

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

+ **RFA No. 1028/2017**

% **8<sup>th</sup> December, 2017**

HARPREET SINGH BHATIA ..... Appellant  
Through: Ms. Palak, Advocate.

versus

NORTH DELHI POWER LTD. .... Respondent

**CORAM:**  
**HON'BLE MR. JUSTICE VALMIKI J. MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J**

**RFA No. 1028/2017 and C.M. Appl. No. 44569/2017 (for restoration of electricity connection in the premises of the appellant)**

1. This first appeal under Section 96 of the Code of Civil Procedure, 1908 is filed by the plaintiff in the suit impugning the judgment of the trial court dated 25.10.2017 whereby the trial court has dismissed the suit filed by the appellant/plaintiff for declaration and permanent injunction. Appellant/plaintiff by the suit plaint sought the relief against the respondent/defendant against disconnecting the electricity supply by not transferring to the account of the new electricity connection the amount of Rs.4,66,840/- against an old

electricity connection in the same premises and which connection was disconnected on account of non-payment of dues. In sum and substance, by the plaint the appellant/plaintiff claims that dues of the old electricity connection which was disconnected for non-payment should not be added to the dues for the new connection in the very same premises, and which contention of the appellant/plaintiff has been rejected by the trial court by referring to the ratio of the judgment of Division Bench of this Court in the case of ***Madhu Garg and Anr. Vs. North Delhi Power Ltd., 129 (2006) DLT 213 (DB).***

2. The facts of the case are that the appellant/plaintiff filed the subject suit pleading that with respect to the electricity connection existing in the premises and having K No. 33100126373 all charges were regularly being paid by the appellant/plaintiff and it is on 10.11.2008 that the respondent/defendant sent a notice stating that there are outstanding dues with respect to an old electricity connection bearing K No. 33100120526 in the same very premises and dues of such old connection, which was disconnected on account of non-payment of dues have to be paid by the appellant/plaintiff inasmuch as such dues of the old connection are liable to be added to the dues

payable under the new connection. The dues with respect to the old electricity connection which was disconnected for was an amount of Rs.3,73,206/-. Appellant/plaintiff sent a reply dated 16.11.2008 to the notice of the respondent/defendant dated 10.11.2008 that he was a tenant in the premises and had no knowledge of the old connection and consequently the respondent/defendant was requested not to transfer the dues of the old connection to the account of the new connection of the appellant/plaintiff. The officers of the respondent/defendant thereafter visited the premises on the 5.10.2010 and sought to disconnect the electricity supply. Appellant/plaintiff sent a letter dated 6.10.2010 and followed it up by the legal notice dated 27.10.2010 to the respondent/defendant to withdraw their impugned notice, and eliciting no favorable response, the subject suit was filed.

3. Respondent/defendant contested the suit and pleaded that it was entitled to recover the amount due against the old connection from the new connection of the appellant/plaintiff in the same premises. The action of the respondent/defendant is as per Clause 2.1 (iv) of the General Conditions of Supply.

4. After pleadings were complete the trial court framed issues and parties thereafter led evidence. These aspects are noted in paras 7 to 10 of the impugned judgment, and which paras read as under:-

**“Plaintiffs' Evidence**

7. In order to prove his case, plaintiff has examined himself as PW-1 who filed his evidence in examination-in-chief by way of affidavit Ex. PW1/A wherein he reiterated the contents of the plaint on oath. PW-1 has relied upon the following documents:-

1. Letter dated 10.11.2008 as Ex. PW1/1.
2. Reply dated 16.11.2008 as Ex. PW1/2.
3. Copy of letter dated 03.08.2010 as Ex. PW1/3,
4. Notice dated 12.02.2010 as Ex. PW1/4,
5. Letter dated 06.10.2010 as Ex. PW1/5,
6. Copy of legal notice dated 27.10.2010 as Ex. PW1/6
7. Postal receipts as Ex. PW1/7 (colly)
8. Electricity bills as Ex. PW1/8 (Colly)
9. Letter dated 21.12.2010 as Ex. PW1/9
10. Letter dated 31.12.2010 as Ex. PW1/10,
11. Bill of September 2011 as Ex. PW1/11,
12. Copy of disconnection notice dated 28.09.2011 as Mark A
13. Copies of five cheques as Mark B (colly).

8. PW-1 was cross-examined on behalf of the defendant and then discharged. No other witness was examined by the plaintiff. Thereafter, PE was closed.

**Defendants' Evidence**

9. Defendant company examined Sh. Naresh Kumar , Manager as DW-1. He has tendered his affidavit in examination-in-chief in evidence as Ex.DW1/A wherein he has reiterated and reasserted the contents of the written statement on oath. DW-1 has relied upon documents which are as follows:

1. Verification report dated 03.02.2010 as Mark A.
2. Notice dated 12.02.2010 as Ex. DW1/2. The same was already exhibited by plaintiff as Ex. PW1/4.
3. Courier receipt dated 02.06.2010 as Mark B.

10. DW-1 was cross-examined on behalf of plaintiff and then discharged. No other witness was examined by the defendant. Thereafter, DE was closed.”

