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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RSA 215/2007

VANDANA CHHABRA

..... Appellant

Through: Mr. Sanjay Rawat, Adv. with Mr.
Gopinath, Adv.
Appellant in person.

versus

B.S.E.S RAJDHANI POWER LTD..... Respondent

Through: Mr. Navin Chawla, Adv. with Mr.
Sita Ram DGM, Enforcement.

CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

ORDER

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22.09.2009

CM APPL.12252/2007

Efforts for reconciliation have failed, as the appellant insists for a detailed affidavit to be filed by the respondent in respect of subsequent bill raised for Rs.4,76,406/- as per the notice of disconnection dated 22.8.2007. To avoid disconnection, this court vide its order dated 7.9.2007 directed the appellant to deposit 50% of the said amount with the respondent/department. Appellant complied with the said order and disconnection of the electricity was not done. The said notice is not the subject matter of this appeal. It was only an interim measure granted to the

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appellant when order dated 7.9.2007 was passed. Appellant insists for refund of the amount so deposited. For that purpose, he has to adopt appropriate forum in accordance with law to challenge the notice dated 22.8.2007. The amount so deposited then, can be ordered to be refunded to the appellant but, then he shall not be entitled to any protection against disconnection because then and the said order of this court would become unenforceable and no further orders are warranted. Hence application stands disposed of accordingly.

CM APPL.11392/2007 (stay)

50% of the impugned bill amount was deposited in the trial court by the appellant when stay against disconnection was obtained. This fact is not disputed by the respondent.

Under these circumstances, learned counsel for the respondent states that they have no intention to proceed with disconnection of the electricity pending disposal of this appeal.

Hence, application needs no adjudication and is accordingly disposed of.

CM APPL.11393/2007 (exemption)

This appeal was filed on 22nd August, 2007. Hence this

application is dismissed having become infructuous.

CM APPL.12122/2009 (for placing on record copy of plaint)

By way of this application, the appellant seeks permission to file copy of the original plaint as annexure to the appeal because, inadvertently the amended plaint has been filed as Annexure A.

Since no prejudice will be caused to the opposite party in accepting the copy of the original plaint on record, this application is allowed. The copy of the original plaint as filed is taken on the record.

Application stands disposed of.

CM APPL. 11394/2007 (O.6 Rule 17 CPC)

By way of this application, the appellant seeks permission to amend the original plaint. According to him a typographical mistake had crept in the plaint inadvertently as the date of inspection has been noted as 19.5.1993 instead of 17.5.1993. This amendment is necessary as the suit of the plaintiff was dismissed by the trial court only on the basis of date of inspection as given in the original plaint i.e. 19.5.1993, whereas the inspection had taken place on 17.5.1993.

Whether the mistake in date crept inadvertently or was a

typographical mistake, can be assessed from the pleadings of the parties before the trial court. In the plaint the appellant pleaded that on 19.5.1993 inspection was carried out at the premises of the appellant and no irregularity was observed in respect of her connection. In the written statement filed by the respondent, it was specifically averred that no inspection was carried out on 19.5.1993 as alleged, though respondent had carried out inspection of the premises of the appellant on 17.5.1993. It is pertinent that despite respondent disclosing in the written statement that inspection was carried out on 17.5.1993, the appellant re-asserted her averment made in the plaint that it was on 19.5.1993 that the inspection was carried out and not on 17.5.1993. Therefore under these circumstances, it is a fallacy that the date 19.5.1993 as finds mention in the plaint was a typographical mistake.

It is significant to note that the trial court in para 11 of its judgment observed that appellant did not even incorporate the fact regarding the inspection dated 17.5.1993 in its plaint by moving any amendment application and as such facts regarding inspection dated 17.5.1993 were outside the purview and

contents of the plaint. Despite this noting of the trial court, appellant did not file any application for amendment of the plaint before the Appellate Court when she challenged the judgment and decree of the trial court dismissing her suit. The date of inspection as 19.7.1993 had been consciously and specifically given by the appellant in the plaint.

Under these circumstances, I do not find it a fit case where amendment of the plaint in the second appeal should be allowed. Hence, application being without any merits is hereby dismissed.

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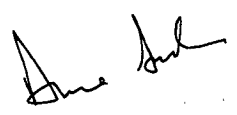
In the appeal, appellant has raised following substantial questions of law:-

- (1) Whether a litigant can be ousted and non suited on account of a mere typographical error?
- (2) Whether a substantive relief should be denied merely on account of technical grounds?

While disposing of application under order 6 Rule 17 CPC, I have already observed that there was no typographical error which resulted into miscarriage of justice as alleged which was

considered by the court in the light of the documents and other evidence on record while dismissing the suit of the appellant.

The proposed questions are questions of fact and are not substantial questions of law to be adjudicated upon in this appeal. The trial court decided the case on merits and not on technical grounds as alleged. Hence, under the circumstances, no substantial question of law is raised. Hence, appeal being without any merits is hereby dismissed.



ARUNA SURESH, J.

SEPTEMBER 22, 2009
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