

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION(CIVIL) NO.12365 of 2015

The Chief Electrical Engineer, Goa

... Petitioner(s)

Versus

Mohit Steel Industries Pvt. Ltd. & Ors.

..Respondent(s)

WITH

SPECIAL LEAVE PETITION(CIVIL) NO.12366 of 2015

AND

SPECIAL LEAVE PETITION(CIVIL) NO.12369 of 2015

O R D E R

1. These Special Leave Petitions are filed against orders of remand passed by the High Court, setting aside the decrees of dismissal of the money suits filed by the respondents-*herein* and remitting the matters back to the

Trial Court with a limited mandate to arrive at the rate of interest, which the respondents are entitled to, on the amounts liable to be refunded to them.

2. We have heard the learned counsel on both sides.

3. The respondents-*herein* are running industrial units. The factory premises of the respondents in SLP (C) Nos.12365 and 12366 of 2015 remained closed during the period from 25.03.2002 to 01.04.2002. Similarly the factory premises of the respondents in Special Leave Petition (C) No.12369 of 2015 remained closed during the period from 28.10.2001 to 15.11.2001, 23.01.2002 to 01.02.2002 and from 22.02.2002 to 11.03.2002. The temporary closure of the factory premises in all these cases was with the departmental incoming Gang Operated Air Break (GOAB) Switch of installation kept open.

4. Though according to the respondents, the demand charges for a particular month

shall be considered for billing on pro-rata basis, if the industry is closed for a minimum period of seven days or more during the month, with the Department's incoming Gang Operated Air Break (GOAB) Switch of the installation kept open, as per para 9(e) of the Notification dated 11.04.2002 issued by the office of the Chief Electrical Engineer, the petitioner demanded payment as usual even for the closed down period. The demand was so made, in all these cases on 31.05.2002. But the respondents made payments, in one case on 19.10.2005, in the second case on 20.12.2005 and in the third case on 29.11.2005. Obviously these payments were made after the expiry of period of three years from the date of the bills.

5. After making payments, purportedly under protest, the respondents filed a writ petition on the file of the High Court of Bombay at Goa seeking refund. However, the writ petition was disposed of with liberty to the respondents to approach the Civil Court. Therefore, the respondents in these three special leave petitions respectively filed Civil Suit Nos.41, 45

and 47 of 2007, on the file of the Adhoc District Judge, Panaji, Goa.

6. The relief originally sought in the suits was for refund of the original bill amount. But after institution of the suit the petitioner demanded additional amounts towards interest on the belated payment of the bill amounts of May-2002. Therefore, the respondents paid even the additional amount under protest and included a prayer for the refund of the interest on belated payment also.

7. The Trial Court originally framed 11 issues in all the three suits and later framed an additional issue in the case in which the plaint got amended.

8. Despite finding that the levy of demand charges during the closure period was illegal, the Trial Court dismissed all the three suits by separate Judgments and Decrees dated 30.04.2008, on the ground that the suits were barred by limitation.

9. Therefore, the respondents filed appeals before the High Court of Bombay at Goa in First Appeal Nos.233, 239 and

243 of 2008. The High Court, by separate Judgments dated 30.07.2014 and 18.09.2014 allowed the appeals, holding that the suits were not barred by limitation and that the respondents/plaintiffs are entitled to refund of the amounts paid. However, on the limited question as to the rate of interest payable on the amounts liable to be refunded, the High Court remanded the suits back to the Trial Court. Aggrieved by the said orders of remand, the petitioner has come up with these Special Leave Petitions.

10. The main grievance of the petitioner (the Chief Electrical Engineer) is **(i)** that a suit for recovery of amount paid under a bill cannot be maintained without challenging the validity of the bill; and **(ii)** that in as much as the bills dated 31.05.2002 were not challenged within a period of three years, the suits filed beyond the expiry of the period of limitation from the date of the bill were barred by limitation. According to the petitioner, the respondents in all these special leave petitions paid the amounts demanded under the bills dated 31.05.2002, long after 31.05.2005 and that the payments so

made beyond the period of three years, cannot save the limitation.

11. But we do not agree. There is no requirement in law for a person to seek a declaration that a demand made under a bill is illegal, so as to maintain a suit for recovery of the amount paid under protest towards the bill. It is a different matter if the consumer chooses not to make payment, but to seek an injunctive relief in respect of disconnection. In such cases it may be possible to argue that without seeking a declaration as to the illegality of a bill, a mere suit for bare injunction is not maintainable. But such an argument is certainly not available in cases where the amount demanded is paid under protest and a suit is filed thereafter for recovery of the said amount.

12. Once it is clear that there is no necessity to seek a declaration that the bill was illegal, it would follow as a corollary that the period of limitation will start running only from the date of payment. Admittedly, the respondents-*herein* filed the suits within the period of limitation from the date of

payment. Therefore, the High Court was right in holding that the suits were not barred by limitation.

13. It must be remembered that the electricity distribution Companies are empowered to effect disconnection of the service, whenever a default is committed by a consumer. This is why the respondents had to make payment, despite a lapse of three years from the date of the bill, as the threat of disconnection cannot be neutralized by the law of limitation. Once the petitioner has recovered the bill amount, by holding out a threat of disconnection, even after the expiry of the period of three years from the date of the bill, it is not possible for them to fall back upon the original cause of action, *namely*, the raising of the bill, for computing the period of limitation for the respondents to seek recovery of the amounts paid. The threat of disconnection continued from the date of the bill upto the date of payment and, hence, the starting point for the period of limitation, for seeking refund is the date of payment. Therefore, we find no grounds to interfere with the orders of remand passed by the High Court.

Hence, these Special Leave Petitions are dismissed. The Trial Court is requested, in view of the fact that the suits were of the year 2007, to dispose of the suits preferably within a period of six months. There will be no order as to costs.

.....J.
(Indira Banerjee)

.....J
(V. Ramasubramanian)

AUGUST 17, 2021
NEW DELHI.

ITEM NO.7 Court 9 (Video Conferencing)

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 12365/2015
 (Arising out of impugned final judgment and order dated 30-07-2014
 in FA No. 233/2008 passed by the High Court of Judicature at Bombay
 at Goa)

THE CHIEF ELECTRICAL ENGINEER, GOA

Petitioner(s)

VERSUS

MOHIT STEEL INDUSTRIES PVT. LTD.
 BY ITS DIRECTOR & ORS.

Respondent(s)=

WITH

SLP(C) No. 12366/2015 (IX)

AND

SLP(C) No. 12369/2015 (IX)

Date : 17-08-2021 These petitions were called on for hearing today.

CORAM : HON'BLE MS. JUSTICE INDIRA BANERJEE
 HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Petitioner(s) Ms. Ruchira Gupta, Adv.
 Mr. Shishir Deshpande, AOR
 Mr. Harsh Panwar, Adv.
 Ms. Akanksha Sisodia, Adv.

For Respondent(s) Mr. Sridhar Potaraju, Adv.
 Mr. Ishaan George, Adv.
 Mrs. Rukma George, Adv.
 Mr. Krishna Kumar, Adv.
 Dr. (Mrs.) Vipin Gupta, AOR

UPON hearing the counsel the Court made the following
O R D E R

Heard learned counsel for the parties.

The Special Leave Petitions are dismissed in terms of the
 signed order.

Pending applications, if any, stand disposed of.

(GULSHAN KUMAR ARORA)
 AR-CUM-PS

(MATHEW ABRAHAM)
 COURT MASTER(NSH)

(SIGNED ORDER IS PLACED ON THE FILE)