

R.C.S.No. 168/2018

Shri. Khemchand Tukaram Kolhe
Vs
Maharashtra Electric Distribution
Co. Ltd. & Ors -1

Common Order Below Exh. NO. 6 and 18

[CNR NO.MHJG050020902018]

These are applications for grant of temporary injunction u/order 39 Rule 1 & 2 of Civil Procedure code.

2. The plaintiff's case in brief is as under,

It is contended by the plaintiff that suit property was originally owned by Chunilal Rupchand Sarode. He has obtained electric connection from defendant No.1 vide Consumer No. 110013153001 (Meter No. 7502021255). Thereafter ,Chunilal Sarode had sold his property along with said electric connection to one Sangita Marotrao Khandare on 02/03/2012 vide Sale Deed Sr. No. 1233/2012. Thereafter, again Sangita Marotrao Khandare had sold said property along with said electric connection to Mangala Khemchand Kolhe (Wife of plaintiff) on 04/06/2013 vide Sale Deed Sr. No. 1948/2013.

3. It is further contended that, thereafter the plaintiff is residing in the said property along with family members and using the said electric connection. It is contended that said property along with family

members and using the said electric connection. It is contended that said property is consisting on ground floor - I Living Room and staircase, 1 Kitchen, 1 Toilet and porch' on 1st floor - 2 bedrooms, 1 Latrine and passage. As such there are only 4 rooms, 1 latrine & 1 Latrine and passage. As such there are only 4 rooms, 1 latrine & 1 toilet. Further this consists 4 fans, 4/5 tube lights, 4 CFL, 1 Co lour T.V., water motor of 1/2 Horsepower, 1 Inverter, and all these equipments consumes 100 to 110 units per month. It is contended that plaintiff is using the said electric connection and paid all the demand bills issued by the defendants. Even for the period of 16/3/2018 to 16/04/2018 bill was issued on dt - 24/04/2018., in said bill consumption was shown of 119 units and bill was of Rs. 720/- which is paid by the plaintiff on 14/05/2018. It is contended that - considering the said bill there was an average consumption from 48 to 111 units for every month.

4. It is also contended that by that, on 15/06/2018 one Shri. Sawant along with 3/4 other official abruptly come at his home, at the very time they were not having any apparatus. They removed the old meter and fixed new meter. When plaintiff enquired they stated that we have power to do so. Thereafter they write some documents and compel to effect signature over the same. When plaintiff prayed for copy they avoided and stated that if he does not sign then they will file false offence of electricity theft and will see that he should be arrested.

5. It is also contended that - on - 18/06/2018 he received bill of Rs. 1,43,877/- as u/s 135 of the Electricity Act of 2003 and directed to

deposit the same up to 23/06/2018. Further over the perusal of said bill it is of Electricity Theft of Rs. 1,35,877/- + compounding amount of Rs. 8,000/- = in all Rs. 1,43,877/-. Further the same was not showing the period of theft and not showing any account. As such it was clear that the said bill was as u/s. 135 r/w 152 of the Act.

6. The plaintiff has also contended the procedure for inspection/action stipulated under law is required to be done by the defendants. Even defendants fail to consider the provisions of S. 126 and fail to perform their duty required to be done by them under the same provision. It is further contended that on- 24/06/2018 again Sawant along with other officials come and intimated that as the bill amount is not paid they will disconnect the electric connection. Lastly plaintiff prayed to direct the defendant to reinstate electric connection. He further prayed for temporary injunction.

7. Contentions of the defendants.

The defendant has resisted these applications by filing his say below exh.12 and 23 . It is contended by the defendant that, this Hon'ble Court has not jurisdiction. On 12/06/2018 flaying squad visited at the house of plaintiff and found that the meter was tampered. As such they seal the meter ,prepared the panchanama and snapped the photograph in mobile. It is further contended that on spot inspection they found that meter is in tampered condition. It is further contended that - thereafter as per sec - 126 they assessed the amount and served the bill. Further as per sec - 145 there is a bar of jurisdiction of the

Court.

8. Thereafter defendants denied the contents of the plaint para wise. They have also submitted some procedure alleged to be carried out by them to explain that they have complied the provisions of law. It is stressfully contended that - as per S. 135 & 126 bill is served and the same is not paid by the plaintiff. Lastly they prayed for dismissal of injunction applications for want of jurisdiction.

9. I have heard the learned counsel appearing for the plaintiff and appearing for the defendants. I have gone through record written note of arguments . After having careful perusal of pleadings, documents and written and oral argument advanced at bar, following points do arise my consideration. I have recorded my findings against each points and reason to follow thereon.

Sr No.	POINTS	FINDINGS
1	Whether the plaintiff has prima facie case ?	IN negative
2	Whether the balance of convenience lies in favour of plaintiff?	In negative
3	Whether the plaintiff would suffer irreparable loss if injunction is refused ?	IN negative
4	What order ?	As per final order.

REASONS

10. The plaintiff has relied upon following documents.

- 1) Xerox copy of Sale deed dated 02.03.2012.
- 2) Xerox copy of Sale deed dated 06.06.2013..
- 3) Copeis of Bill from 24.04.2018 14.04.18.
- 4) Notice dated 18.06.2018.
- 5) Goverment Resolution .
- 6) Notice issued by defendant to plaintiff dated 07.07.18.
- 7) Notice to defendant by the plaintiff .
- 8) Notice by defendant to the plaintiff dated 17.June 2018.

The defendant relied upon following documents.

1. Zerox copy of spot panchnama dated 12/06/18
2. Zerox copy of spot inspection report dated 12/06/18
3. Notice issued by the defendant under section 135 of Electricity Act to the plaintiff.
4. Zerox copy of complaint-
5. Commercial circular no. 133, dated 15/02/2018.

