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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of hearing and Order: 8th August 2017.

+ RFA 60/2009
B.S.E.S.RAJDHANI POWER LTD.

..... Appellant
Through: Mr. Manish Srivastava, Mr. Aditya
Gupta, Mr. Shagun Trisal, Advocates

versus

PRECISION PIPES ANF PROFILES CO.

..... Respondent
Through: Mr. Varun Hans, Advocate

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

ORDER
% **08.08.2017**
P.S. TEJI, J. (ORAL)

1. The present appeal has been filed under Section 96 read with Order XLI Rule 1 of CPC on behalf of the appellant – B.S.E.S. Rajdhani (hereinafter referred to as the defendant/appellant) against the judgment and decree dated 23.09.2008 passed by the learned Additional District Judge, Delhi.

2. The facts of the case in brief are that the plaintiff/respondent had filed a suit through duly authorized person - Shri Yoginder Sharma, Manager (Taxation). The respondent is the registered consumer of the industrial power connection bearing no. 1505216 with the sanctioned load of 120 HP and has been making the payment of the bills regularly. On 10.09.2002 the officials of the appellant/

defendants inspected the respondent's premises and found the connected load as 98.68 KW against the wrongly mentioned sanctioned load of 46.33 KW despite the fact that the sanctioned load of the respondent is 120 HP. According to the respondent, the appellant seems to have inspected the other part of the premises which is occupied by M/s. Progressive Equipment Pvt. Ltd. having its own connection and the officials of the appellant have made some false and frivolous report that the respondent is also the user of the said connection. The appellants had also taken some action against the said firm but the appellant through its Superintendent Engineer (south) served a show cause notice to the effect that the respondent was sub letting the electricity to the said firm. On 07.11.2002, a representation was made by the respondent but without considering the same the superintendent passed a false order on 02.11.2002 according to which LIP tariff is to be levied clubbing the connection of M/s. Progressive Equipments Pvt. Ltd. with that of the respondent.

Thereafter the respondent had filed the suit for injunction against the order of the Superintendent Engineer but the appellant served a notice of disconnection and alleged dues of Rs.7,96,641.20p were claimed to be outstanding towards the plaintiff/respondent. It is stated that the defendant/ appellant cannot arbitrarily club the two connections of two parties and each connection was sanctioned under separate agreements and the said agreements have never been changed or transformed. It is alleged that the Connection No.009-462989 IX as mentioned in the impugned notice is that of M/s. Progressive

Equipment whereas the notice has been issued in the name of M/s. Precision Pipes and Profiles Company Limited. It was further stated that the impugned bill cannot be raised as Progressive Equipment Pvt. Ltd. has got its own separate connection and the bills cannot be clubbed as both the firms have their own independent and separate identities and the bills against the plaintiff/respondent cannot be raised on the basis of LIP or in other firm since the defendant/appellant has already raised the bills of these two connections of the plaintiff/respondent clubbing the two connections. Accordingly the plaintiff/respondent had approached the court requesting for declaring the demand for sum of Rs.7,96,641.20 p as null and void and for restraining the defendant/appellant from disconnecting the electricity supply of the plaintiff/respondent.

3. In response to the suit filed by the plaintiff/respondent the defendant/appellant filed his written statement, in which he had raised a preliminary objection that the suit was liable to be dismissed under Order 7 Rule 11 (B) as the plaintiff/respondent had under-valued the suit because the demand of the defendant/appellant raised against the consumer is of Rs. 13,85,353.92 p but has fixed the court fees for the amount of Rs.7,96,641.20 p. It is also stated that the plaintiff/respondent is not entitled to any relief and is liable to be dismissed under Section 41 of the Specific Relief Act. According to the defendant/appellant, the premises of the respondent was inspected on 10.09.2002 where two connections were found installed i.e one bearing no. K. no. 009-4629897 with the connected load of 89.595

KW against the sanctioned load of 123.76 HP and the CT box seals were found fictitious and another bearing K. no. NP-011-1505216 with the connected load of 98.68 KW against the sanctioned load of 46.33 KW and both the connections were being used by the respondent/plaintiff. The show cause notice was issued by the concerned authority of the appellant to the plaintiff/ respondent and the speaking order of FAE bill for a sum of Rs. 13, 85,353.92 p against the plaintiff has also been passed by the defendant.

