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Court : Supreme Court of India

Decided On : Aug-20-2010

Reported in : (2010)9SCC145; AIR2010SC3835; 2011(1)MLJ177; 2010(7)SCJ737

Judge : R V Raveendran,;H L Gokhale, JJ.

Acts : Electricity (Supply) Act - Section 49;

Appeal No. : CIVIL APPEAL NO. 6817 OF 2010 [Arising out of SLP (C) No.16396/2006]

Appellant : Haryana State Electricity Board .

Respondent : M/S Hanuman Rice Mills and ors.

Judgement :

1. Leave granted. Heard.

2. The second respondent - Haryana Financial Corporation auctioned the rice mill premises of one of its borrowers - Durga Rice Mills, to recover its dues. The first respondent purchased the said premises at the auction on 14.12.1990 for a consideration of Rs. 15,25,000/- and paid the entire sale consideration to the second respondent. When the first respondent purchased the mill premises, electricity supply to the premises had been disconnected. After taking possession of the premises, the first respondent applied for and obtained electricity connection in its own name in the year 1991. Four years later, the appellant served upon the first respondent, a notice dated 16.1.1995 demanding payment of Rs.2,39,251/- towards arrears of electricity charges due by the previous owner Durga Rice Mills.

3. The first respondent filed a civil suit for permanent injunction and the said suit ended in dismissal on 5.12.1996 which was affirmed by the appellate court on 27.2.1998. Thereafter the appellant served a notice dated 2.3.1998 informing the first respondent that the electricity supply will be disconnected if the said arrears due by Durga Rice Mills were not paid. This was followed by disconnection of electricity supply on 9.3.1998. First respondent filed a suit challenging the said demand and disconnection of electricity supply. The said suit was dismissed by the trial court. While dismissing the suit, the trial court held that the claim of the appellant was barred by limitation. Feeling aggrieved by the dismissal, the first respondent filed an appeal; and feeling aggrieved by the finding that appellant's claim was barred by limitation, the appellant filed an appeal. The first appellate court decided the appeals by a common judgment dated 30.10.2003. It dismissed the appeal filed by the appellant and allowed the appeal filed by the first respondent. It held that first respondent could not be made liable for the dues of the previous owner, as there was no provision in the terms and conditions of sale that the electricity dues of the previous owner should be paid by the first respondent as auction purchaser. The judgment of the first appellate court was challenged by the appellant by filing a second appeal. The Punjab & Haryana High Court by its judgment dated 8.8.2005 dismissed the said appeal holding that the liability of a consumer to pay charges for consumption of electricity, cannot be fastened on a subsequent auction purchaser of the property, in view of the decision of this court in Isha Marbles vs. Bihar State Electricity Board - (1995) 2 SCC 648.

4. Feeling aggrieved the appellant filed this appeal raising two contentions:

(i) The dismissal of the first suit filed by the first respondent for permanent injunction having attained finality, the second suit filed by the first respondent for a declaration that demand and disconnection were invalid, was barred by the principles of res judicata.

(ii) The decision in Isha Marbles relied on by the High Court was inapplicable to the facts of the case. The decision of this court in Dakshin Haryana Bijli Vitran Nigam Ltd. v. Paramount Polymers (P) Ltd. - (2006) 13 SCC 101, entitles the appellant to claim and receive the electricity dues of the previous owner from the new owner/auction purchaser.

Re: Point No. (i)

5. The first suit by the first respondent was for a permanent injunction to restrain the appellant Board from enforcing the demand notice dated 16.1.1995 in respect of the electricity consumption charges incurred by the previous owner. By the second suit, the first respondent sought a declaration that the notice dated 9.3.1998 threatening disconnection of electricity supply for non-payment of the arrears of the previous owner and the consequential disconnection dated 9.3.1998, were invalid and for consequential relief. The matter that was directly and substantially in issue in the second suit was completely different from the matter that was directly and substantially in issue in the first suit. The reliefs claimed were also different, as the first suit was for a permanent injunction and the second suit was for a declaration and consequential relief. Therefore the second suit was not barred by res judicata.

