

ORDER BELOW EXH.25
(Passed on 24/01/2024)

- 1] This is an application filed under Order 6 Rule 17 of Code of Civil Procedure.
- 2] It is contention of the plaintiff that, he has filed suit for possession and recovery of compensation. The suit is pending for evidence. During pendency of the suit the defendant has purchased shop block from Ma Vaishnavi Real Estate. Therefore, the defendant is having alternate shop therefore he has no right to retain the suit property. In this respect the plaintiff want to amend his plaint. Therefore by this application he prayed for granting permission to amend his pleading.
- 3] The defendant has filed his say on the back leaf of the application. He has strongly opposed the application and submitted that application is false. There is no nexus between the proposed property of defendant and the suit property. Hence, prayed for rejection of the application.
- 4] Perused documents on record. Heard both sides.
- 5] The plaintiff has filed suit for possession of suit property. The proposed amendment will not change nature of the suit. Due to such amendment no any prejudice would be caused to the defendant. It will help to decide the matter on its merits. Hence, I proceed to pass following order.

Order

1. Application is hereby allowed.
2. Plaintiff to carry out amendment within 14 days from the date of this order.
3. Plaintiff to bear cost of the application.

Date : 24/01/2024

(J.M. Mistry)
Jt. Civil Judge (Jr.Dn.),
Umred

1] Present application has been filed by the defendant under Order 7 Rule 11 of Code of Civil Procedure.

2] Perused the application and documents filed on record.

3] Heard both sides at length.

4] It is contention of defendant that the plaintiff has not come in court with clean hand. He has not disclosed the real fact. On 03.03.2020 the defendant has lodged report/crime against the plaintiff under section 135 of Electricity Act, 2003. The plaintiff is alleged to have committed theft of 22,000 units electricity for amount of Rs.4,50,173/-. Amount of Rs.55,000/- is compounding charges for the same. Hence, total amount of Rs.5,05,173/- is due from the plaintiff. The plaintiff has not valued the suit properly. The present suit is beyond the pecuniary jurisdiction of this Court. Hence, this Court has no jurisdiction to try the present suit.

5] Defendant further contended that case under Electricity Act against the plaintiff is pending before Hon'ble Special Court, Nagpur. Only the Special Court has jurisdiction to try all the matters under Electricity Act. Therefore, this Court has no jurisdiction to try

the present suit.

6] Defendant further contended that, he is ready to give connection of electricity to the plaintiff on payment of amount of Rs.5,05,173/-, which is due from him towards theft of electricity and compounding charges. Hence, the suit is liable to be rejected on the above stated grounds.

7] In support of his contention, he has relied upon the decision of Hon'ble Supreme Court reported in **T. Arvandandam .Vs. T.V. Satyapal and another**, AIR (SC) 2421 wherein it was held that *“the court must exercise its powers to shoot down the bogus litigation at the earliest stage.”*

8] He has further relied upon following citations :-

(1) **The Superintendent Engineer, Tamilnadu Electricity Board .Vs. Shri. Balaji Educational and other**, CRP (PD) No.3646 of 2017,

(2) **Supreme Court of India (Division Bench) Civil Appeal No.2507 of 1997**, decided on 14.03.1997 in **Punjab State Electricity Board other Vs. Ashwani Kumar**,

(3) **Delhi High Court (Division Bench), Regular First Appeal (OS) No.12 of 2008**, decided on 25-09-2008 in **Sh. B.L. Kantroo Vs, Bses Rajdhani Power Ltd** Wherein, it was held that :

“the jurisdiction of the Civil Court to take cognizance of the suit of civil nature covered under Electricity Act

stands excluded. Consumer cannot approach Civil Court without exhausting alternative remedies provided under Electricity Act. Any dispute about civil liabilities in theft cases is impliedly excluded from the jurisdiction of civil court in view of provision of section 153 and 154 of the Act, wherein Special Court has got the jurisdiction to determine any dispute regarding the quantum of civil liability specifically in theft cases and the same court can act as civil court as well as criminal court while conducting the case before it.”

9] The plaintiff has filed his say on backleaf of the application. He submitted that the ground taken by the defendant is out of the purview of Order 7 Rule 11 of C.P.C. There is no criminal case pending against plaintiff before Special Court, Nagpur. The defendant has not mentioned details of the case alleged by him. Defendant is tried to mislead the court and wants to avoid the hearing and thereby prolonging the matter. The provision of section 135 of Electricity Act, 2003 is all about the criminal trial and so far as alleged recovery is concerned, the defendant can take recourse of section 154 (5) of Electricity Act, 2003. The suit is based on different cause of action. Hence, prayed for rejection of the application.

- 10] The plaintiff has relied upon the following citations :-
- (1) **Kuldeep Singh Pathania.Vs. Bikram Singh Jaryal (SC 24 Jan. 2017)**

 - (2) **Ajay Kumar Agrawal .Vs. O.S.F.C. and Others. (Orissa High Court 23 November, 2006)**

11] I have gone through the record. The plaintiff is the Registered Company. It is Allottee of the plot No.A-27 in MIDC, Industrial area, Umred for the purpose of business and for construction of its infrastructure. It has obtained huge loan from Canara Bank. The company is in need of electricity. On 07.02.2019 the Deputy Engineer, MIDC , Sub Division has granted NOC to the plaintiff for releasing power supply. Therefore, on 10.02.2021 the plaintiff applied to defendant for new electricity connection. The defendant No.2 has rejected the said application on 23.02.2021 on the count of FIR filed against Director Harendranath Datta for offence punishable under section 135 of Electricity Act with P.S.O. Bori. According to the plaintiff, the reason given for rejection of new electricity connection is irrelevant. The complaint dt.3.3.2020 against plaintiff for theft of electricity is false. Police have not yet filed final report of the offence before Special Court. Therefore, by filing this suit, the plaintiff has sought relief of declaration and permanent injunction.

12] The defendant opposed the suit and filed present application under Order 7 Rule 11 for rejection of plaint on the ground that the suit is not maintainable in view of section 145 of Electricity Act. According to him, the plaintiff has filed the suit without seeking proper remedies available to him. Only the special court has jurisdiction to entertain the matters relating to Electricity Act.

13] Section 145 of the Electricity Act reads as under :-

Section 145 :- “Civil Court not to have jurisdiction – No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in Section 126 or an appellate authority referred to in Section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

14] In the present case plaintiff is alleged to have committed theft of electricity. Total amount of Rs.5,05,173/- is due from the plaintiff. The plaintiff is not yet supplied with electricity connection. He is not consumer of MSEB. Defendant is distribution licensee to supply the electricity on application made by the owner or occupier of any premises. The plaintiff has made application to the defendant for new electricity connection which was rejected. The plaintiff in this suit has challenged the rejection of new electricity connection to him. He has not challenged the assessment amount. Under section 135 of Electricity Act, the person would be liable to pay the assessed amount as is required to be assessed under section 126 of the Electricity Act and in trial before Special Court. The Special Court shall determine the amount and it has jurisdiction to decide the civil and criminal liability of the plaintiff. The case is not in respect of theft of electricity. The plaintiff in his plaint has not averred anything about assessment amount. He has not challenged the recovery of

assessment amount. Therefore, the case cannot come under section 126 of Electricity Act. Therefore, in my view, the dispute is of civil nature and the suit is maintainable. This court has jurisdiction to try the present suit. Hence, I proceed to pass the following order :-

ORDER

Application is hereby rejected.

Umrer.
Date :15/07/2021

(J.M. Mistry)
Jt. Civil Judge (Jr.Dn.),
Umred.