

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA 234/2007**

Date of decision : October 26, 2009

KAMAL KISHORE Appellant
Through : Ms. Neha Gupta, Adv.

Versus

BSES RAJDHANI POWER LTD. Respondent
Through : Nemo.

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest ?

J U D G M E N T

ARUNA SURESH, J. (Oral)

1. Respondent department raised a bill for Rs.5,56,320.95p on the basis of inspection carried out on 22.10.1997 of K.No.NA 002 1283990 installed at Khasra No.487/35, Village and Post Office Peera Garhi, New Delhi, which is registered in

RSA 234/2007

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the name of the appellant. The said bill was raised as the Inspector who inspected the meter found the appellant indulging in FAE and using the load more than the sanctioned load and was involved in the theft of electricity. Another inspection was carried on 30.6.1999 which also indicates that appellant was found indulging into theft of electricity.

2. On 27.10.2000, appellant received a letter dated 22.10.1997 along with the copy of theft bill. Apprehending disconnection, he filed a suit for permanent and mandatory injunction against the respondent department. The trial court dismissed the suit relying upon '**Sarjiwan Singh v. Delhi Vidyut Board, 110 (2004) DLT 633**', and '**Kamleshwar Kishore Singh v. Paras Nath Singh & Ors., 2002 Supreme Appeals Reporter (Civil) 69**'.
3. The trial court observed that the relief of declaration was not claimed by the appellant and in the absence of the main relief, consequential relief sought for i.e. mandatory and permanent injunction

was not maintainable. The said judgment and decree of the trial court dated 21.02.2005 was upheld by the appellate court. Hence, the second appeal filed under Section 100 CPC.

4. Ms. Neha Gupta, learned counsel for the appellant has submitted that substantial question of law involved in the second appeal is that the first appellate court did not decide the appeal on merits and dismissed the same for the reason that the court fees has not been paid and simplicitor suit for permanent injunction was not maintainable in view of the judgment of ***Sarjiwan Singh's case (supra)*** whereas appellant never refused to pay the court fees.
5. It is further submitted that since the inspection report prima facie was illegal, the appellant rightly did not claim the relief of declaration because the bill being illegal, did not need any declaration from the court and the only remedy available to the appellant was to seek relief of mandatory and perpetual injunction against the department.

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6. Submissions challenging the dismissal of the suit by the trial court upheld by the appellate court for the reason of non-payment of court fees are not tenable. The judgments of the courts below are silent on the question of court fees required to be paid by the appellant. It is pertinent that, though appellant has alleged that he never refused to pay the court fees, even in the appeal, he has not paid the court fees. Since the courts came to the conclusion that simplicitor suit for permanent injunction was not maintainable, there was no occasion for the courts below to deal with the question if proper court fees was not paid by the appellant in the trial court or in the first appellate court.
 7. The suit of the plaintiff and the appeal were dismissed with the observations that it was mandatory for the appellant to challenge the demand raised by the respondent department and to ask for declaration of such demand as illegal and incorrect and further seek relief of perpetual injunction as prayed. Since the appellant did not

challenge the illegality of the bill nor any such relief for declaration was sought, which was pre-requisite for grant of injunction, the suit filed simplicitor for permanent injunction was not maintainable. I find no infirmity or illegality in the impugned orders.

8. Suffice would be to say that the appellant claimed a relief of permanent injunction for restraining the respondent department or its agents, etc. from disconnecting the supply against K.No. NA 002 1283990 installed at Khasra No.487/35, Village and Post Office Peera Garhi, New Delhi and also sought grant of mandatory injunction for directing the respondent and its agents, etc. to correct the impugned bill by excluding the misuse charges and paid units from levy of penalty. Thus, it is clear that the appellant challenged the legality of the bill and sought its correction by way of a mandate whereas the appellant was required to claim a relief of declaration that the impugned bill as raised by the respondent department was illegal and invalid.

9. The trial court framed issue No.1 as follows:-

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"Whether DVB conducted illegal inspection on 22.10.1997 and raised illegal impugned bill for Rs.5,56,320.95? OPP."

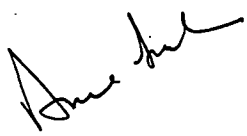
10. Formation of this issue also indicates that illegality of the bill was challenged by the appellant. Appellant disputed the receipt of the impugned bill before 27.10.2000. He also denied receipt of inspection report as well as show cause notice. He also alleged that he was not given any personal hearing before raising the impugned bill and no speaking order was passed and the impugned bill was issued against the appellant without examining the consumption pattern of the appellant and without installing any pilot meter.
11. Under these circumstances, when the bill raised by the electricity department prima facie is illegal, the appellant was required to seek declaration to the fact that the bill was incorrect and illegal, before he could pray for injunction against the recoveries made on the basis of said bills. Clever and cunning drafting of the plaint cannot impede the court from looking at the substance of the relief asked for.

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12. It cannot be gainsaid that the main documents to be looked at by the court is the plaint and if controversy is created from an intelligent reading thereof, the court need not go any further. But where the plaint does not disclose the facts which prima facie show the illegality of the demand, the mere filing of the suit for injunction simplicitor cannot be used as a device to defeat or delay the liability thereby created. **'Shamsher Singh v. Rajinder Prashad & Ors., AIR 1973 SC 2384', Sarjiwan Singh and Kamleshwar Kishore Singh's cases (supra)** are relied upon.

13. From perusal of the pleadings of the parties prima facie, the bill raised by the respondent department is legal, therefore, appellant was required to seek relief for declaration to the fact that bill is incorrect and illegal, before he could pray for an injunction against the recovery on the basis of such bill. In fact, by way of mandate, the appellant had asked for correction of the bill without seeking relief of declaration.

14. Since the question of law sought to be formulated in this case is now well settled principle of law and is no longer res integra, no question of law is involved in this appeal.
15. As pointed out above, the substantial questions of law as suggested in the appeal are not based on the grounds on which the suit and the appeal were dismissed but relate to some other issues which were never determined by the courts below. This court need not go into those questions of law, as suggested as they are not required to be settled in this appeal.
16. Hence, finding no merits in the appeal, same is accordingly dismissed.


(ARUNA SURESH)
JUDGE

OCTOBER 26, 2009
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