

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 1386 OF 2014

Rajendra S/o Ramesh Gavali,
age 30 years, occup, Business,
R/o Hingangaon, Tal.Kalamb,
Dist. Osmanabad Petitioner

versus

1. Hari s/o Vaijnath Kotalwar,
age 72 years, occup. Agriculture,
R/o Saraswati Colony, Latur,
Dist. Latur.
 2. M/s Shankara Builders, Latur,
Through its' Proprietor,
Vankatesh s/o Hari Kotalwar,
age 32 years, occup. Agri. &
Business, R/o Saraswati Colony,
Latur, Dist. Latur.
 3. Junior Engineer,
Maharashtra State Electricity
Distribution Company Ltd.,
Zone No.7, Sai Dham Road,
Tq. and Dist. Latur. Respondents
-
- Mrs. Anjali Dube (Bajpai), Advocate for petitioner
Mr. A.S. Deshpande, Advocate for respondents no. 1 and 2
Mr. P.B. Paithankar, Advocate for respondent no. 3

CORAM : SUNIL P. DESHMUKH, J.
1st August, 2015

Oral judgment:

1. Rule. Rule made returnable forthwith. Heard the parties finally, by consent.
2. Petitioner-original plaintiff challenges the order dated 10-01-2014 whereunder the 6th Joint Civil Judge, Junior Division,

Latur has rejected petitioner's application at Exhibit-46 in regular civil suit no.146 of 2012, seeking restoration of electricity supply to his hair cutting saloon.

3. Indisputable facts appear to be, the petitioner claims that he has been occupying suit premises on the basis of agreement of sale by the owner and has been running hair cutting saloon. Electricity connection to the premises had been in the name of the owner. The petitioner had been enjoying the same for quite sometime. Subsequently, dispute arose since the owner had not been executing sale deed and a suit came to be filed by petitioner seeking specific performance. During pendency of suit, the petitioner had been enjoying interim injunction against the owner.

4. However, the petitioner contends that during these proceedings at the behest of owner, respondent no. 3 has disconnected electricity supply to the petitioner's saloon. Under the circumstances, petitioner moved trial court seeking restoration of electricity supply and/or by another application for new electricity connection at his costs. Said request has been rejected and hence, writ petition.

5. It transpires that respondent No. 3 – officer of distribution licensee of electrical energy under the Electricity Act, 2003

insisted to have registered document by owner in favour of petitioner before making energy supply to the petitioner.

6. In this context it would be pertinent to refer to relevant provisions of Electricity Act, 2003. In the scenario, it appears that section 43 of aforesaid enactment would be pertinent which is reproduced hereinbelow for ready reference.

“ 43. Duty to supply on request- (1) Every distribution licensee, shall on an application by the the owner or occupier of any premises give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate commission:

Provided further that in case of village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate commission may extent the said period as it may consider necessary for electrification of such village or hamlet or area.

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1):

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default. ”

Aforesaid provision coupled with regulation number 4, fairly being pointed out before this court, under Maharashtra Electricity Regulatory commission (Electricity Supply Code and Other Conditions of Supply) Regulation, 2005, also obligates supply energy to the occupant.

7. In the circumstances, request for electricity energy supply by the petitioner may not be detained on the ground which, *prima facie* does not appear to be relevant. The trial court, however, appears to have adopted an approach which does not appear to be compatible with the position emerging from aforesaid provisions in this respect. The court, as such, ought to have read section 94 of Code of Civil Procedure, 1908 in favour of the petitioner.

8. In the present case, it would be pertinent to note that the same was available to petitioner before disconnection. It appears to be a day-to-day necessity for business/ occupation like the one run by the petitioner. Taking into account above, electricity supply to petitioner, in the facts of case may not be detained. Needless to refer to that supply of such a connection would hardly have any effect on the dispute in respect of the rights to the property.

9. In view of the same, I deem it appropriate to set aside the impugned order. Accordingly impugned order dated 10-01-2014 passed by the 6th Joint Civil Judge, Junior Division, Latur on Exhibit-46 in regular civil suit no.146 of 2012 is set aside. Respondent no. 3 - Maharashtra State Electricity Distribution Company Ltd. may restore supply and/or respondent no. 3 shall take action for supply of electrical energy to the disputed premises in the present matter occupied by petitioner on petitioner's new/fresh application at his own costs. For aforesaid purposes, petitioner shall make proper applications to respondent no.3 which shall be considered favourably and supply be connected and/or restored during pendency of the litigation without prejudice to power and authority of respondent no. 3 to take action according to rules if occasion arises.

10. Writ petition stands allowed. Rule made absolute in aforesaid terms.

SUNIL P. DESHMUKH, J.

pnd