As to point nos. 1 to 3

It is submitted by Ld., advocate for plaintiff that, defendant has not supplied copy of inspection report and without affording an opportunity to raise objection to the plaintiff. It is also submitted that, order dated 12/06/18 has been passed in gross violation of the rule of natural justices. It is also submitted by plaintiff that, he is ready to pay 50% amount of theft in court. Therefore, he requested for restoration of Electric Connection. On the other hand it is submitted by Ld., for the

defendant that, as per Section 154(5) special court has power to make final assesment. It is also submitted by defendant that, the plaintiff has wirtte to file appeal before consumer forum when efficious remedy available to the plaintiff court can not grant injunction against the defendant. The plaintiff has filed the written note of agrument below Exh. No. 28 and defendant below Exh. No. 32. I have gone through oral as well as documents on record. The defendant relied upon state of U.P. Vs. Anish Ahmed civil appeal 5466/07. I have gone through this citation.

11. The plaintiff has claimed a declaration of bill dated 18/06/2018 as null and void and has further prayed for a direction to reinstate the electric connection. It is not disputed that plaintiff is owner of electric connection. On 15.06.2018 the officers of defendant inspected spot.

12. It appears on record that, the defendant had issued a notice to the plaintiff at the time of inspection. Notice Exh. No. 14 shows that it is bear signuature of defendant. Defendant has also produced on record complaint which is lodged by the defendant against the plaintiff under section 135 of Electricity Act. If the case of the plaintiff fails under the category of theft, civil court can not have jurisdiction in view of bar created by section 154 of the Electricity Act and as explained by the Division Bench of the Hon'ble High Court of Delhi in B.L.Kantroo Vs. BSES Rajdhani Power Ltd. 154 (2008) DKT 56(DB). On the other hand if the case of plaintiff fails under simple unauthorized use of electricity, it will be barred by section 126, 127 r/w 145 of the Electricity Act.

13. This court reliance upon citation B.L.Kantroo Vs. BSES Rajdhani Power Ltd. 154 (2008) DKT 56(DB) (supra), it was observed as under :the provisions of sub-section(5) of section 154 specifically vest Special Court with the jurisdiction to determine any dispute regarding the quantum of civil liability in theft cases whether or not the allegation of theft is disputed, is still entitled to make such a challenge to the disputed bill before the Special Court, even in cases where no criminal complaint is filed against the consumer and the amount of civil liability so determined shall be recovered as if it were a decree of a civil court and it can act as civil court as well as criminal court while conducting the cases before it.

14. Although there is no specific provision in section 145 of the Act for exclusion of jurisdiction of Civil Court to entertain any proceeding in respect of any matter which the Special Court is empowered by or under the Act to determine, we are of the view that impliedly excluded from the jurisdiction of Civil Court in view of the provisions 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 said court can act as civil court as well as criminal court while conducting the cases before it.

15. Clearly, in theft cases, civil court jurisdiction is barred by implication irrespective of filing or non filing of any criminal complaint in present case notice under section 135 of electricity Act is placed on

record. Copy of the complaint below Exh. No. 14 is produced on record.

16. However, the fact remains that even if the case was to be under Section 126 of the Act, the Civil Court would have no jurisdiction in view of the bar under section 145 of the Act as expressly held in the appellant/defendant in this appeal has not challenged the order dated 15/06/2018. Once the said fact has come to the notice of this court in a challenge to a subsequent order in the said proceedings, this court cannot shut its eyes to the same and allow an order of a court which has no jurisdiction and the judgment whereof would be a nullity for the said reason, to stand. Even if the argument of the respondent / plaintiff of Section 126 of the Act being applicable were to be accepted, the jurisdiction to challenge the bill or demand under Section 126 of the Act would be of the Appellate Authority constituted under Section 127 of the Act. Clearly, if any consumer is aggrieved from any assessment made by the authorized officer, he has to challenge the same in terms of the Section 127 and not otherwise.

17. In B.L.Kantroo (supra) , it was clearly observed as under no injunction shall be granted by the court or authority in respect of any action under the Act. Clearly, prohibition of injunction has been independently provided in section :- 145. Needless to say that the expression “any action” is of wide import and can not be given any restrictive meaning. The expression shall mean any action which can be validly taken under the Act. Raising of bill or accepting any payment there against by any mode including an adjustment is an action which

can be taken by defendant company under or in pursuance of the power conferred upon it by the Electricity Act. And therefore, a Court can not issue any injunction against such action. Therefore, the consumer can not ask for any such injunction in view of the bar created by Section 145 of the Act . In view of the above, it is held that both the prayers of the plaintiff can not be granted by a civil court and therefore the plaintiff can not maintain provisions of the Electricity Act.

18. As per as Section 41 of Specific Relief act deals With Injunction when refused.';An injunction can not be granted;

h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust; Consumer can not approach civil court without exhausting alternative remedies provided under Electricity Act. As as per section 127 of Electrictiy Act consumers has right to appeal before consumer forum which is not exhausted by the plaintiff in present matter. Therefore in my opinion the plaintiff has no prima facie case per contra the defendant has prima facie case, therefore, the plaintiff would not suffer irreparable loss, per contra the defendant would suffer it, hence I record my finding on point no 1 to 3 in negative.

As to point no 4 :

19. In view of my finding to point no 1to 3 supra, application deserves to be rejected. In the result I proceed to pass following order.

ORDER

1. Applications below Exh. 6 and 18 are hereby rejected.
2. Cost in cause.

Date : 29.11.2018

**(D.B.Sathe)
8Th Jt. C.J.J.D. Jalgaon.**