

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : October 27, 2017

+ RFA 40/2009
MANJEET KUMAR

..... Appellant

Through: Mr. V.K. Goel, Advocate

versus

NORTH DELHI POWER LTD.

..... Respondent

Through: Mr. Manish Srivastava, Mr. Shagun
Trisal, Advocates

CORAM:

HON'BLE MR. JUSTICE P.S. TEJI

JUDGMENT

P.S. TEJI, J

1. Aggrieved by the judgment and decree dated 02.12.2008 passed by the learned Additional District Judge, Delhi in Suit No. 5/2006, the appellant has preferred the instant appeal under Section 96 of CPC.

2. In nutshell, the facts of the case are that three electric connections being K.Nos. 33200475344, 33205012639 and 33200137295 were installed at B-223, Naraina Industrial Area, Phase I, New Delhi and were sanctioned for industrial purpose in the name of the appellant herein. The appellant paid the bills received against all the aforesaid connection numbers. On 07.02.2005, all the three connections got amalgamated and consequently an HT connection of 225 KW with K.No.331032051393 was provided w.e.f. February 2005. The appellant made regular payments of the bills received in respect of the new HT connection. In the month of August 2005, the

bill with an arrear of Rs.4,09,840.69 was raised on account of short charges for the earlier three meters, which was paid by the appellant in three installments i.e. in the bill of August, September and October 2005 alongwith the dues for respective months. In October 2005, another sum of Rs.5,09,250/- was added by the respondent alleging that the data of meter against earlier K.No.33200137295 was downloaded on 18.07.2005 and while analyzing, it was found that one Dial Over was missing from the billing and the same was charged in the bill of October 2005. The appellant challenged the same by way of preferring a suit before the court below on the ground that the said earlier connection was installed on 22.11.2003 and he was regularly paying the bills, therefore there was no question of any missing dial over. The said meter was removed on 07.02.2005 at a reading of 87695 and the bills in respect of that meter were paid up to date. The data downloading was stated to have been done on 18.07.2005 by the respondent at their end and that too without any information or knowledge of the appellant. The respondent declared that there was one dial over. The appellant raised a plea before the trial court that considering the reading of meter as 87695 on the date of removal of the meter i.e. on 07.02.2005 there was no question of claiming any short damages in bill of August 2005 as the appellant was never offered any chance to witness the analysis of CMRI data. Further plea of the appellant was that the CMRI data and story of one additional dial over was totally fabricated by the respondent therefore the demand raised by the respondent was illegal.

3. In response to the suit filed by the appellant before the trial court, the respondent filed its written statement justifying that the demand was raised correctly on account of the third dial over of the reading in respect of the aforesaid meter, which was removed on 07.02.2005. It was stated that the meter data was downloaded with the help of CMRI on 18.07.2005 which was analyzed and it was found that there was one extra dial over of one lac reading. Since the appellant had consumed the energy through the aforesaid meter and the same could not be charged by the respondent due to the extra dial-over of the reading of the meter, therefore the matter was processed and the demand of Rs.5,09,250/- was raised as reflected in bill for October 2005. The explanation given by the respondent was that the aforesaid meter was of ABB make and as per software installed in the said meter, it was not displaying the reading of more than 5 digits and for that technical reason, the demand could not be raised earlier. It was further stated that the appellant had no right to challenge the CMRI data which was based on scientific and logical principles. To support its averment, the respondent had also explained its reasoning in calculating the amount of arrears with regard to justify its demand.

4. Upon pleadings of the case before the court below, the learned ADJ had framed the following issues:

1. *“Whether the impugned demand raised by the defendant is legal and valid and has been raised on the basis of dial over of the units? (OPD)*

2. *Whether the plaintiff is entitled to the relief of declaration as asked for in the plaint? (OPP)*
3. *Whether the plaintiff is entitled to the relief of permanent and mandatory injunction as asked for in the plaint? (OPP)*
4. *Relief.”*

5. In support of his contentions, the appellant examined himself as PW-1 as a sole witness and filed his examination in chief by way of affidavit and corroborated the submission as already made in the plaint and placed on record copy of bills, reading charts, letters of the appellant and copy of the protocol of the meter installation. However, the respondent examined its Client Manager, KCG Mani Bhushan Prasad who had corroborated the submissions as were made in the written statement. He had also placed on record the copies of the bill, copy of the CMRI data and copy of the meter protocol.

6. After considering the pleadings of the parties, evidence recorded and the documents relied upon by the parties, the learned ADJ had passed the impugned judgment thereby dismissing the suit of the plaintiff/appellant holding that the plaintiff/appellant is not entitled to any relief of declaration and permanent injunction as prayed for. Therefore, the appellant has filed the present appeal challenging the impugned judgment and decree dated 02.12.2008.

7. The appellant has challenged the impugned judgment and decree on the ground that the meter in question was installed on 22.11.2003 and regular readings were being recorded and from the readings it was clear that there was no question of any missing dial over. The meter was removed on 07.02.2005 having a reading of 87695, bill in respect of which was fully paid including short charges paid in the bill of August 2005. It is further contended that the alleged meter was removed from the premises of the appellant on 07.02.2005 and the data downloading was stated to have been done on 18.07.2005 by the respondent without any information or knowledge of the appellant. Since the meter was removed from the site more than five months back and the same was in the custody of the respondent, therefore, in such a situation, the self style version of the respondent cannot be accepted as correct especially in view of the fact that regular rising readings of the meter were being recorded at site every month and no irregularity was observed at any point of time. More so, no detailed analysis of CMRI data was done in the presence of the appellant or his representative. Lastly it is contended that the consumption pattern of the appellant shows a consistent and regular trend. One extra dial of 1 lac units does not fit anywhere. On the aforesaid grounds, the appellant sought for quashing and setting aside the impugned judgment and decree dated 02.12.2008 passed by learned ADJ in Suit No. 5/2006.

