

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: September 02, 2015

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Judgment Delivered on: September 04, 2015

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CM(M) 191/2015 & CM Nos.4208-09/2015

UMESH CHAND SHARMA

..... Petitioner

Through: Mr.Shalabh Gupta, Advocate.

versus

BSES RAJDHANI POWER LTD AND ANR

..... Respondents

Through: Ms.Mithu Jain, Advocate for R-1 with
Mr.Ankit Sharma, AMPS, BSES.

Mr.Smarhar Singh, Advocate for R-2.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. By way of this petition filed under Article 227 of the Constitution of India read with Section 151 CPC, petitioner (Plaintiff in Civil Suit No.216/2012) is challenging the order dated 30th September, 2014 whereby the learned JSCC-ASCJ-Cum-Guardian Judge, Dwarka Courts, Delhi has dismissed the appeal bearing MCA No.03/2014.

2. In the year 2012 petitioner filed a suit bearing Civil Suit No.216/12 for declaration and permanent injunction against the respondent BSES restraining it from disconnecting the electricity meter installed in the name of the petitioner at premises under possession of petitioner out of property bearing No.24/4 & 5, Narain Ashram, Samalkha, New Delhi-110037.

3. The petitioner along with the suit had also filed an application under Order XXXIX Rule 1 & 2 CPC seeking ad-interim injunction in his favour and against the respondent No.1 till the final adjudication of the suit.

Notice of the suit along with the application under Order XXXIX Rule 1 & 2 CPC was served to the respondent No.1, who filed written statement and reply to the application.

4. On 10th October, 2012 respondent No.2 herein filed an application under Order I Rule 10 CPC for impleadment as respondent No.2 in the suit which was allowed by the learned Civil Judge on 21st January, 2013. Thereafter, respondent No.2 also filed its written statement and reply to the application under Order XXXIX Rule 1 & 2 CPC.

5. On 12th August, 2014 the learned CJ dismissed the application of the petitioner. While disposing of the application under Order 39 Rule 1 and 2 CPC and considering that the criteria required for grant of injunction are not satisfied by the petitioner/plaintiff, the learned Civil Judge made the following observation :-

'In view of the aforesaid discussion, in my considered opinion, the plaintiff has failed to prima facie prove his occupation/possession over any part of suit property and that he is entitled to ad interim injunction. Balance of convenience also, in my considered opinion, does not lie in favour of the plaintiff in as much as even if the case of the plaintiff is believed for the sake of arguments that he is in occupation of the suit property since 2005, no irreparable loss is going to be caused to him if the injunction sought for by him is not granted since admittedly he had been residing in the suit property without any electricity connection since 2005 and as such there is no urgency that he should be supplied electricity pending adjudication of rival claims of parties as to the ownership and possession of the suit property.'

6. Being aggrieved by the order dated 12th August, 2014 petitioner filed an appeal bearing MCA No.3/2014 which was also dismissed by learned JSCC-

ASCJ-Cum-Guardian Judge, Dwarka Courts, Delhi vide order impugned dated 30th September, 2014.

7. Learned counsel for the petitioner has submitted that in view of the decision of the Supreme Court Chandu Khamau vs. Nayan Malik & Ors. (2011) 12 SCC 314 and Meena Chaudhary vs. BSES Rajdhani Power Ltd. 2013(6) SLT 2003, this Court in exercise of its power under Article 227 of the Constitution of India may direct BSES to provide electricity connection subject to the conditions deemed fit by the Court.

8. Learned counsel for the respondent No.2 has strongly opposed the prayer contending that for getting electricity connection petitioner submitted NOC to BSES. Respondent No.2 made a complaint to BSES that NOC was forged. On the said complaint, the electricity connection was disconnected by BSES. It has been further submitted by learned counsel for the respondent No.2 that the petitioner has no title or interest in the suit property and he cannot be permitted to collect proof of his possession in the garb of electricity connection. Learned counsel for the respondent No.2 has submitted that there is already status quo order operative against the petitioner. He has relied upon Shalini Shyam Shetty and Anr. vs. Rajendra Shakar Patil (2010) 8 SCC 329, Labhkuwar Bhagwani Shaha (MRs.) and Ors. vs. Janardhan Mahadeo Kalan & Anr. (1982) 3 SCC 514, Jai Singh & Ors. vs. Municipal Corporation of Delhi & Anr. (2010) 9 SCC 385 and Nagendra Nath Bora & Anr. vs. Commissioner of Hills Division & Appeals, Assam & Ors. AIR 1958 SC 398 in support of his contentions.

9. On behalf of respondent No.1/BSES, it is not disputed that in respect of electricity connection provided to the petitioner, the meter was energized on

07.06.2012 and till the date of disconnection, the electricity bills were duly paid for the electricity consumed. BSES has also not disputed that disconnection was due to the complaint made by respondent No.2 that NOC was forged.

10. I have considered the rival contentions and carefully gone through the record.

11. It has been repeatedly observed by the Supreme Court as well as by this Court that electricity is an essential requirement without which any person in occupation cannot enjoy the property. Electricity connection cannot have the effect of conferring any title on the person seeking/getting electricity connection. Further the observation made by learned Trial Court that if the petitioner had been without electricity since 2005, no irreparable loss is going to be caused to him, shows lack of sensitivity on the part of learned Trial Court while dealing with such issue.

12. Since electricity is an essential for any human being, placing reliance on Shalini Shyam Shetty and Anr. vs. Rajendra Shakar Patil (Supra), Labhkuwar Bhagwani Shaha (Mrs.) and Ors. vs. Janardhan Mahadeo Kalan & Anr. (Supra), Jai Singh & Ors. vs. Municipal Corporation of Delhi & Anr. (Supra) and Nagendra Nath Bora & Anr. vs. Commissioner of Hills Division & Appeals, Assam & Ors. (Supra) by learned counsel for respondent No.2 is of no help to him.

13. Mere filing of a complaint that NOC was not genuine, the petitioner cannot be deprived of basic amenities of life. Thus, without prejudice to rights and contentions of the parties, following directions are issued:-

- (i) BSES/respondent No.1 is directed to grant a fresh electricity connection to the petitioner without insisting for no-objection certification or title documents from the petitioner.
- (ii) The petitioner shall comply with all procedural and commercial formalities required to obtain electricity connection in respect of the premises in which earlier CA No.100088171 was installed.
- (iii) Before applying for fresh electricity connection, the petitioner shall clear all the dues, if any in respect of CA No.100088171.
- (iv) The petitioner is also directed to deposit with BSES a sum of ₹5000/- as additional security deposit which shall not be adjusted against dues, if any, in respect of CA No.100088171. The petitioner shall also furnish the details of his bank account to respondent No.2.
- (v) In case of default in payment of dues, BSES will be entitled to disconnect the electricity.
- (vi) Grant of electricity connection to the petitioner shall not confer any right on the petitioner in respect of the suit property.
- (vii) The petitioner shall be bound by the status quo order, if any, passed by the Court of competent jurisdiction.

14. The petition stands disposed of in above terms.

Copy of the order be given dasti to learned counsel for the parties.

(PRATIBHA RANI)
JUDGE

SEPTEMBER 04, 2015

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