

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3048 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : YES  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the concerned : NO  
Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals?

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Appearance:

1. Special Civil Application No. 3048 of 1996  
MR SANDEEP N BHATT for Petitioner No. 1  
MR RC JANI for Respondent No. 1-2  
MR RD DAVE for Respondent No. 3  
NOTICE SERVED BY DS for Respondent No. 3  
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CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 30/04/2004

ORAL JUDGEMENT

1. The petitioner prefers this writ petition under  
Article 226 of the Constitution of India challenging the  
demand raised by the respondents for electricity

consumption charges. The said electricity consumptions charges were to be paid by the predecessor-in-title, hence the petitioner was not ready to make the payment of electricity consumption charges and therefore the petitioner could not get electricity connection and hence the petitioner has preferred the present petition.

2. It is averred by the learned advocate for the petitioner that in pursuance of the advertisement, given by the respondent no. 3 - Gujarat State Financial Corporation, for public auction of the premises of M/s. Adinath Plastics, having its factory premises at Ankleswar, the petitioner offered for Rs.5,11,111/- and it was thought fit, by the Gujarat State Financial Corporation Tender Committee, to allow, the petitioner to purchase the factory premises of M/s. Adinath Plastics, Ankleswar. It is contended by the learned advocate for the petitioner that as the said premises was purchased through public auction, it absolves the petitioner from the liability of making payment of dues towards electric consumption charges which have remained unpaid by the predecessor-in-title. Whatever are the dues of M/s. Adinath Plastics are not required to be paid by the petitioner as it has purchased the premises of M/s. Adinath Plastics through public auction. It is also contended by the learned advocate for the petitioner that always the respondent no.3 Gujarat State Financial Corporation is selling the properties through public auction and no purchasers are paying the dues of electricity charges of predecessor-in-title. This is a bald statement averred by the petitioner without support of any affidavit, neither by the petitioner nor by the respondent no. 3 - Gujarat State Financial Corporation. Learned advocate for the petitioner has relied upon the decision of the Hon'ble Supreme Court in the case of (M/s) Isha Marbles Vs. Bihar State of Electricity Board and Anr., reported in 1995 (2) G.L.H. 134.

3. Looking to the aforesaid judgment, the facts of the case which is decided by the Hon'ble Supreme Court are different than those of the present case which is before this Court.

4. It is contended by the learned advocate of the Gujarat Electricity Board that the dues of the G.E. Board can never be waived by any one than the G.E. Board itself. No such offer has been made by the G.E. Board either to Gujarat State Financial Corporation or to the petitioner for waiving dues of electric consumption charges of the predecessor-in-title of the petitioner. The dues of the G.E. Board have, remained unpaid by, the

predecessor-in-title of the petitioner and therefore the petitioner, is bound to make payment of the dues of M/s. Adinath Plastics, Ankleswar from whom, the petitioner has purchased the property through the respondent no.3 Gujarat State Financial Corporation.

5. It is contended by the learned advocate Mr. R.C. Jani appearing for the G.E. Board that the petitioner has purchased the property through public upon certain conditions, auction which contains Clause 13 which reads as under :

"Clause - 13 : Liabilities of Gujarat Electricity Board/Electricity Company, if any, shall be borne by the purchaser."

6. The petitioner has not challenged the existence of aforesaid Clause - 13 of the agreement nor as he challenged the propriety of said Clause - 13. It is reflected from the aforesaid agreement that the petitioner has purchased the factory premises of the erstwhile owner - M/s. Adinath Plastics, through public auction, with clear understanding that it shall have to make payment of charges of electricity consumption to the G.E. Board. In fact, the petitioner has, therefore, paid the arrears of charges of electricity consumption of the erstwhile owner - M/s. Adinath Plastics on 16th June, 1995. The aforesaid charges of electricity consumption was not paid under protest. Thus, now the petitioner is estopped from raising a plea that ithe is not liable for making payment of charges of electricity consumption of erstwhile owner - M/s. Adinath Plastics.

7. If the agreement is having such Clause-13, it can never be said that the respondent no. 3 - Gujarat State Financial Corporation has allowed the petitioner to purchase the property of M/s. Adinath Plastics, Ankleswar with no liability of payment of the dues towards electricity consumption charges. On the contrary, the petitioner had agreed to make payment of the dues towards consumption charges of its predecessor-in-title. The terms and conditions of the agreement were accepted by the petitioner and therefore now the petitioner is estopped from raising a plea that the public auction through the respondent no. 3 always absolves the petitioner, from the payment of the dues of the predecessor-in-title towards electricity consumption charges which are to be paid to the G.E. Board. Neither the G.E. Board nor its officers nor the respondent no.

3 Gujarat State Financial Corporation has allowed to petitioner, to assume waiving of the electricity consumption charges. It is only the petitioner who has assumed that there will not be any liability of payment of electricity consumption charges and therefore upon erroneous presumption the petitioner has preferred the present petition under Article 226 of the Constitution of India.

8. In view of the aforesaid facts and circumstances of the case, and when there was an agreement between the respondent no. 3 and the petitioner with Clause - 13, the petitioner is liable, to make payment of the dues of electricity consumption charges, worth Rs.95,289-70 ps. of its predecessor-in-title. Reliance is placed by the learned advocate for the petitioner upon the judgment of the Hon'ble Supreme Court in the case of M/s. Isha Marbles (supra) is of no help to the petitioner, in view of Clause - 13 of the agreement and more so when the G.E. Board has not waived the amount of electricity consumption charges of M/s. Adinath Plastics. Only the G.E. Board can waive the amount of said electric consumption charges and none the else. Dues of the G.E. Board cannot be waived by any other party. In the present case even the respondent no. 3 - Gujarat State Financial Corporation has insisted, for payment of dues and liability towards electric consumption charges of the predecessor-in-title of the petitioner.

9. Thus, there is no merits in the present petition and hence the same deserves to be dismissed. Accordingly, the present petition is dismissed. Rule is discharged, with cost of Rs.5,000/- (Rupees Five Thousand only). It is clarified that whatever amount is paid by the petitioner towards the liability of bill of Rs.95,289-70 ps. of the predecessor-in-title - M/s. Adinath Plastics, set off for the same, shall be given by the G.E. Board.

(D.N. Patel, J.)

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