory and permanent injunction before the learned Civil Judge (Junior Division), Gurgaon. The appellants filed written statement, inter-alia, raising preliminary objections as regards the maintainability of the Suit. It is pointed out that the same was not maintainable in view of Indian E F G H

A Electricity (Haryana Amendment) Act, 1998 (in short the 'Amendment Act') i.e. Haryana Act No.4 of 1998. Replication to the said written statement was filed by the respondent. The trial Court framed an issue i.e. Issue No.3 in this regard but held that the memo was illegal, null and void. An appeal was filed B before the learned District Judge, Gurgaon, before whom the same plea was taken. But the High Court only referred to the submission of the respondent and held that whether theft committed was to be adjudicated by reference to the Electrical Inspector. It was noted that appellant no.1 ought to have brought C on record the evidence of some technical person regarding commission of theft and only then it would have been substantiated. In the absence of that, the plea relating to theft cannot be gone into. The Second appeal was dismissed but it was observed that if on independent evidence, commission of D theft is established, the appellants are free to proceed to check theft of electricity in accordance with law.

4. In support of the appeal, learned counsel for the appellant submitted that the Trial Court came to the erroneous conclusion that the Suit was maintainable. In appeal, the first E appellate court came to an abrupt conclusion that the jurisdiction of the Civil Court existed. It was stated that the dispute between the consumer and the Nigam was not barred by any Statute. The High Court did not address itself to the fundamental question as to the maintainability of the suit. It was also F submitted that the courts below were not justified in holding that notice was required before any action was taken. It was also pointed out that the reference to the electrical inspector was not necessary in the case of theft.

G 5. We find that, all through, the appellants have been taking the stand about the maintainability of the Suit. Relevant provisions of the Amending Act read as follows:

"2. *Amendment of Section 24 of Central Act 9 of 1910:*

H In sub-section (1) of Section 24 of the Indian Electricity Act,

1910, the following proviso shall be added, namely:-

"Provided that no Court shall take cognizance of any matter pertaining to the payment of charges due from any person to a licensee in respect of the supply of energy to him or stay the recovery thereof unless –

(i) he has exhausted all the remedies available to him under the terms and conditions governing the supply of energy to him; and

(ii) he has deposited forty percent of the amount outstanding against him, with the licensee."

6. It is the stand of the appellants that the terms and conditions of supply clearly provide the consequences in case of theft or pilferage of electrical energy which read as follows:

"24(A)(i)(3) *Theft or Pilferage of Electrical energy:*

A consumer shall be guilty of theft of energy where he dishonestly abstructing, consumes, uses or draws any energy:-

a) Otherwise than through a meter referred to in condition 14 of the Terms and Conditions of Supply of the Board or Section 26 of the Indian Electricity Act, 1910.

b) Through any artificial means, or means not authorized by the Board; or

c) By tampering with such meter or its body seals, or an apparatus or circu..;

d) By manipulating such meter indicator or apparatus referred to in sub-section (6) of Section 26 of the Indian Electricity Act, 1910 or;

e) By manipulating or abstructing or interfering in the functioning of such meter in any manner so as to prevent

A it from fully and/or correctly registering the energy consumed; or

f) by manipulating change of phase of the electric supply lines; or

B g) from a disconnected connection; or

h) by any other means whatsoever interfering with the said meter or Board's supply system where such interference is an offence under Section 44 of the Indian Electricity Act, C 1910."

7. Unfortunately, the effect of the aforesaid amendment has not been considered by either by the trial court or by the first appellate court or the High Court. Reference may be made to a decision of this Court in *M.P. Electricity Board, Jabalpur v.* D *Harsh Wood Products* (1996 (4) SCC 522) laying down that in the case of theft notice was not required. Similarly, in *Sub-Divisional Officer (P) UHBVNL v. Dharam Pal* (2006 (12) SCC 222) in paragraph 7 to 11, it was observed that reference is not necessary to the Electrical Inspector in the case of theft. The E applicability and the relevance of these judgments have not been considered by the High Court.

8. In the circumstances, we set aside the impugned judgment of the High Court, remit the matter to it for considering F the issues relating to maintainability of the Suit as filed by the respondent.

9. We make it clear that we have not expressed any opinion on the merits of the case. The appeal is allowed to the aforesaid extent without any order as to costs.

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B.B.B. Appeal allowed.