

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

WRIT PETITION NO. 5082 OF 2016

1. The Maharashtra Electricity Distribution Company Limited, Mumbai, through :
Deputy Divisional Engineer,
M.S.E.D.C.L., Sub Division Rahata,
Tq. Rahata, District : Ahmednagar
2. Deputy Executive Engineer, .. Petitioners/
M.S.E.D.C.L., Rahata, Orig.Defts.
Sub Division Rahata, Dist.Ahmednagar

versus

M/s Hotel Sai – Sangam,
At Nimgaon Korhale, Tq. Rahata, .. Respondent/
Through: Sunil Bhimashankar Sonavane, Original
Age 44 years, occup. Business, Plaintiff
R/o Nimgaon, Tq. Rahata, Dist.Ahmednagar

Mr. Satish M. Godsay, Advocate for petitioners
Mr. N. L. Choudhari, Advocate for respondent-caveator

CORAM : SUNIL P. DESHMUKH, J.
DATE : 5th May, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard the learned counsel for parties finally, by consent.
2. The proceeding bearing regular civil suit no. 108 of 2016 has instituted by present respondent against the petitioners in the court of Civil Judge, Junior Division, Rahata, seeking injunction against them and their head office with declaration that the action being taken by the petitioners is illegal.

3. Along with plaint, the plaintiff has also filed application Exhibit – 5 seeking temporary injunction restraining the defendants from disconnecting energy supply of his hotel. In the meanwhile, energy supply was disconnected and as such application Exhibit-14 had been moved by plaintiff for re-connection of the same. Both the applications (Exhibit 5 as well as Exhibit 14) were rejected by the trial court under an order dated 12-04-2016.

4. The order of the trial court was subjected to challenge in Miscellaneous Civil Appeal No. 14 of 2016 before the appellate court by the plaintiff. While deciding said appeal in favour of appellant-plaintiff under order dated 22-04-2016, the appellate court has considered that the jurisdiction of the civil court has been questioned by defendants with reference to section 145 of the Electricity Act, 2003 and that the plaintiff has a remedy under the provisions of said Act before the Assessing Authority who can pass final order of assessment after giving opportunity to the parties. A further appeal is provided against the order of the assessing authority. Under the circumstances, the issue with regard to jurisdiction arises and as such the trial court ought to have framed preliminary issue to that effect pursuant to section 9A of the Code of Civil Procedure, 1908 before deciding applications for interim relief. The appellate court considered that the decision rendered by the trial court would tantamount to a decision upon the issue of jurisdiction without adducing evidence and affording opportunity to

the parties. The issue, according to the appellate court, has been dealt with by the trial court without framing the same. The appellate court as such considered that the trial court's order is unsustainable and it would be expedient that preliminary issue according to section 9A of the Code of Civil Procedure be framed and decided and in case it is decided in the affirmative holding jurisdiction in favour of the trial court, applications for interim relief be decided.

5. The appellate court while passing the order had also directed defendants to restore energy supply to the plaintiff on the condition of deposit of arrears towards unauthorized use of energy supply for a period of six months before assessment order. Learned counsel for the petitioner submits that after amendment to section 126 of the Electricity Act, such period is increased to one year and as such there is an error creeping in, in the order of appellate court while directing deposit of arrears of six months instead of one year.

6. Having regard to aforesaid, I do not think that this is a case wherein discretion should be exercised in favour of the petitioners-defendants. Let the action proposed by appellate court to proceed with, only with a modification that period for deposit of arrears should be of one year and not six months. The impugned order as such, stands modified by replacing one year period in place of six months.

7. Writ petition stands disposed of. Rule discharged.
8. It is expected that the trial court would frame necessary issue immediately and proceed with and decide the same as early as possible, preferably within a period of ten weeks from the date of receipt of writ of this order.

SUNIL P. DESHMUKH,
JUDGE

pnd