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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No.428/2010**

% Date of decision: 26th September, 2011.

BSES YAMUNA POWER LTD Appellant
Through : Mr. Anil Bhasin, Adv.

versus

SABIR ALI Respondent
Through : Mr. Ashok Mahajan, Adv.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

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| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | NO |
| 2. | To be referred to the Reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

JUDGMENT (ORAL)

1. The appellant has challenged the judgment of the learned Trial Court on various grounds inter alia that the Civil Courts had no jurisdiction to entertain and try the suit and the remedy of the respondent was to approach the Special Court under the Electricity Act, 2003. The appellant has referred to and relied upon the Division Bench judgment of this Court in the case of **B.L. Kantroo v. BSES Rajdhani Power Ltd., 154 (2008) DLT 56 (DB).**

2. The learned counsel for the respondent submits that this plea was not raised by the appellant before the learned Trial Court. The learned counsel further submits that the plea of inherent lack of jurisdiction raised by the appellant is misconceived and the judgment in the case of **B.L. Kantroo** (Supra) referred to by the appellant is clearly distinguishable.

3. The learned counsel for the appellant submits that new plea relating to inherent lack of jurisdiction can be raised at any stage. The learned counsel for the appellant refers to and relies upon the judgment of the Apex Court in the case of **Chandrika Misir v. Bhaiyalal, AIR 1973 SC 2391** where it was held that a new plea relating to inherent lack of jurisdiction can be raised at any stage even if it was not raised before the learned Trial Court.

4. In the facts and circumstances of this case, this case needs to be remanded back to the learned Trial Court for a finding on the plea of inherent lack of jurisdiction raised by the appellant.

5. In view of the above, the case is remanded back to the learned Trial Court to give a finding on the plea of the appellant relating to inherent lack of jurisdiction of the Civil Court after hearing both the parties. It is clarified that this Court has not examined the merits of the case and, therefore,

the parties shall be entitled to challenge the finding of the learned Trial Court on the merits of the case after the decision of the issue of jurisdiction. The appeal is disposed of on the above terms.

6. Both the parties shall appear before the learned Trial Court on 17th October, 2011 when the learned Trial Court shall fix the date for hearing of both the parties on the issue of inherent lack of jurisdiction of the Civil Court. The learned Trial Court shall expedite the hearing in the matter.

7. LCR be returned back immediately through a special messenger.

8. The appellant has deposited the decretal amount in terms of the order dated 16th March, 2011. Let the said amount be released to the respondent subject to furnishing the security to the satisfaction of the Registrar General of this Court.

9. Copy of this order be given 'Dasti' to learned counsels for both the parties under signature of Court Master.

SEPTEMBER 26, 2011
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J.R. MIDHA, J