

Spl.C.S. No.70/2023
**Kiran Vs Deputy Executive
Engineer MSEDCL and Ors.**

ORDER BELOW EXH.5
(CNR No.:MHST180002232023)

Read an application and the reply / written statement of defendants at Exh. 16. Perused the record. Heard the learned counsel for the plaintiff Adv. Shri. M.H. Oak and the learned counsel for defendants Adv. Shri. S.S. Satbhai.

2. The plaintiff/applicant filed this application under Order XXXIX, rule 1 and 2 of the Code of Civil Procedure for granting temporary mandatory injunction against defendants that defendants shall not recover an amount of Rs.34,45,130/-, from the plaintiff and they shall reconnect the electric supply of the plaintiff's company through electric meter No. 204020054438.

It is the contention of the plaintiff that the plaintiff is running the business i.e. Shreeram Stone Crusher situated at Gondawale Bdk. The plaintiff is using the electric supply for Shreeram Stone Crusher through electric meter No. 204020054438. The defendant No.1 and 2 are the officers of the Maharashtra State Electric Distribution Company. On 20.03.2023, the officer of defendants namely Maheshkumar Shrirang Raut visited to Shreeram Stone Crusher unit and inspected the electric meter and thereafter, break down the electric supply of the plaintiff's company and removed the electric meter and went away. Thereafter, on 23.3.2023 defendants lodged report to Vaduj Police Station bearing FIR

No.137/2023. The Police Station Officer Vaduj registered the crime against the plaintiff for an offence punishable under Section 135 of the Electricity Act, 2003.

The officer of the defendant's company Namely Maheshkumar Shrirang Raut was having no right to visit to Shreeram Stone Crusher and to remove the electric meter and to disconnect the electric supply. Defendants have not properly assessed about the unauthorised use of electricity. They have not complied the provisions under Section 126 of the Electricity Act, 2003. Defendants initiated wrong action against the plaintiff. The plaintiff has not unauthorisedly used the electricity in the Shreeram Stone Crusher. Therefore, the plaintiff is not under obligation to pay an amount of Rs. 34,45,130/- as per the letter dated 20.03.2023 issued by defendant's company. Defendants also cannot disconnect the electric supply of Shreeram Stone Crusher. Therefore, plaintiff prayed to grant temporary mandatory injunction against defendants.

On the contrary, defendants filed the reply/ written statement at Exh. 16 and opposed to this application on the ground that the Civil Court is having no jurisdiction to entertain this suit vide Section 145 of the Electricity Act, 2003. The plaintiff committed an offence under Section 135 of the Electricity Act, 2003. The plaintiff unauthorisedly used the electricity. The plaintiff tampered to the electric meter. The plaintiff dishonestly tampered the meter or uses a tampered meter, current reversing transformer, loop connection or any

device or method which interferes with accurate of proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted and committed an offence under Section 135 of the Electricity Act. Under these circumstances, the plaintiff is bound to pay assessment charges and compounding charges which comes to Rs.34,45,130/-. This Court cannot grant injunction in favour of plaintiff and therefore, prayed to reject the application.

5. The following points arose for my determination and I recorded my findings thereon for the reasons given as under.

Sr.No.	Points	Findings
1]	Whether the plaintiff/applicant is having prima-facie case in his favour ?	No.
2]	Whether the balance of convenience lies in favour of the plaintiff/applicant ?	No.
3]	Whether the irreparable loss will be caused to the plaintiff, if the temporary injunction will be refused ?	No.
4]	What order ?	As per final order.

REASONS

6. In order to prove the contention, the plaintiff/applicant filed some documents i.e. the xerox copy of letter dated 20.03.2023 issued by of defendant No.1, the

assessment bills, the compounding bill, the xerox copy of FIR bearing No.137 registered with police Station Vaduj and other electricity bills. Defendants have not filed any documents in support of their defence.

As to Point No.1 To 3 :-

7. It is the submission of the plaintiff that the officer of defendant's company namely Maheshkumar Shrirang Raut visited to the Shreeram Stone Crusher unit and thereafter, without having any right, disconnected the electricity supply and removed the electric meter. Defendants alleged that the plaintiff committed theft of electricity by tampering meter. However, the plaintiff is the businessman. He is one of the biggest consumer of the defendant's company. The plaintiff used to pay electricity bills regularly. The plaintiff never tampered electric meter and committed theft. The plaintiff also has not used the electric supply unauthorisedly. Defendants took wrong action against the plaintiff. Therefore, the plaintiff is not under obligation to pay assessment bill or compounding bill.

8. I heard the learned counsel for the plaintiff Adv. Shri. M.H.Oak and the learned counsel for defendants Adv. S.S. Satbhai. The learned counsel for the plaintiff Adv. Shri. M.H. Oak argued that the defendants company is only one of the electric supplier company. The defendants company is having monopoly to supply the electricity to the consumers. The defendants company wrongly disconnected the electric supply of the plaintiff and provided assessment bills and

compounding bills which are totally illegal. The competent officer of the defendant's company has not assessed the bills properly. He has not complied the conditions mentioned in Section 126 of the Electricity Act, 2003. The fair opportunity has not been provided to the plaintiff to give reply to the assessment bills. Under these circumstances, this Civil Court is having jurisdiction to see as to whether the procedure adopted by the defendant's company is legal as provided under Section 126 of the Electricity Act. He also further argued that the action taken by defendant's company is totally illegal and therefore, it is necessary to issue mandatory injunction to defendant's company to reconnect the electric supply through electric meter No.204020054438. Therefore, he prayed to grant temporary mandatory injunction against defendants.

