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IN THE HIGH COURT OF DELHI

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RSA No.39/2007

Delhi Jal Board Petitioner
through: Mr.R.K.Tewari, Advocate.

VERSUS

Smt.Sulochna Respondent
through: Mr.Manmohan Mittal, son of the
respondent in person.

DATE OF DECISION

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04.04.2008

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether judgment should be reported in Digest? Yes

: **PRADEEP NANDRAJOG, J.**(Oral)

1. I have heard learned counsel for the appellant and with his assistance gone through the record of the learned Trial Judge.

2. On 16.3.2007, following substantial question of law was framed :-

“If a confectionery shop is run in a residence whether the shopkeeper is liable to pay commercial charges?”

3. To appreciate the substantial question of law framed, backdrop facts which require to be noted are that the

respondent was aggrieved when without serving upon her a show cause notice, she received a water bill pertaining to connection No.6409 installed at premises bearing No.Z-22, Naveen Shahdara, Delhi-32 on non-domestic rates. She filed a civil suit for permanent injunction alleging that premises in question was a residential house and that water connection sanctioned was under domestic consumer category and bills required to be raised were as per tariff applicable to a domestic connection. She stated that the appellant could not raise a water bill on non-domestic tariff.

4. Needless to state the issue which arose for consideration in the suit was whether the respondent was entitled to charge tariff at commercial rates.

5. It was not in dispute between the parties that from a part of the premises a shop was being run. Confectionery items were sold therefrom.

6. The learned Trial Judge concluded that in view of the fact that part of the premises for which water connection was obtained was being used for a non-residential purpose, appellant would be entitled to raise bills as per tariff applicable for commercial buildings. Vide judgment and decree dated 10.2.2003 the suit was dismissed.

7. In appeal, being RCA No.30/2003, the learned

Appellate Judge considered the matter a little deeper with reference to question whether there was evidence on record to sustain a finding that the respondent was using water for the business of the confectionery shop.

8. First Appellate Court allowed the appeal vide judgment and decree dated 1.11.2006. The judgment and decree of the learned Trial Judge was reversed. Suit was decreed.

9. I have gone through the evidence on record. The evidence shows that the appellant never served a show cause notice to the respondent before changing the category under which the connection was sanctioned. The evidence shows that the water connection was sanctioned under domestic category. Further no suggestion to the effect that water was being used in the conduct of the business of the confectionery shop has been put up by the appellant to the witness of the respondent who I note is none else other than her son who appeared as PW-1.

10. I note that DW-1, the Meter Inspector had stated in his evidence that when he inspected the premises he saw a wash basin installed adjacent to the shop and that water was taken through a pipeline in the said wash basin.

11. It appears what the witness intended to say was

that through a pipeline water was reaching the wash basin.

12. Be that as it may, 2 things stand out. Firstly, no show cause notice was issued to the respondent before changing the category under which water connection was sanctioned. Secondly, no suggestion was given to the witness of the respondent in harmony with the stand of the appellant that water was used in connection with the conduct of business.

13. On the question of law framed, suffice would it be to record that merely because a confectionery shop is run from a residential house would not render liable the category of water connection to be changed on said count alone unless it is additionally shown that water was being used in connection with the business of the confectionery shop. Further dominant user of the premises would also have to be kept in mind.

14. In the instant case I find no evidence to sustain a finding that water was being used for the business of the confectionery shop.

15. I notice that according to the respondent no cooking activity was being conducted from the confectionery shop. Pre-manufactured food items in sealed packets were being sold and continue to be sold therefrom.

16. The inevitable conclusion has to be that the

impugned judgment and decree dated 1.11.2006 passed by the learned First Appellate Judge does not call for any interference.

17. The appeal is dismissed.
18. No costs.
19. TCR be returned forthwith.

April 04, 2008

PRADEEP NANDRAJOG, J.

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