

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : October 13th, 2017

+ RFA 67/2007

BSES YAMUNA POWER LIMITED Appellant

Through: Mr.Manish Srivastava, Mr.Aditya
Gupta, Mr.Shagun Trisal and
Mr.Vikrant S.Chauhan, Advs.

versus

SH.RAMESH LADHA Respondent

Through: Mr.Fanish K. Jain and Mr.Neeraj
Gahlaut, Advs.

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

JUDGMENT

P.S.TEJI, J.

1. The present appeal has been filed by the appellant under Section 96 read with Order XLI Rule 1 of the CPC against the judgment and decree dated 30.10.2006 passed by the learned Additional District Judge, Delhi whereby the suit filed by the respondent/plaintiff has been decreed in favour of the respondent/plaintiff and against the appellant/defendant.

2. The facts enumerating from the record are that the respondent/plaintiff had filed a suit for declaration, mandatory and permanent injunction for declaring the inspection report dated 02.06.2000 and subsequent reports and action of the defendant in not replacing the

burnt meter and not restoring the electricity as well as bill of Rs.3,10,400/- as null and void, mandatory injunction directing the defendant to restore the electricity supply and a decree of permanent injunction restraining the defendant from demanding the amount of impugned bill. The plaintiff had contended that he was a registered consumer of defendant in respect of K. No.611-1547968 installed at GF-8/130, Karan Gali, Vishwas Nagar, Shahdara, New Delhi for industrial purpose. The sanction load was 7.5 HP but the plaintiff voluntarily disclosed it as 51 K.W. On 02.06.2000, officials of the defendant inspected the premises of the plaintiff and prepared an inventory of the machine installed in the premises and calculated the connected load. The officials assessed the total load as 51.598 KW. A paper was affixed on the meter box of the plaintiff. On 22.06.2000, a fire broke out in the premises and the same was extinguished. In the said fire, the electricity meter also got burnt and the plaintiff informed the same to the defendant on 23.06.2000. Thereafter, the electricity supply was disconnected from the pole.

3. In their written statement, the defendant contended that a joint inspection was carried out at the premises of the plaintiff on 02.06.2000. The load and MTD report were prepared in the presence of plaintiff. During inspection, it was observed that the connected load of 51.598 KW was connected against the declared load of 51 KW. During meter checking, seals of CT box were found missing. A paper seal was affixed on the meter duty box. On the basis of inspection, a show cause notice dated 14.07.2000 was issued to the

plaintiff and called for personal hearing on 21.07.2000. The plaintiff attended the hearing on 21.07.2000 but the reply submitted by him was not found tenable and an assessment demand for theft was raised against the connection. On 29.06.2000 another inspection was carried out with regard to the burnt meter.

4. On the basis of pleadings of the parties, following issues were framed :

(i)Whether DVB conducted illegal inspection on 2.6.2000 and raised illegal impugned bill for Rs.3,10,400/-?

(ii)Whether plaintiff is entitled to decree of declaration?

(iii)Whether plaintiff is entitled to decree of mandatory injunction?

(iv)Whether plaintiff is entitled to decree of permanent injunction?

(v)Whether the plaintiff has not come to Court with clean hands and suppressed the material facts?

(vi)Relief.

5. The Court below also framed following additional issues :

(i)Whether at the time of inspection dated 2.6.2000 the CT meter box seals of the lower side were found missing as mentioned in the inspection report, if so, its effect?

6. Issue no.1, additional issue no.1 and issue nos.2 to 4 were decided in favour of the respondent/plaintiff and against the appellant/defendant. Issue no.5 was decided against the appellant/defendant. A decree of declaration was passed declaring the inspection reports prepared pursuant to the inspection and entire action of defendant in not replacing the burnt meter and not restoring the electricity supply to the plaintiff's premises as well as impugned bill of Rs.3,10,400/- as null and void. A decree of mandatory injunction was passed directing the appellant/defendant to restore the electricity supply to the premises of the plaintiff. A decree of permanent injunction was also passed in favour of the plaintiff from demanding a sum of Rs.3,10,400/- vide bill dated 11.08.2000. Being aggrieved by the impugned judgment and decree passed, the present appeal has been preferred.

7. Arguments advanced by the counsel for the parties were heard and I have gone through the evidence, documents and material available on record.

8. The issue in question is whether the CT meter box seals on the electricity meter of the plaintiff/respondent were found missing or not. As per the testimony of appellant/defendant's witness DW2 Braham Pal, there is nothing in his testimony to this regard. As per testimony of DW1 R.K. Jain, he found one lower side seal missing at the time of inspection of the premises of the plaintiff/respondent. He had deposed that the consumer could pick up a door up to half-3/4 from the lower side from the accessibility. He further deposed that they presumed that consumer might have picked the door. He further stated that they had

not observed anything else. There is nothing in the testimony of DW1 R.K. Jain to the effect that the lower side seal of CT box was missing or that the plaintiff/respondent had done anything wrong to illegally abstract the energy. It can easily be inferred that if one seal on the lower side of CT box was missing, there was no effect on the working of the electricity meter.

9. The other question for consideration is whether the inspection conducted by the officials of the appellant/defendant on 02.06.2000 was illegal and the bill raised consequent thereto was illegal. The plaintiff/ respondent in his testimony had categorically deposed that the inspection by the officials of the appellant/defendant conducted at his premises was illegal. The defendant witness DW1 during his cross-examination had stated that as per report Ex.DW1/1, there was no allegation of tampering with the machine. The seals affixed on the CT and CT box were in a proper condition. He further stated that they had presumed that the consumer might have picked a door. DW2 Braham Pal had stated that the report Ex.DW2/1 was prepared by Sh.N.K. Gupta. He stated that he did not check the load of the premises of the plaintiff/ respondent. He further stated that he had not checked the meter. Neither did he check the meter nor prepared the report, which shows that the testimony of DW2 is of no consequence.

10. So far as the testimony of the other defendant witness DW1 R.K. Jain is concerned, he had stated in his testimony that they had only presumed that the consumer might have picked up the door as one lower seal of the CT box was missing. There was no evidence to

show that any attempt was made through the lower side of CT box or there was any tampering with the machine. Thus, there is no legality in the inspection carried out by the appellant/defendant and the same was in fact illegal. Since the inspection dated 02.06.2000 was illegal, the consequent bill raised upon the plaintiff/respondent also becomes illegal.

11. In view of the discussion made above, no error has been found in the judgment and decree passed by the Court below and the same is accordingly upheld. The appeal is accordingly dismissed.

12. No order as to costs.

(P.S.TEJI)
JUDGE

OCTOBER 13, 2017
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