Re : Point No. (ii)

6. The High Court held that the demand was untenable in view of the decision in Isha Marbles. In Isha Marbles this court held that in the absence of a charge over the property in respect of the previous electricity dues, and in the absence of any statutory rules authorizing a demand for the dues of the previous occupant, an auction purchaser seeking supply of electrical energy by way of a fresh connection, cannot be called upon to clear the pre-sale arrears, as a condition precedent for granting fresh connection. This court further held that an Electricity Board could not seek the enforcement of the contractual liability of the previous owner/occupier against a purchaser, who was a third party in so far as the contract between the Electricity Board and the previous occupant and that an auction purchaser who purchases the property after disconnection of the electricity supply, could not be considered as a 'consumer' within the meaning of the Electricity Act, 1910 or Electricity (Supply) Act, 1948, even though he seeks reconnection in respect of the same premises. This court observed:

"Electricity is public property. Law, in its majesty, benignly protects public property and behoves everyone to respect public property. Hence, the courts must be zealous in this regard. But, the law, as it stands, is inadequate to enforce the liability of the previous contracting party against the auction purchaser who is a third party and is in no way connected with the previous owner/occupier. It may not be correct to state, if we hold as we have done above, it would permit dishonest consumers transferring their units from one hand to another, from time to time, infinitum without the payment of the dues to the extent of lakhs and lakhs of rupees and each one of them can easily say that he is not liable for the liability of the predecessor in interest. No doubt, dishonest consumers cannot be allowed to play truant with the public property but inadequacy of the law can hardly be a substitute for overzealousness." (emphasis supplied)

7. The appellant relies on the subsequent decision of this court in Paramount Polymers (supra) to distinguish the decision in Isha Marbles. In Paramount Polymers (supra), the terms and conditions of supply contained a provision (clause 21A) providing that reconnection or new connection shall not be given to any premises where there are arrears on any account, unless the arrears are cleared. In view of the said express provision, this Court distinguished Isha Marbles on the following reasoning: "This Court in Hyderabad Vanaspati Ltd. v. A.P. SEB [1998] 2 SCR 620 has held that the Terms and Conditions for Supply of Electricity notified by the

Electricity Board under Section 49 of the Electricity (Supply) Act are statutory and the fact that an individual agreement is entered into by the Board with each consumer does not make the terms and conditions for supply contractual. This Court has also held that though the Electricity Board is not a commercial entity, it is entitled to regulate its tariff in such a way that a reasonable profit is left with it so as to enable it to undertake the activities necessary. If in that process in respect of recovery of dues in respect of a premises to which supply had been made, a condition is inserted for its recovery from a transferee of the undertaking, it cannot ex facie be said to be unauthorized or unreasonable. Of course, still a court may be able to strike it down as being violative of the fundamental rights enshrined in the Constitution of India. But that is a different matter. In this case, the High Court has not undertaken that exercise. The position obtaining in *Isha Marbles (supra)* was akin to the position that was available in the case on hand in view of the Haryana Government Electrical Undertakings (Dues Recovery) Act, 1970. There was no insertion of a clause like Clause 21A as in the present case, in the Terms and Conditions of Supply involved in that case. The decision proceeded on the basis that the contract for supply was only with the previous consumer and the obligation or liability was enforceable only against that consumer and since there was no contractual relationship with the subsequent purchaser and he was not a consumer within the meaning of the Electricity Act, the dues of the previous consumer could not be recovered from the purchaser. This Court had no occasion to consider the effect of clause like Clause 21A in the Terms and Conditions of Supply. We are therefore of the view that the decision in *Isha Marbles (supra)* cannot be applied to strike down the condition imposed and the first respondent has to make out a case independent on the ratio of *Isha Marbles (supra)*, though it can rely on its ratio if it is helpful, for attacking the insertion of such a condition for supply of electrical energy. This Court was essentially dealing with the construction of Section 24 of the Electricity Act in arriving at its conclusion. The question of correctness or otherwise of the decision in *Isha Marbles (supra)* therefore does not arise in this case especially in view of the fact that the High Court has not considered the question whether Clause 21A of the terms and conditions incorporated is invalid for any reason."