4. After the completion of pleadings by the parties, following issues were framed by the Court below:

a) *Whether the plaintiff was user of the connection K. no. NP-009-462897/IX/IP? If so, whether the load of K. No. could be added to the load of K. no. NP/011/1505216/IX and the defendant could raise the demand on the basis of LIP tariff? OPD*

b) *Whether the defendant has passed any speaking order during the pendency of the suit? If so, its effect? OPD*

c) *Whether the impugned demand raised by the defendant is illegal and void? OPP*

d) *Whether the plaintiff is entitled to the relief of declaration and injunction as claimed? OPP*

e) *Relief.*

5. After considering the material available on record and the deposition of the witnesses, the learned trial court had passed the impugned judgment and decree dated 23.09.2008, vide which the demand raised by the defendant/appellant on the basis of intermixing

and FAE for a sum of Rs.7,96,641.20p was held illegal, null and void but defendant/appellant was held to have proved the excess connected load on the date of inspection and it was granted liberty to raise a revised bill on the basis of the connection load found on the premises of the plaintiff/respondent within 30 days from the receipt of judgment. It was also directed to give adjustment for a period of 6 months prior to the date of inspection and also adjustment of the amount already deposited by the plaintiff/respondent.

6. Aggrieved by the aforesaid judgment and decreed dated 23.09.2008 passed by the learned ADJ, the appellant has preferred the instant appeal and raised the contention that the Joint Inspection Report dated 10.09.2002 clearly establishes that the K.No.0094629897/IX/IP was being used by the respondent of which the seal of CT Box was found to be fictitious at the time of inspection and same was not denied by the respondent herein. It is further contended that the details of intermixing has been proved by the appellant and the inspection and load report is also proved from the evidence of Mr. O.P. Pawar, who had proved the same, wherein it was clearly mentioned that both the connections were being used by the respondent. It is further contended that the clubbing of more than one connection for classification under SIP or LIP category is permissible under statutory tariff order and the terms and condition of the supply form an integral part of the tariff, being statutory in nature. It is further contended that the speaking order dated 12.11.2002 categorically mentions that the plaintiff/respondent had been found to be using both

the connections, therefore the levy of LIP tariff is justified. Accordingly, the appellant has prayed for setting aside the judgment and decree dated 23.09.2008 passed in CS No.90 of 2005.

7. Arguments heard on behalf of the parties and the record of trial court is perused.

8. The onus of proving Issue No. 1 is upon the defendant/appellant and the case of the appellant is that when the officials of the appellant had inspected the respondent's premises bearing No. 70, Okhla Industrial Estate, Phase III, New Delhi-20, on 10.09.2002, two connections were found installed i.e K. No. 009-4629897 with the connected load of 123.76 HP and the CT box seals were found fictitious and K. no. NP-011-1505216 with the connected load of 98.68 KW against the sanctioned load of 46.33 KW on which a show cause notice was issued to the respondent for LIP. It is also alleged that a bill for a sum of Rs. 13,85,353.92 p was raised against the respondent by the appellant.

9. So far as the Issue No.2, since the demand is raised by the defendant/appellant therefore the onus to prove this issue was on the defendant/appellant. It is a matter of record that during the course of proceedings a speaking order was passed after giving personal hearing to the representative of the plaintiff/respondent. Only one witness has been examined by the appellant namely O.P Pawar who has proved the Inspection Report dated 10.09.2002 which is Ex. DW 1/1.

Therefore, the demand raised by them pursuant to the said order is valid and legal.

10. The onus to prove Issue no. 3 is upon the plaintiff/respondent where the respondent had alleged that their firm had never used the connection in the name of M/s. Progressive Equipment Pvt. Ltd. and therefore it cannot be clubbed with that of the respondent and hence the order passed by the SE is illegal. The only witness DW-1 had admitted that the photographs of the intermixing had been taken but the same had not been produced and proved in the court, therefore, the learned ADJ has rightly drawn adverse inference against the defendant. It was necessary for the defendant to have proved that the connections of M/s. Precision Pipes and Profile Ltd and M/s. Progressive Equipments Pvt. Ltd. had been found intermixed, details of which have not been proved. The witness had admitted that both the companies are having separate meters and getting separate bills and are paying separate income tax. The report (DW-1/1) does not find any corroboration from the independent material, though there is an allegation of fraudulent abstraction of energy, but the defendant had simply stated that the meter of the respondent was found tampered. Therefore, the demand raised by the defendant/appellant on the basis of LIP and also on the basis of fraudulent abstraction of energy is illegal and invalid. So far as the allegations of excess load is concerned it has been proved by the witness that the plaintiff/respondent was using the load of 98.68 KW against 46.33

KW, therefore the demand raised by the defendant/appellant so far as the excess load is held legal.

