

Southern Power Distribution Company Of ... vs Gopal Agarwal on 27 July, 2017

Equivalent citations: AIR 2017 SUPREME COURT 3862, 2018 (12) SCC 644, AIR 2017 SC (CIVIL) 2616, (2018) 6 ALLMR 484 (SC), (2017) 4 RECCIVR 710, (2017) 2 CLR 901 (SC), (2017) 4 CIVILCOURTC 484, (2017) 6 ANDHLD 49, (2018) 1 ICC 125, (2017) 8 SCALE 328, (2017) 3 UC 1812, (2017) 178 ALLINDCAS 145 (SC)

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Bench: Navin Sinha, L. Nageswara Rao

Non-Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.1918 of 2016

SOUTHERN POWER DISTRIBUTION COMPANY OF TELENGANA
LTD. THROUGH ITS CMD & ORS.

.... Appellant(s)

Versus

GOPAL AGARWAL & ORS.

... Respondent(s)

JUDGMENT

L. NAGESWARA RAO, J.

The Writ Petition filed by Respondent No.1 challenging the action of the Appellants in not releasing the Low Tension (domestic) Power Supply was allowed by a Single Judge of the Andhra Pradesh High Court. The appeal filed by the Appellants was dismissed by the Division Bench. Challenging the legality and validity of the said judgment the Appellants have approached this Court by filing this appeal.

2. The City Union Bank Limited, the Second Respondent herein issued a tender/sale notice under SARFAESI Act, 2002 for sale of land, plant and machinery in Survey Nos.168/169 in Bollaram

village, Medak district which belonged to M/s J.T. Alloys Private Limited. The property was brought to sale due to default in payment of the outstanding loan amount. It was stated in the tender/sale notice dated 22.02.2006 that the sale would be on “as is where is” condition. The First Respondent participated in the auction and was declared the highest bidder in respect of dry land measuring 0.36 hectares in Survey No.168, Bollaram village. A certificate of sale was issued by the authorised officer of the Respondent-Bank on 12.04.2006 and the delivery and possession of the property sold was made free from all encumbrances known to the secured creditor on receipt of Rs.1,12,50,000/-.

3. Appellant No.3, the Superintending Engineer, Operation Circle Medak, informed the Respondent-Bank that an amount of Rs.1,88,23,185/- was due towards electricity charges from M/s J.T. Alloys Private Limited. The Third Appellant requested the Bank to transfer the residual amount realised from the sale for adjustment towards arrears payable by M/s J.T.Alloys Private Limited. The Bank informed the Third Appellant that there was no amount left after utilisation of the sale proceeds towards its dues.

4. The First Respondent applied for a Low Tension (domestic) electricity connection to the premises which he purchased in the auction conducted by the Second Respondent-Bank. As there was no response from the Appellants, the First Respondent filed a Writ Petition in the High Court of Andhra Pradesh. The said Writ Petition was allowed by a judgment dated 23.02.2007 on the ground that the Petitioner cannot be denied the power supply connection due to non payment of arrears payable by the previous owner of the property. The learned Single Judge of the High Court of Andhra Pradesh relied upon two judgments of this Court in Ahmedabad Electricity Co. Ltd. v. Gujarat Inns (P) Ltd. , (2004) 3 SCC 587 and Isha Marbles v. Bihar State Electricity Board, (1995) 2 SCC 648.

5. A Division Bench of the High Court confirmed the judgment of the Single Judge by dismissing the appeal filed by the Appellants. The Division Bench held that there was no evidence produced before the Court to show that the First Respondent had undertaken to discharge the liability of the previous consumer. It was also held that the Appellants cannot withhold the supply of power to Respondent No.1 on the specious ground that the arrears have not been cleared by the previous consumer. The Appellants, as stated earlier, have filed this appeal assailing the said judgment of the High Court.

6. We have heard the learned counsel appearing for the parties and we are of the opinion that there is no reason to interfere with the judgment of the High Court. The High Court relied upon the judgment in Isha Marbles(supra) to grant relief to the First Respondent. It was held in the said judgment that an auction purchaser cannot be called upon to clear the past arrears. It was also held that a power connection to an auction purchaser cannot be withheld for the dues of the past owner. The High Court also referred to a judgment in Ahmedabad Electricity Company Limited(supra) wherein the ratio of the judgment in Isha Marbles case was reiterated, particularly with reference to a fresh connection for supply of electricity. In NESCO v. Raghunath Paper Mills (P) Ltd., (2012) 13 SCC 479, the purchaser in an auction sale conducted by the official liquidator on “as is where is” and “whatever there is” basis was found not liable for payment of the electricity arrears. In the said case an advertisement was issued by the official liquidator for sale of moveable and immoveable property of M/s Konark Paper and Industries Limited on “as is where is” and whatever there is” basis. The

auction purchaser applied for a fresh electricity connection to its unit which was denied on the ground of non payment of arrears by the past owner. After considering the judgments in Ahmedabad Electricity Company (supra) and Isha Marbles (supra), this Court held that the request of the auction purchaser for a fresh connection could not have been rejected.

7. The facts of this case are similar to that of NESCO v. Raghunath Paper Mills (P) Ltd., (2012) 13 SCC 479. The tender/sale notice mentioned that the property was being auctioned on “as is where is” basis. The First Respondent applied for a fresh connection and he is in no way connected to the past owner. He has also not undertaken to pay the past arrears of the previous owner. In view of the above, the Appeal is dismissed.

.....J [L. NAGESWARA RAO]J [NAVIN SINHA] New
Delhi, July 27, 2017