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

+ RFA 411/2014 & CM No.14210/2014 (for stay)

DELHI BAR ASSOCIATION

..... Appellant

Through: Mr. A.S. Chandhiok, Sr. Adv. with
Mr. Sanjay Dewan, Mr. S. Nasir &
Mr. A.D. Sharma, Advs.

Versus

TATA POWER DELHI DISTRIBUTION LTD Respondent

Through: Mr. Sudhir Nandrajog, Sr. Adv. with
Mr. Anupam Varma, Mr. Nikhil
Arora & Mr. D. Marwah, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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24.05.2016

1. This first appeal under Section 96 of the Code of Civil Procedure, 1908 impugns the judgment and decree of the Court of Additional District Judge (ADJ)-17, Tis Hazari Courts (THC), Delhi of dismissal of Civil Suit No.52/2014 filed by the appellant for declaration and for mandatory injunction consequent to rejection under Order VII Rule 11 of the CPC of the plaint on the ground that the jurisdiction of the Civil Court to try the dispute raised is barred by the provisions of the Electricity Act, 2003.

2. The appellant had instituted the suit from which this appeal arises pleading i) that it is the largest and oldest Bar of Asia having more than 20,000 lawyers on its rolls; ii) that the land on which the chambers of the lawyers in the Tis Hazari Court Complex are built was given to the appellant / plaintiff on licence basis; iii) that the members of the appellant / plaintiff constructed their chambers on the said land and applied to the erstwhile

Delhi Electricity Supply Undertaking (DESU) for electricity meters and which were provided in the chambers and the electricity charges were being billed on domestic tariff; iv) that upon privatisation of the distribution of electricity, the respondent Tata Power Delhi Distribution Ltd. was supplying the electricity to the said chambers; v) that the respondent / defendant vide letter dated 25th February, 2013 informed the appellant / plaintiff that they were in the process of replacing the meters to shift to automated meter reading and assured that such change would not affect the status of the billing which till then was being done on domestic tariff; vi) that on the basis of aforesaid assurance, the meters were replaced; vii) that however the respondent / defendant thereafter unilaterally started billing the said meters at non-domestic tariff and to which the appellant / plaintiff protested; viii) that the said chambers are nothing but an extension of the residence of the advocates as the space therein is very small and used by the advocates only for giving consultation during court hours.

Accordingly, a decree for declaration that the letter dated 27th September, 2013 of the respondent / defendant demanding the tariff at non-domestic rates is null and void and a decree for permanent injunction restraining the respondent / defendant from disconnecting the electricity supply and a mandatory injunction to the respondent / defendant to charge for the electricity for the said meters at domestic tariff, were claimed.

3. The suit was entertained and vide interim order disconnection of any of the electricity meters was restrained subject to the members of the appellant / plaintiff continuing to pay the electricity charges at the domestic rates.

4. The learned ADJ by the impugned order has allowed the application of the respondent / defendant under Order VII Rule 11 of the CPC *inter alia* holding that for redressal of the grievance agitated in the plaint, the remedy of appeal before the Appellate Tribunal for Electricity (APTEL) under Section 111 of the Electricity Act had been made available and the same provided a complete code and the jurisdiction of the Civil Court was impliedly barred.
5. Aggrieved therefrom, this appeal was preferred and entertained and though there is no interim order in the appeal but the respondent / defendant, considering the large number of lawyers who would be affected, has been kind and has not taken any adverse / coercive action.
6. The senior counsel for the appellant / plaintiff and the senior counsel for the respondent / defendant were extensively heard on 19th April, 2016 and 4th May, 2016.
7. The senior counsel for the appellant / plaintiff, in pursuance to the suggestion of this Bench, has advised the appellant and which advise has been accepted by the appellant / plaintiff, that the appellant / plaintiff approaches the Delhi Electricity Regulatory Commission (DERC) / APTEL for the relief as claimed in the suit with respect to the tariff. In this view of the matter, it is not deemed necessary to record the contentions of the senior counsel for the appellant / plaintiff and of the senior counsel for the respondent / defendant in this respect.
8. However that still leaves open the question of the arrears with effect from July, 2013, since when the respondent / defendant is claiming electricity charges at non-domestic rate and till a decision is taken by the

DERC/APTEL. As aforesaid, though the respondent / defendant has been raising the bills at non-domestic tariff but the members of the appellant / plaintiff have been paying the same at domestic rates.

9. The senior counsel for the respondent / defendant on instructions states that the respondent / defendant, taking a sympathetic view of the matter, has agreed to waive off the late payment surcharge on the arrears.

10. Considering all the facts and the arguments raised and with an intent to put a quietus to the issue affecting a large number of lawyers and which has been pending for the last nearly three years, I am of the view that till the DERC/APTEL decides, the electricity charges be allowed to paid at domestic rates only. Of course, once the DERC / APTEL passes an order, the tariff thereafter will be guided thereby. I am intentionally not giving any reasons for directing so as such a direction has been given in the peculiar facts pertaining to the lawyers' chambers at Tis Hazari Courts and so as not to constitute it a precedent.

11. In this view of the matter, the appeal is disposed of in the following manner:

- (i) The appellant / its members to within 60 days of today ensure that all amounts due at the domestic tariff are cleared and paid and no arrears at least at the rate of domestic tariff remain outstanding;
- (ii) The appellant / its members to on or before 31st July, 2016 approach the DERC/APTEL for the reliefs for which the suit aforesaid was filed and for any additional / other relief to which the appellant / its members may be entitled to;

(iii) Till the decision / order of the DERC / APTEL, the electricity charges with respect to electricity meters installed in the lawyers' chambers at Tis Hazari Court Complex be paid at the domestic rate / tariff and subject to being so paid, the respondent / defendant shall not take any measures for disconnection of the electricity meters or otherwise for non-payment of the arrears since July, 2013 computed at non-domestic rate or of current charges till the decision / order of DERC/APTEL.

No costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

MAY 24, 2016

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