



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 367 OF 2017

BETWEEN:

SRI. PARAMESHWARAPPA
S/O HARATE BEERAPPA,
AGED ABOUT 57 YEARS
R/O DOMBE VILLAGE,
KHANDIKA POST, SAGAR TALK,
SHIMOGHA DISTRICT - 577 401.

...APPELLANT

(BY SRI. NAGENDRA NAIK R, ADVOCATE)

AND:

SMT. RADHA MOHAN N.K
D/O N.M. KRIHSNAMURTHY,
AGED ABOUT 63 YEARS
R/O ASHOK ROAD, SAGAR TALUK,
SHIMOGHA DISTRICT - 577 401.

...RESPONDENT

(RESPONDENT - SERVED)

THIS RSA IS FILED U/S. 100 OF CPC., AGAINST THE JUDGEMENT AND DECREE DTD 27.08.2016 PASSED IN R.A.NO. 32/2014 ON THE FILE OF THE ADDL. SENIOR CIVIL JUDGE AND JMFC.,SAGAR, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGEMENT AND DECREE DTD 01.03.2014 PASSED IN OS.NO.37/2013 ON THE FILE OF THE ADDL. CIVIL JUDGE AND JMFC., SAGAR.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

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Location:
HIGH
COURT OF
KARNATAKA



CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Sri.Nagendra Naik R., learned counsel for the appellant. Though served with the notice, none appears for the respondent.

2. Though the matter is listed for admission and for condonation of delay of 39 days in filing the appeal, matter is taken up for final disposal in view of the scope of the appeal in challenging the judgment and decree passed by the First Appellate Court in RA No.32/2014 on the file of Additional Senior Civil Judge and JMFC, Sagar in allowing the damages to be paid at the rate of Rs.500/- per month from 01.12.2009 to 22.06.2010.

3. Since there is a proper explanation as to condonation of delay in the affidavit filed by the appellant, delay of 39 days in filing the appeal is condoned and thereafter, matter is taken up for consideration on merits.



4. Facts which are utmost necessary for disposal of the appeal are as under:

4.1. A suit for injunction and damages came to be filed by respondent against the appellant and Mangalore Electricity Supply Company (hereinafter 'MESCOM' for short) as defendant Nos.2 and 3. Suit was not contested by the appellant who was defendant No.1 in the Trial Court and defendant Nos.2 and 3 engaged the services of Sri.M.Ganapati, learned counsel who did not contest the matter further.

4.2. According to the case of the plaintiff, when the plaintiff applied for electricity connection, defendant No.1 said to have filed objection with defendant Nos.2 and 3 by contending that electricity connection should not be given from the pole which was erected in front of the house of defendant No.1 by paying necessary charges for erecting the poll.



5. Learned Trial Judge after considering rival contentions of the parties, noted that for erecting the electric pole, no doubt defendant No.1 has paid the charges but at any rate the electricity pole is not the property of defendant No.1 but it was erected in the public property and electricity connection was sought to be given to the farm house situated in land bearing Sy.No.127 for which defendant No.1 had no right to object and decreed the suit in part by granting injunction as prayed for by the plaintiff but rejected the prayer for awarding damages.

6. Defendant No.1 did not choose to file any appeal against the said judgment and decree passed by the Trial Court in O.S.No.37/2013 instead it is the plaintiff who filed an appeal before the First Appellate Court in RA No.32/2014 insofar as denial of the relief of damages.

7. Learned Judge in the First Appellate Court after notifying the respondent, heard the arguments of the parties. Appellant was represented by an Advocate before the First Appellate Court.



8. Learned Judge in the First Appellate Court after considering the rival contentions of the parties, allowed the appeal in part and granted damages to be paid by defendant No.1 to the plaintiff from 01.12.2009 till 22.06.2010 *inter alia* holding in paragraph Nos.15 and 16 of the judgment as under:

"15. Plaintiff has claimed damages of Rs.500/- per month from 01/12/2009 till he gets electricity supply to his farmhouse. That on perusal of the entire materials on record, I am of the opinion that there is no material on record whether the defendant No.1 has stopped his obstruction or continued the same. Materials on record prove that till filing the suit there was obstruction on the part of the defendant No.1. Under these circumstances, I am of the opinion that the plaintiff is entitled for damages from 01/12/2009 till the date of suit. Since there is no cogent and reliable materials to prove that the plaintiff has continued his obstruction after filing the suit, I am of the opinion that the plaintiff is not entitled for damages after filing the suit. Plaintiff has claimed damages at the rate of Rs.500/- per month. In my opinion the said damages claimed by the plaintiff is reasonable. Hence, the plaintiff is entitled for damages of Rs.500/- per month from 01/12/2009 till



22/06/2010, the date of suit and the defendant No.1/respondent is liable to pay the said amount to the plaintiff within one month from today and if he fails to pay the said amount within one month from today, he is liable to pay the said amount with interest at the rate of 6% per annum from today till realization.

