

Anand

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

WRIT PETITION NO.9832 OF 2016

Abdul Aziz Ibrahim Pophlunkar

.Petitioner

Vs.

The Maharashtra State Electricity Distribution
Company Limited & anr.

.Respondents

Mr.Rohit D. Joshi Advocate, for the Petitioner

Mr.Nirav Shah a/w. Mr.Anuj Jaiswal i/b. M/s. Little & Co., Advocate,
for the Respondents

CORAM : R.G.KETKAR, J.

DATE : 17.03.2017

P.C.

. Heard Mr. Joshi, learned counsel for the Petitioner and Mr.
Shah, 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 21.10.2015 passed by the learned Judge, Labour Court Mahad, Deputation Civil Judge, S.D. Mahad below Exh.5/D in Special Civil Suit No.23 of 2015 as also the Judgment and Order dated 21.04.2016 passed by the learned District Judge-1, Mangaon, Dist. Raigad in Misc. Civil Appeal No.37 of 2015. By these

Orders, the Courts below rejected the Application made by the Plaintiff for mandatory injunction directing Respondents to forthwith restore the electricity supply as also install new meter.

3. Rule. Mr. Shah waives service on behalf of the Respondent No.2. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. In support of this Petition, Mr. Joshi submitted that the Courts below rejected the Application principally on the ground that the Plaintiff has not deposited or not ready to deposit demand bills of the Defendants under the protest. In paragraph 14, the learned District Judge noted submissions made on behalf of the Defendants based on Rule 25(4)(2) to the effect that power supply of the consumer shall be reconnected only after the full payment/deposit of the assessed amount within 48 hours. In paragraph 15, submission made on behalf of the Defendants that prayer of the Plaintiff for temporary mandatory injunction cannot be granted unless the Plaintiff pays entire assessed amount i. e. Rs.11,45,490/- was also noted.

5. Mr. Joshi submitted that in pursuance of the Order dated 22.02.2017 without prejudice to the rights and contentions of the Plaintiff in pending proceedings, the Plaintiff will deposit Rs.11,45,490/- in the trial Court within two weeks was noted. Mr. Joshi submitted that in pursuance thereof, the Plaintiff has deposited Rs.11,45,490/- in the trial Court on 06.03.2017.

6. On the other hand, Mr. Shah supported the impugned Orders. He submitted that the Electricity Act, 2003 is complete Code in itself. Suit instituted by the Plaintiff is not maintainable and they have to adopt remedy available under the said Act. After arguing the matter for some time, upon taking instructions Mr. Shah states that the Respondents will restore electricity supply as also install new electric meter as was earlier, if the amount deposited by the Plaintiff is remitted in the account of the Defendants. Mr. Joshi submitted that it may also be clarified that in the event Plaintiff succeeds in the suit, the learned trial Judge will pass appropriate order as regards amount so remitted to the account of the Defendants together with interest at the rate as the trial Court deems fit and proper.

7. In view thereof, Petition is disposed of on the following

terms.

(i) The amount deposited by the Plaintiff in the trial Court shall be forthwith remitted in the account of the Defendants;

(ii) Upon remittance of the amount in the account of the Defendants, in terms of the proviso under Section 135 of the Electricity Act, the Defendants shall restore the supply within 48 hours of such payment and also install electric meter;

(iii) The Defendants shall file an undertaking in the trial Court to the effect that in case the Plaintiff succeeds in the suit, they will refund amount of Rs.11,45,490/- to the Plaintiff together with interest at such rate as may be fixed by the trial Court.

8. The impugned Orders stand substituted by this Order. Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R.G.KETKAR, J.)