The decision in *Paramount Polymers* was followed in *Dakshin Haryana Bijli Vitran Nigam Ltd. v. Excel Buildcon Pvt.Ltd.* [2008 (10) SCC 720].

8. In *Paschimanchal Vidyut Vitran Nigam Ltd. v. DVS Steels & Alloys Pvt.Ltd.* [2009 (1) SCC 210] this court held, while reiterating the principle that the electricity dues did not constitute a charge on the premises, that where the applicable rules requires such payment, the same will be binding on the purchaser. This court held:

"A transferee of the premises or a subsequent occupant of a premises with whom the supplier has no privity of contract cannot obviously be asked to pay the dues of his predecessor in title or possession, as the amount payable towards supply of electricity does not constitute a 'charge' on the premises. A purchaser of a premises, cannot be foisted with the electricity dues of any previous occupant, merely because he happens to be the current owner of the premises. When the purchaser of a premises approaches the distributor seeking a fresh electricity connection to its premises for supply of electricity, the distributor can stipulate the terms subject to which it would supply electricity. It can stipulate as one of the conditions for supply, that the arrears due in regard to the supply of electricity made to the premises when it was in the occupation of the previous owner/occupant, should be cleared before the electricity supply is restored to the premises or a fresh connection is provided to the premises. If any statutory rules govern the conditions relating to sanction of a connection or supply of electricity, the distributor can insist upon fulfillment of the requirements of such rules and regulations. If the rules are silent, it can stipulate such terms and conditions as it deems fit and proper, to regulate its transactions and dealings. So long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable, courts will not interfere with them. A stipulation by the distributor that the dues in regard to the electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to a premises, cannot be termed as unreasonable or arbitrary. In the absence of such a stipulation, an unscrupulous consumer may commit defaults with impunity, and when the electricity supply is disconnected for non-payment, may sell away the property and move on to another property, thereby making it difficult, if not impossible for the distributor to recover the dues. Provisions

similar to Clause 4.3(g) and (h) of Electricity Supply Code are necessary to safeguard the interests of the distributor."

9. The position therefore can may be summarized thus : (i) Electricity arrears do not constitute a charge over the property. Therefore in general law, a transferee of a premises cannot be made liable for the dues of the previous owner/occupier.

(ii) Where the statutory rules or terms and conditions of supply which are statutory in character, authorize the supplier of electricity, to demand from the purchaser of a property claiming re-connection or fresh connection of electricity, the arrears due by the previous owner/occupier in regard to supply of electricity to such premises, the supplier can recover the arrears from a purchaser. Position in this case

10. The appellant did not plead in its defence that any statutory rule or terms and conditions of supply, authorized it to demand the dues of previous owner, from the first respondent. Though the appellant contended in the written statement that the dues of Durga Rice Mills were transferred to the account of the first respondent, the appellant did not specify the statutory provision which enabled it to make such a claim. The decision in Paramount Polymers shows that such an enabling term was introduced in the terms and conditions of electricity supply in Haryana, only in the year 2001. The appellant did not demand the alleged arrears, when first respondent approached the appellant for electricity connection in its own name for the same premises and obtained it in the year 1991. More than three years thereafter, a demand was made by the appellant for the first time on 16.1.1995 alleging that there were electricity dues by the previous owner. In these circumstances the claim relating to the previous owner could not be enforced against the first respondent.

11. On facts, it has to be held that the decision of the High Court does not call for interference. The appeal is therefore dismissed. Parties to bear their respective costs.

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