

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 9097 OF 2016**

Mohan Surjan Boyat

..Petitioner.

Vs

Shivnarayan Baxiram Nemani  
Trust and Ors.

.. Respondents

Mr. R.R.Shetty, Advocate for Petitioner.

Mr. Rahul Mistry a/w Ms Sonali Kunekar, Ms Bhkti A Sutar , Ms  
Gauri Y Kale i/b Vikas Kisan Mahangare, Advocates for  
Respondents.

**CORAM : R.G.KETKAR,J.**  
**DATE : 01/10/2016**

**PC:**

1. Heard Mr. R.R.Shetty, learned counsel for the petitioner and Mr. Rahul Mistry, learned counsel for the respondents at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'plaintiff', has challenged the Judgment and order dated 2.5.2016 passed by the Appellate Bench of the Small Causes Court, Mumbai in Appeal No.184 of 2016. By that order, the Appellate Court allowed the appeal preferred by the respondent, hereinafter referred to as 'defendant', and quashed and set aside the judgment and order dated 16.2.2016 passed by the learned trial Judge below Exhibit-10 in R.A.D. Suit No.1862 of 2015. The

Appellate Court dismissed the application Exh.10 made by the plaintiff.

3. In support of this petition, Mr. Shetty strenuously contended that the learned trial Judge allowed the application Exh.10 after considering the order passed by the City Civil Court in S.C.Suit No.73 of 2010. The learned trial Judge observed that electricity supply was made to the suit premises. As the defendants are causing hurdles before the Best Authorities, on humanitarian ground some interim relief deserves to be granted in favour of the plaintiff till decision of his status. As the BEST Undertaking is not party to the suit, no direction can be issued against it. However, the defendants can be restrained from putting hurdles before BEST Undertaking if the plaintiff is otherwise entitled to get separate electricity connection.

4. Mr. Shetty submitted that S.C.Suit No.73 of 2010 the plaintiff herein who was defendant therein took out Notice of Motion no.1842 of 2015 for mandatory injunction directing the defendants herein who are plaintiffs therein to restore immediately electricity supply to the suit premises or in the alternative to give NOC for restoration of electricity supply to the suit premises. The learned Judge of the City Civil Court dismissed the Motion on the ground that the defendants therein have failed to deposit huge amount of electricity bills. The defendants

therein have committed default in payment of huge electricity amount and in such circumstances, the electricity supply cannot be restored. He submitted that the plaintiff herein and defendant therein has cleared the dues of BEST Undertaking. Plaintiff has paid his share of Rs. 20215.50 towards the electricity bills.

5. The learned trial Judge restrained the defendants from causing hurdles in obtaining electricity supply. As against this, the Appellate Court allowed the appeal preferred by the defendants on the ground that the prayer sought by the plaintiff was not granted and altogether different relief which was not prayed for by the plaintiff was granted. The learned trial Judge also did not specifically refer to hurdles caused by the defendants in obtaining electricity supply . Mr. Shetty submitted that after the City Civil Court dismissed the motion taken out by the plaintiff herein, the defendants herein have addressed a letter to the BEST Authorities objecting to supply of electricity to the suit premises. He, therefore, submitted that the impugned order requires to be set aside thereby restoring the order of the trial Court.

6. On the other hand, Mr. Mistry supported the impugned order. He submitted that the defendants herein have filed S.C.Suit No. 73 of 2010 before the City Civil Court. Notice of Motion taken out by the plaintiff herein was rejected on

9.5.2015. The plaintiff herein did not challenge that order. The relief claimed in application Exh.10 and in Notice of Motion No.1842 of 2015 are one and the same. The City Civil Court has dismissed the motion on merits and the findings recorded therein operate res judicata. He, therefore, submitted that no case is made out for interfering with the impugned order.

7. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, the defendants herein have instituted S.C.Suit No. 73 of 2010 against the plaintiffs herein in the City Civil Court. Pending that suit, the plaintiffs who was defendant therein took out Notice of Motion No.1842 of 2015. By order dated 9.5.2015, the learned trial Judge dismissed the motion. Paragraph 15 of that order reads thus:

“15. It is vehemently argued on behalf of the defendants that plaintiff has disconnected the electric supply of the suit premises but there is nothing on record to show that plaintiffs have disconnected the electricity supply of the suit premises. On the contrary, the plaintiff came with the specific case that the BEST has disconnected the electric supply of the suit premises on failure of the defendants to deposit huge amount of electricity bills. Not only this but the record and proceeding shows that the electricity supply was disconnected by the BEST in the month of January, 2015. But here the defendants are seeking mandatory injunction against plaintiff. It appears that the defendants have suppressed the reasons of the disconnection of the electric supply from the Court. On the ground of suppression of material facts from the Court by any party he will not be entitled to a discretionary relief. There is nothing on record to show that the defendants are occupying the suit premises

on any legal basis. So also there is nothing on record to show that they have any title of the suit premises. On the contrary the evidence shows that the parents of the defendants occupied the suit premises when they were in the employment of the plaintiffs. After demise of the original employees the defendants have no right to continue in the possession of the suit premises. If the electricity supply is restored it would cause hardship to the B.E.S.T. a public body. Moreover, it is the duty of the BEST to supply the electricity to the suit premises. But here it appears that defendants have committed default in payment of huge electricity bill amount. In such circumstances, restoration of the electric supply cannot be directed. Moreover, if the defendants deposit the arrears of electricity bills the BEST can restore the electric supply. But the defendants are seeking mandatory injunction against the plaintiffs which cannot be granted. As such defendants have not made out prima facie case. Balance of convenience is not in their favour. The B.E.S.T. A public body will be affected, therefore, motions are liable to be dismissed. So, I record my finding to the point nos 2 to 5 accordingly. In the result I proceed to pass the following order."

8. It is not in dispute that plaintiff herein did not challenge that order. I have also perused the prayers made by the plaintiff herein in Notice of Motion No.1842 of 2015 before the City Civil Court and Exh.10 before the Small causes Court. The prayers are identical. In view thereof, unless and until the plaintiff herein challenges the order passed by the City Civil Court, he cannot get relief of restoration of electricity connection. Even if I accept the submission of Mr Shetty that the order passed by the City Civil Court is wrong order on merits, nonetheless that binds the plaintiff herein so long as it is not set aside by the superior court.

In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed. It is made clear that observations made herein will not come in the way of plaintiff if he chooses to challenge order passed by the City Civil Court. Order accordingly.

(R.G.KETKAR, J.)