8. The counsel representing the respondent, on the other hand, contended that the demand raised by the respondent is purely based on

readings detected through CMRI data. As the said data was retrieved from the ABB meter and the same was not able to display the reading of more than 5 digits and was incapable of showing 6 digits, therefore there is a dial over after 99999 and the dial over of one lakh unit is required to be given, which could only be downloaded through the CMRI data. Therefore, it is urged that the impugned judgment and decree passed by the learned ADJ need not to be interfered with as it does not suffer from any illegality or infirmity. However, the appeal filed by the appellant is liable to be rejected.

9. I have heard the submissions made on behalf of counsel appearing for both the sides and also gone through the material placed on record as well as the impugned judgment and decree passed by the learned ADJ.

10. Upon perusal and careful scrutiny of the impugned judgment and decree passed by the learned ADJ, this court finds that after framing three issues out of which first issue was decided in favour of the respondent and against the appellant and other two issues, onus whereof was upon the appellant, were held against the appellant thereby holding the appellant not entitled to any relief of declaration and permanent injunction.

11. The only question which arose before this court is that whether the demand of Rs.5,09,250/- raised in October 2005, against the electric meter which was removed in the month of February 2005 on behalf of the respondent is justified or not. This court observes that the

learned ADJ had considered the scientific evidence which was in the form of CMRI data which had been placed before it, on the basis of which the analysis was done. Though PW-1 in his cross-examination showed his ignorance about the meter being of ABB type, but on the basis of the deposition of the witness of the respondent who had specifically deposed that the meter installed at the site was an electronic ABB meter and could not display the reading of more than 5 digits due to which there was a dial over after 99999 and the dial over of one lakh units was required to be given which could only be found by downloading the CMRI data. The learned ADJ relied on the provisions of Section 85(b) of the Indian Electricity Act which specifically mentioned that there is a presumption of correctness of the electronic record unless the contrary is proved. Apart from this, the learned ADJ observed that the meter was removed from the premises of the appellant on 07.02.2005 which remained in the possession of the respondent and had not been installed at any site till 18.07.2005, when the CMRI data was downloaded, electronic record of which was placed before court as Ex. DW-1/2.

12. The learned ADJ had observed that despite the fact that the manner in which the data has been downloaded in the absence of the appellant or his representative almost five months after the meter has been taken in custody by the respondent is highly improper yet the entire scientific data placed before the court cannot be discarded on this account. It further went on to observe that there is a presumption of correctness of electronic data which the appellant has not been able

to rebut. The extract of reasoning given by the learned ADJ is reproduced as under:

“...The meter in question which was of ABB type is an electronic meter having a secured data and there is nothing on record to show that there has been a tampering in the data or the meter at any point of time. The analysis of the previous data downloaded from the same meter on which the demand had been raised by the defendant for 2,87,695 units and was not disputed by the plaintiff only shows that there was a deficiency of one lac units which deficiency is evident from the reading sheets placed on record by the defendant and the consumption during the period 23.07.2004 to 07.02.2005 which has not been disputed by the plaintiff can be derived by subtracting the values for the cumulative reading for the period prior to 23.07.2004 and the cumulative readings taken on 07.02.2005 which show figures in negative and is impossible being an irregularity. This irregularity can only be overcome by adding 6 digits to the readings in the table in view of the roll over/dial over which is the case of the defendant and the consumption for the said period is for 387695 units after three dial overs in the reading whereas the earlier demand had only been raised for 287695 units (1 lac less as the third dial over was not added). Having analyzed the data again on 18.07.2005

the third dial over was noticed from the CMRI data and thereafter the additional demand which is now under challenge was raised by the defendant. According to the defendant, the analysis has also been done on the basis of the average power factor recorded by the meter which is also one of the quotients as evident from the CMRI reading. The power factor is the resultant of KWH consumption divided by KVAH consumption as per the CMRI data the power factor for the period 23.7.2004 to 7.2.2005 has been recorded as 0.88 on the basis of formula $[KWH \text{ units}/KVAH \text{ units} = \text{Power Factor} (226661.2935/257392.302 = 0.880)]$. However, in case if the argument of the plaintiff regarding the third dial over of 1 lac unit being regularly done is taken to be correct, then under these circumstances on the basis of the aforesaid formula the power factor result would be as under:

$$-38965.84 / -9381 = 4.15$$

Similarly by applying the same formula the result derived by putting 1 lac dial over units to power factor would be $161,034.17 / 190,618.05 = 0.84$ and therefore, under these circumstances, I hold that not only on the basis of the power factor of the CMRI data but also on cross-check on the basis of the power factor by applying the formula of KWAH/KVAH units as evident from the CMRI

data downloaded, the demand raised by the defendant on the basis of the additional 1 lacs dial over units is legal and valid.”

13. In the light of the aforesaid reasoning of the learned ADJ, this court observes that the demand so raised by the respondent is not only legal and valid on the basis of the power factor of the CMRI data but also legal and valid while applying the formula of the KWAH/KVAH units.

14. Since the issue of demand raised by the defendant is held to be legal and valid and the same is found to have been raised on the basis of dial over of the units, therefore, no relief could be granted to the plaintiff/appellant with regard to Issue Nos. 2 and 3. Therefore, this court does not find any irregularity or infirmity in the impugned judgment and decree passed by the learned ADJ, therefore, the same is hereby upheld and the appeal filed by the appellant is dismissed.

15. The parties are directed to bear their own costs.

16. Copy of this order be sent to the concerned court for reference and record.

(P.S.TEJI)
JUDGE

OCTOBER 27, 2017

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