In view of this, I have gone through Section 126 and 145 of the Electricity Act, 2003.

Section 126 deals with assessment. It provides that, " if on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgments, the electricity charges payable by such person or by any other person benefited by such use.

The order of provisional assessment shall be served upon the person in occupation or possession or in-charge of

the place or premises in such manner as may be prescribed.

The person on whom an order has been served under Sub-Section 2 shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall after affording a reasonable opportunity of hearing to such person, passed a final order of assessment within 30 days from the date of service of such order of provisional assessment of the electricity charges, payable by such person.

Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within 7 days of such provisional assessment upon him. If the assessing officer reaches to the conclusion that unauthorise use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorise use of electricity has taken place and if however, the period during which such unauthorise use of electricity has taken place cannot ascertained, such period shall be limited to a period of 12 months immediately preceding the date of inspection. The assessment under this section shall be made at a rate equal to twice the tariff applicable for the relevant category of services specific in sub section 5.

Section 145 deals with Civil Court not to have jurisdiction. It provides that 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.

So, on reading Section 126 and 145 of the Electricity Act, it reveals that the competent officer or the assessing officer may assess the electricity charges, if it comes to his conclusion that any person unauthorizedly use the electricity and thereafter, he may provide assessment bill to the said person.

In this present case, the officer of defendant's company visited to the Shreeram Stone Crusher and found that the owner of the Shreeram Stone Crusher used electricity unauthorizedly and therefore, the assessing officer provide the theft bill/ assessment bill for the amount of Rs. 19,45,130/- and compounding bill for the amount of Rs. 15,00,000/- which comes to total amount of Rs.34,45,130/-. The defendant's company also issued letter to the plaintiff on 20.03.2023 and suggested to the plaintiff to pay assessment bill and compounding bill to the defendants' company. Thereafter, the defendants lodged report against the plaintiff in the police station and thereafter, police registered crime for an offence under Section 135 of the Electricity Act, 2003.

The learned counsel for the plaintiff Adv. Shri. M.H. Oak submitted that the defendant's company or its competent officer has not assessed properly. They have neither provide provisional assessment bill nor provide final assessment bill to the plaintiff and therefore, the wrong procedure has been adopted by the defendant's company and contravened to the provisions of section 126 of the Electricity Act, 2003.

However, the plaintiff produced the letter dated 20.03.2023 issued by the defendant's company along with theft bill and compounding bill. It shows that the defendant's company provide theft bill / assessment bill and compounding bill to the plaintiff along with letter dated 20.03.2023 and suggested to pay the said bills. In my opinion, the theft bill/ assessment bill or compounding bill are amounts to assessment bill which is assessed by the competent officer of defendant's company under Section 126 of the Electricity Act, 2003.

If the plaintiff is dissatisfied with the aforesaid bills, the plaintiff may file objection to the assessment officer and may request to correct the said bills and to provide final assessment bill. The plaintiff may also prefer an appeal to the appellate authority, if he is aggrieved by the provisional assessment bill or final assessment bill vide section 127 of the Electricity Act, 2003. The remedy is provided to the plaintiff to prefer an appeal vide Section 127 of the Electricity Act, 2003. The plaintiff may also request to defendant's company to assess minimum compounding bills. The plaintiff cannot seek

remedy before the Civil Court and challenged the assessment bill.

The Civil Court is expressly barred to entertain and to try the suit vide section 145 of the Electricity Act, 2003. Section 145 provides that, no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matters pertaining to section 126 or 127 of the Electricity Act, 2003. Therefore, in my opinion, the jurisdiction of the Civil Court is excluded by Section 145 of the Electricity Act, 2003.

The learned counsel for the plaintiff Adv. Shri. M.H. Oak further submitted that, if the defendant's company or the competent officer wrongly adopted the procedure while assessing the bill and breached the conditions of section 126 of the Electricity Act, 2003, the Civil Court is having every jurisdiction to entertain and try suit pertaining to procedure of Section 126 of Electricity Act, 2003.

However, the submission of the learned counsel of the plaintiff cannot be accepted because the word "any suit or proceeding in respect of any matter" has been used in Section 145 of the Electricity Act and those words are pertaining to Section 126 and 127 of the Electric Act, 2003. Therefore, whatever the procedure has been adopted by the assessment officer, the jurisdiction of Civil Court is expressly barred. The appellate authority may correct the assessment bill by exercising the power under Section 127 of the Electricity Act.

Therefore, to my mind, this Civil Court is having no jurisdiction to pass any order or to grant any injunction either in favour of plaintiff or defendants. Under these circumstances, the plaintiff is not entitled to any injunction vide Order XXXIX rule 1 and 2 of the Code of Civil Procedure. Therefore, it appears that the plaintiff is having no prima facie case in his favour. The balance of convenience is in favour of the defendants. No any irreparable loss will be caused to the plaintiff, if the injunction will be refused. On the other hand, the plaintiff may approach to the defendants' company to correct the assessment bill and to impose minimum compounding bills. The plaintiff may also prefer an appeal before an appellate authority, if he is dissatisfied with the assessment bill and compounding bills. In the result, I answered to point Nos. 1 to 3 as negative.

In view of the above discussion, findings and reasons, I am of the opinion that the plaintiff is not entitled for temporary mandatory injunction. Hence, I proceed to pass the following order.

ORDER

- 1) The application at Exh.5 is rejected.
- 2) Parties to take note of it.

Vaduj.
Date: 03.05.2023

(D.D. Fulzele)
Civil Judge Sr.Dn., Vaduj.

(K.A. Jagtap) Stenographer