11. So far as the Issue No. 4 is concerned, this is interconnected with Issue No.3. with regard to the entitlement of the relief claimed by the defendant. Apparently, the Issue No.3 is consequent to the Issue No.1. The office of the defendant was inspected on premises No.70, Okhla Industrial Estate, Phase III, New Delhi where two connections were found installed with the connected load of 98.68 KW and the sanctioned load was 46.33 KW for LIP. Admittedly, the above mentioned load of 123.76 HP, the connections falls to the SE category and notice to make the payment accordingly was issued. The case of the defendant is that there was interconnectability to decrease the load of one connection and bring it to less than 100 and shifted to the other. But in both the connections, the load has not been shown to be more than 100 KW and sanctioned load of both the LIP connection was less than 100 KV, which brought the load of both the connections within permissible limit for LIP. But the defendant proceeded on the basis of Fraudulent Abstraction of Energy (FAE). Apparently, no fraudulent abstraction of energy has been demonstrated while raising the demand of Rs. 7,96,641.20p by the defendant, which demonstrates the failure on the part of the defendant to bring its demand of Rs. 7,96,641.20p under the FAE and resultantly the Issue No.1 deserved to be decided against the defendant and in favour of the plaintiff. As a result thereof, Issue No.3 automatically deserved to be decided in favour of the plaintiff and against the defendant. Issue No.4 is consequential in

nature with regard to the entitlement of the relief claimed by the plaintiff.

12. The grievance of the plaintiff/respondent is that in the present case two demands were created by the defendant/appellant; one is on the basis of the intermixing i.e. for Rs.13,85,353.92p against the plaintiff/respondent and the other is for *Fraudulent Abstraction of Energy (FAE)* for sum of Rs.7,96,641.20p. *The argument advance is that the plaintiff/respondent had filed a suit for declaration and permanent injunction seeking the declaration that the impugned bill for a sum of Rs. 7,96,641.20p issued by the defendant/appellant be declared as illegal, null and void and is not payable by the plaintiff/respondent. Further it was prayed to pass a decree of permanent injunction in favour of the plaintiff and against the defendant thereby restraining the defendant and its officials etc. from taking any action against the plaintiff on the basis of the order dated 12.11.2002 passed against the plaintiff and also from disconnecting the above connection in dispute on the basis of notice of disconnection dated 02.01.2003 in respect of Connection bearing No. NP/1505216 IX installed in the name of the plaintiff at 70, Okhla Industrial Estate Phase III, New Delhi on the basis of the impugned and illegal bill of Rs.7,96,641/20p.*

13. Learned counsel for the defendant/appellant argued that while granting the relief, the court below declared the impugned demand, as raised, by the defendant on the basis of intermixing and FAE for sum of Rs.7,96,641/20p as illegal, null and void. Whereas the bill for the

intermixing for a sum of Rs.13, 85,353.92 was not under challenge in the present suit and the observation made would affect the demand raised on account of the intermixing. During the course of argument, it is revealed from the record, which is an admitted position by the parties, that in the present case only FAE bill has been declared illegal, null and void and no relief has been granted in regard to the intermixing. It is just in the passing reference where on the basis of intermixing word is mentioned, the party had agreed that it should be clarified by the court that the bill raised by the defendant on the basis of intermixing and FAE for the sum of Rs.7,96,641.20p as null and void needs to be rectified to the effect that the bill raised by the defendant i.e. FAE for sum of Rs. 7,96,641.20p is illegal, null and void.

14. During the course of arguments, it has been submitted that the grievance of the defendant/appellant is that while dealing with the present case, the learned Trial Judge, during discussion as well as, at the time of granting the relief, has mentioned that *'I hereby declare the impugned demand raised by the defendant on the basis of intermixing and FAE for a sum of Rs.7,96,641.20 as illegal, null and void.'* So, the same may affect the claim of appellant in other proceedings.

15. Admittedly, the relief granted to the plaintiff is only with regard to the sum of Rs.7,96,641.20p with regard to the amount on account of the FAE and intermixing. It is therefore, clarified that so far as the purpose of the suit is concerned, since relief is granted in FAE and

intermixing, the subject matter of the suit would be restricted to the demand basing on the FAE and intermixing of Rs.7,96,641.20p and not for any other bill of Rs.13,85,353.92p. It is ordered accordingly and the judgment and decree is modified to the extent indicated above.

16. In nutshell, after considering the contentions raised by the appellant, impugned judgment and the material placed before this court is of the considered opinion that the impugned judgment passed by the learned Additional District Judge is a well reasoned order and all the issues as well as evidence recorded to prove them have been properly dealt with, which call for no interference from this court. Finding no merit in the appeal filed by the appellant the same is hereby dismissed and the impugned judgment and decree dated 23.09.2008 passed by learned Additional District Judge is upheld while modifying the judgment to the extent indicated above. Decree sheet be prepared accordingly subject to modification as mentioned above.

17. Parties are left to bear their own costs.

P.S.TEJI, J

AUGUST 08, 2017

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