

* **HIGH COURT OF DELHI : NEW DELHI**

+ **C.M(M) No.1686 of 2007 CM No.17812/2007**

% **Date of decision: 10.01.2008**

M/s Narayan Service Station ...Petitioner
Through: Mr.Asutosh Lohia, Advocate

versus

North Delhi Power Limited Respondent
Through: Mr.Sudhir Nandrajog &
Mr.Diwakar Sinha,Advocates

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

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

VIPIN SANGHI, J

1. Notice. Mr. Sudhir Nandrajog accepts notice on behalf of the respondent.
2. Admit.
3. With the consent of the parties the appeal is taken up for hearing today. This petition under Article 227 of the Constitution of India has been preferred against the order dated 17.12.2007 passed by the learned Civil Judge, Delhi in Suit No.646/2007 filed by the petitioner seeking permanent injunction. The dispute raised in the suit pertains to the electricity connection bearing K No.31200287552. The respondent, pursuant to an inspection report dated 19.10.2006

followed by a show cause notice of the same date, passed a reasoned order dated 1.12.2007 against the final assessment bill for an amount of Rs.15,00,433/- with due date of payment of 17.12.2007. The plaintiff filed the suit to challenge the said bill and sought interim protection against the payment thereof. During the pendency of the suit the impugned order has been passed by learned trial judge at the stage when the defence of the defendant was yet to come on record. The learned trial court has, prima facie, examined the contentions of the plaintiff and on the basis of the inspection report, the show cause notice and the reasoned order he found in favour of the plaintiff that the conclusive evidence establishing DAE is lacking. The trial court also took note of the fact that the defendant has not segregated the connected load into heating load, cooling load and lighting load. The bill had been raised on the basis of the entire connected load for all the 12 months for 20 hours a day. Credit for recorded consumption had also not been given. Various other apparent infirmities were also noted by the learned trial court. However, on the other hand, the trial court also considered the aspects that the plaintiff had not specifically averred as to what his connected load was on the date of the inspection. The court also took into account the recorded consumption vis-a-vis the connected load found in the premises on the date of inspection and the nature of activities being undertaken by the plaintiff, that is, running of petrol pump. Balancing these considerations, the trial court has directed the plaintiff to make a deposit of an amount of Rs.3.75 lakhs and subject to deposit being

made in two equal monthly instalments, the electricity connection in question is not to be disconnected.

4. Learned counsel for the plaintiff states that in the facts of the present case the plaintiff was entitled to grant of complete stay of the impugned demand and restraint against disconnection of electricity. He has relied on the decision of this Court in **Jagdish Narayan vs. North Delhi Power Limited & Anr.**, 140(2007) DLT 307. He submits that from the perusal of inspection report it is clear that no case of dishonest abstraction has been made out. He relies on paragraph 25 of the said decision wherein this Court has held that an automatic presumption of DAE, on the basis of the external symptoms of tampering together with the analysis of the consumption pattern, would not be a safe or error free method. Some other tangible evidence must be shown to have existed. The analysis of the consumption pattern in terms of the Regulation 26(ii) is merely corroborative and not by itself substantive evidence of DAE. He submits that on the perusal of the inspection report it is clear that no case of dishonest abstraction of energy is made out.

5. On the other hand learned counsel for the respondent has drawn my attention to the decision of the Supreme Court in **W.B. State Electricity Board vs. Fakir Chand Rice Mills & Ors.** (1996) 8 SCC 647. This was a case of alleged pilferage in the meter reading. The Supreme Court held that normally in matters of money claims at least half of the amount would be directed to be deposited. The Court observed that just like there is an obligation on the licensee to supply

electrical energy to the consumer, equal obligation is cast on the consumer to pay the amount subject to determination of the controversy in suit. In the facts of that case the Court directed the deposit of Rs.12 lakhs as against the demand notice of Rs.28 lakhs. Learned counsel for the respondent has also relied on ***Sahil Singh Maniktala & Ors. vs. Harpreet Singh & Ors.*** 118(2005) DLT 350 (DB) wherein a Division Bench of this Court held that an appeal cannot be taken against the grant of a part relief by the learned trial judge where the remaining part remains under consideration for ascertaining the stand of the defendant. The plaintiff has no absolute right to the grant of ex parte interim relief, nor is the Court obliged to grant it for asking and on the very first hearing. It is a prerogative of the trial judge to feel satisfied on the requirements which govern the grant of a temporary injunction and to proceed in the matter accordingly. The Court held an appeal would not be maintainable where part relief had been granted at the stage of issuing notice and the application for ad interim relief is pending. An appeal on that stage would have serious consequences of pre-empting the consideration by the learned trial court and by-passing his jurisdiction.

6. Having considered the rival submissions I am of the view that the order passed by the learned trial court is sound and does not call for interference by me in exercise of jurisdiction under Article 227 of the Constitution of India. The learned trial court has justly balanced the equities at this stage and it is open to him to pass further orders once the pleadings are complete and both parties have

produced the documents they seek to rely upon. After all, the interim application is still pending for further consideration. At the same time, I am of the view that in case it is found that the demand raised by the respondent is found to be unsustainable, it would be open to the Court to consider the grant of interest on the amount deposited by the plaintiff. Similarly in case the demand raised by the respondent is found justified in its entirety or in excess of the amount directed to be deposited at this stage the Court could consider granting interest in favour of the respondent on the remaining amount found due.

7. The first instalment of 50% of Rs.3.75 lakhs will be deposited within 15 days from today and the remaining 50% will be deposited within one month from the date of the first deposit.

8. With these observations the petition stands disposed of.

Dasti.

January 10, 2008
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VIPIN SANGHI, J.