

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 3263/2007**

Decided on 29.08.2011

IN THE MATTER OF :

HARI KISHORE

..... Petitioner

Through: Mr. P.K.Puri, Advocate

versus

B.S.E.S.YAMUNA POWER LTD.

..... Respondent

Through: Mr.K.Dutta and Mr.Manish Srivastava
Advocates

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

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| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

HIMA KOHLI, J. (Oral)

1. This case has been returned by the Secretary, Delhi High Court Legal Services Committee with an observation made in the proceeding dated 17.02.2011 to the effect that none was present for the petitioner.
2. Counsel for the petitioner states that this case was never forwarded to the Continuous Lok Adalat. He also draws the attention of this Court to

the order dated 14.02.2011 to state that the present writ petition was never directed to be placed before the Secretary, Delhi High Court Legal Services Committee, along with the other petitions.

3. Perusal of the order dated 14.02.2011 reveals that the present writ petition does not find any mention in the aforesaid order. Furthermore, as per the proceedings recorded in the order dated 16.12.2010, this case was renotified for 14.02.2011. It appears that the orders passed on 14.02.2011 in some other batch of matters came to be erroneously placed in the proceeding sheets of the present file. In any event, counsel for the parties state that this is not a fit case for being sent to the Continuous Lok Adalat to explore a settlement and the case may be heard and decided on merits.

4. The present petition is filed by the petitioner praying *inter alia* for issuance of a writ in the nature of certiorari, for quashing the speaking order dated 11.4.2007 passed by the respondent pursuant to an inspection carried out at the premises of the petitioner on 6.11.2006 and a demand raised on account of theft of electricity, for a sum of ₹4,84,500/-, with due date of payment as 26.4.2007.

5. Counsel for the petitioner states that the impugned speaking order and the impugned demand raised by the respondent on the basis of theft assessment are liable to be quashed for the reason that the respondent had arrived at a settlement with the petitioner before the Mediation

Centre, Tis Hazari Courts on 19.2.2007, which was duly accepted by the learned ADJ vide order dated 20.2.2007 passed in a civil suit instituted by the petitioner. He states that under the settlement, the petitioner had agreed to pay a sum of ₹4,43,424/- to the respondent, after it was agreed between them that the respondent would waive the late payment surcharge, as indicated in the bill for February 2007.

6. Counsel for the respondent opposes the present petition on the ground that the bill sought to be quashed by the petitioner in the present proceeding was raised only in April 2007, whereas the settlement arrived at before the Tis Hazari Courts, Delhi was in a suit instituted by the petitioner on 09.01.2007 for declaration, mandatory and permanent injunction against the respondent. In the suit proceedings, a bill of ₹4,88,900 raised by the respondent for the billing month of December 2006 was assailed by the petitioner (plaintiff in the suit proceedings) on the ground that the said bill did not give the details of the arrears amounting to ₹1,38,077.25 paise shown therein. He therefore states that the cause of action arising out of the speaking order dated 11.4.2007, pursuant to which the impugned bill of ₹4,84,500/- with due date of 26.04.2007 was raised, could not have been the subject matter of settlement before the Mediator in the suit proceedings initiated by the petitioner in January 2007.

7. Counsel for the petitioner however insists that the speaking order dated 11.04.2007 and the bill raised pursuant to an inspection dated 6.11.2006 were also the subject matter of settlement before the Mediation Centre and the same came to be fully settled between the parties upon the petitioner agreeing to pay a sum of ₹4,43,424/- to the respondent.

8. This Court has heard the counsels for the parties and perused the documents placed on record.

9. In the first instance, a perusal of the plaint filed by the petitioner, in the trial court, for declaration, mandatory and permanent injunction shows that in para 19, which is the para setting out the cause of action, there is no mention of the inspection carried out by the respondent at the premises of the petitioner on 06.11.2006. As far as para 3 of the plaint is concerned, there is a passing reference of BSES YPL (defendant in the suit proceedings) having removed the meter on 06.11.2006 and installing another meter therein. It is clear from a conjoint reading of the averments made in the plaint that the bill impugned by the petitioner in the suit proceedings was raised for the month of December 2006 and the same was for a sum of ₹4,88,900/-. It is further averred in the plaint that the said bill showed that a late payment surcharge of ₹51,283.42 paise was imposed, which related to the old meter reading.

10. A perusal of the proceedings sheet dated 19.2.2007 before the Mediation Centre, Tis Hazari Courts shows that the subject matter of mediation was only the cause of action as mentioned in the suit instituted by the petitioner for injunction. It is in that context that the settlement was reached between the parties to the effect that the respondent would waive the late payment surcharge in the bill raised for the month of February 2007, with a due date of 2.3.2007 and the net amount to be paid by the petitioner (plaintiff in the suit) would be ₹4,43,424/-. There is no mention in the mediation proceedings of any other dispute between the parties, which was referred or required to be settled between them. Furthermore, the order dated 20.2.2007 passed by the learned ADJ and placed on record also shows that the trial court accepted the settlement as recorded before the Mediator in the proceedings held on 19.2.2007, as a complete settlement of all disputes between the parties for which the suit was instituted and based on this settlement, the suit was disposed of.

11. In the aforesaid background, the submission of the counsel for the petitioner that the impugned demand raised by the respondent on the petitioner by virtue of the bill with due date of 26.4.2007, for a sum of ₹4,84,500/- was also the subject matter of the settlement before the Mediator appointed in the suit proceedings, initiated earlier to the passing of the impugned speaking order dated 11.4.2007, is untenable and rejected. In fact, the speaking order dated 11.4.2007 came to be passed

by the respondent after issuance of a notice to show cause to the petitioner on 3.3.2007, subsequent to the passing of the order dated 20.02.2007 by the learned ADJ in the suit proceedings. The challenge laid by the petitioner to the speaking order dated 11.4.2007 and the impugned bill for the amount of ₹4,84,500/- on the above ground therefore fails and the petition is dismissed, while leaving the parties to bear their own costs.

12. At this stage, counsel for the petitioner states that the petitioner be given one last opportunity to explore the possibility of arriving at a negotiated settlement with the respondent in respect of the bill for ₹4,84,500/- before the Continuous Lok Adalat. While maintaining the order passed above, parties are directed to appear before the Continuous Lok Adalat on 7.9.2011, on which date both the parties shall be present along with their respective counsels. The Registry shall forward the file of this case before the Continuous Lok Adalat to assist it in understanding the background of the dispute between the parties.

AUGUST 29, 2011
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(HIMA KOHLI)
JUDGE