16. Under these circumstances, I am of the opinion that the judgment and decree dated 01/03/2014 passed by the learned Additional Civil Judge, Sagar in O.S.No.37/2013 regarding the relief of damages sought in the plaint are contrary to law, facts and materials on record and there are grounds to interfere in the impugned judgment and decree of the trial court regarding the relief of damages sought in the plaint. Accordingly, I answered the Point Nos. 1, 3 and 4 in the affirmative and point No.2 partly in the affirmative."

9. Being aggrieved by the same, defendant No.1 is before this Court, in this appeal, on following grounds:

- *"That the judgment of the court below is contrary to law. The court below has presumed the facts on the ground that the Appellant has not filed written statement disputing the allegation in the plaint. The Plaintiff has not produced any material to establish*



interference on the part of the Appellant. The document produced are legal notice, acknowledge, RTC, sketch, village map and estimate given by the MESCOM. None of this document establishes that the Appellant has disturbed the process of power connection to the Plaintiff. The court below has presumed interference in the absence of any material in this regard. Therefore, the presumption drawn by the court below is illegal and without any basis.

- *That the content of the notice is that defendant has lodged a complaint to Sagar Rural Police Station against the plaintiff. If that is accepted as true on the face of it, it only proves that the Appellant has exercised the Statutory remedy available to him. Exercising his legal right cannot be termed as obstructions. That apart the Plaintiff has not produced any material to establish that any damage is actually caused to him. The fact of damages has to be establish not to be presumed. Hence the finding of the court below is perverse and sustainable.*
- *The Judgment itself says that Defendant has obstructed the Plaintiff from taking power connection from the Electrical Pole near to his house. Plaintiff has obtained the connection from the western position of her house shows that there was alternate pole available to the Plaintiff. Hence*



the theory of damage is totally imaginary only to cause harassment to Defendant the suit is filed."

10. Learned counsel for the appellant reiterating the grounds urged in the appeal memorandum, would contend that absolutely there is no evidence placed on record by the plaintiff to substantiate the claim for damages and learned Judge in the First Appellate Court has recorded finding only on the basis of pleadings which is impermissible as there is no foundation for claiming the damages in the suit and thus sought for allowing the appeal.

11. He would further emphasize that all that defendant No.1 did is objecting for electricity connection which is a statutory right granted to defendant No.1 under the rules and regulations of the electricity supply. Therefore, defendant No.1 ought not to have been penalized by directing him to pay damages from 01.12.2009 till 22.06.2010.



12. Having heard the arguments of both sides, this Court perused the material on record meticulously.

13. On such perusal of the material on record, this Court does find reasonable force in the contentions urged on behalf of the appellant that there is no proper basis and material evidence placed on record to sustain the finding of the First Appellate Court in awarding the damages at the rate of Rs.500/- per month as against Rs.5,000/- per month claimed by the plaintiff from 01.12.2009 till 22.06.2010.

14. Nevertheless, because of the frivolous objection raised on behalf of defendant No.1, electricity connection sought for by the plaintiff was delayed by the MESCOM authorities.

15. Therefore, as a token of damages, if a sum of Rs.2,000/- in lumpsum is allowed as there is no proper material evidence to substantiate the claim of Rs.5,000/- per month from 01.12.2009 till 22.06.2010, ends of justice would be met.



16. Accordingly, the following:

ORDER

- i. Appeal is ***allowed in part.***
- ii. While maintaining the order of the First Appellate Court, damages awarded by the First Appellate Court is modified to sum of Rs.2,000/- without interest which is to be paid by defendant No.1 to the plaintiff on or before 30.06.2026.
- iii. Office is directed to pass the modified decree.
- iv. In view of the disposal of the appeal, pending interlocutory application is consigned to records.

**Sd/-
(V SRISHANANDA)
JUDGE**

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List No.: 1 Sl No.: 50