5. The only relevant issue before the trial court, and also before this Court, is as to whether the respondent/defendant can transfer the dues of an old electricity connection installed in the same premises to the dues of the new electricity connection in the same premises. This aspect has been held in favour of the respondent/defendant in the terms of the ratio of the Division Bench judgment of this Court in the case of *Madhu Garg (supra)*, and the relevant para of the trial court in this regard is para 17, and which para reads as under:-

“17. All the notices and reply which were exchanged between the parties have been admitted. The only issue which has to be decided by this court is whether legally defendant can transfer the old dues pending against the old connection to the new connection installed in the same premises. Number of judgments have laid down the law on the said aspect. However, the landmark judgment in this regard has been passed by the Hon'ble High Court in the case titled as Madhu Garg and anr vs North Delhi Power Limited, 129 (2006) DLT 213 (DB). In the said case also the issue before Hon'ble High Court was that if there are electricity dues against the owner of premises who transfers the premises to new owner, can the new owner be compelled to pay the electricity dues of the previous owner and can the electricity department/company refuse to supply electricity to the premises for such non-payment. The Hon'ble High Court has distinguished the judgment of the Hon'ble Supreme Court passed in the case of Isha Marbles vs Bihar State Electricity Board, (1995) 2 SCC 648 and has held as follows:-

“14. In our opinion, there is no distinction between the purchaser of a premises who was aware that there were outstanding electricity dues against the previous owner/tenant, and one who was not aware of it. In either case, the dues have to be paid by the new owner/occupant before supply can be continued/restored. This is because of the statutory provision contained in Clause 2(iv) of the General conditions of Supply which has been quoted above.

15. In our opinion, whenever a person purchased a property, it is his duty to find out whether there are outstanding electricity dues in relation to the premises or not, and he cannot be allowed to say later that he was unaware of the fact that there were electricity dues of the previous owner/tenant.

16. In view of the General Condition of Supply, it is the duty of the new owner/occupant to himself make enquiries and find out whether there was such dues or not. The General conditions of supply are statutory in nature (being delegated legislation), and hence the question of bonafide or malafide does not arise and in either case the new owner/occupant of the premises has to pay the dues against the previous owner/tenant, if he wishes the electric supply to be continued restored. 17. It is obvious that the purpose of framing clause 2.1 (iv) of the General Conditions of Supply was that many persons against whom there were huge electricity dues tried to avoid payment of the same by selling/transferring the property, and in this way the electricity department/electricity company could not recover its dues. In our opinion, there is no illegality or unconstitutionality in Sub-Clause (iv) of clause 2 of the General Condition of Supply.

18. It may be mentioned that in Hyderabad Vanaspati Ltd vs A.P State Electricity Board, IV(1998) SLT 182= AIR 1998 4SCC 1715, the Supreme Court took the view that even in the absence of a contract the terms and conditions of supply will be governed by the statutory Regulations and they will be applicable to the consumers who will be bound by them.....

“27. In our opinion, an interpretation of the law which furthers the preservation and protection of public property ought to be adopted. If arrears of electricity charges outstanding in respect of electricity supplied to a premises were to be permitted to be equated with a contractual claim of damages, it would encourage dishonest consumers to raise some dispute or other in respect of such arrears and evade the consequences of non-payment of electricity charges viz disconnection/ non-resumption of supply.

28. In our opinion, the decision in Isha Marbles vs BSES and Anr, which has been heavily relied upon by the writ petitioner is clearly distinguishable, as the Supreme Court observed therein that it was due to inadequacy of the law as applicable in the State of Bihar that arrears cannot be realized from the subsequent purchaser. However, the law applicable in Delhi is different in as much as there is a statutory condition of supply which requires payment of such outstanding dues before resumption/continuation of electricity supply.

29. In our opinion, the condition of supply relates to Section 49 of the Electricity (supply) Act as well as Sections 11 and 28 of the DERA. The court has consistently held that the condition of supply forms an integral part of the tariff and does not require approval of State Legislature. In fact, Clause 2.1(iv) of the Conditions of Supply was formulated by DESU(DVB) as far back as in 1997-98 and thereafter adopted by DERC in 2001-2002.....”

6. In my opinion, no fault can be found with the impugned judgment inasmuch as the trial court has followed the law as applicable to Courts in Delhi in view of the judgment in the case of ***Madhu Garg (supra)*** and rationale of which judgment is, as demonstrated from para 17 of the impugned judgment. The rationale and object of the relevant provision of Clause 2.1 (iv) of General Conditions of Supply was to ensure that dishonest consumers are not encouraged and arrears with respect to connection are not evaded for payment. In fact the Division Bench of this Court in ***Madhu Garg (supra)*** case distinguished an earlier judgment of the Supreme Court in the case of ***Isha Marbles Vs. Bihar State Electricity Board and Another (1995) 2 SCC 648*** on the ground that so far as Delhi is concerned the consumers are governed by statutory regulations which have to hold the field.

7. Learned counsel for the appellant/plaintiff places reliance upon the judgment of a Learned Single Judge of this Court in the case of ***Harpal Singh Vs. North Delhi Power Ltd.*** in WP(C) No. 6812/2008 decided on 9.7.2010 to argue that there cannot be disconnection of electricity supply without serving a legal notice and a licensee cannot disconnect the supply in case the appellant/plaintiff was found to have stopped supplying electricity to the old connection.

8. In my opinion, the argument urged on behalf of the appellant/plaintiff by placing reliance upon the judgment of ***Harpal Singh (supra)*** is misconceived because in the judgment in the case of ***Harpal Singh (supra)*** the issue was that the electricity was liable to be disconnected or not for supplying electricity to an old connection although after notice the consumer had stopped supplying electricity to the old connection. Also, there were issues in the judgment in the case of ***Harpal Singh (supra)*** as to whether the electricity connection of the present consumer was or was not for the same premises with respect to which dues were claimed of an old connection. Further, the judgment which was passed in the case of ***Harpal Singh (supra)*** was in a writ petition on the ground of non-compliance of principles of

natural justice whereas as required by Regulation 49 of the Delhi Electricity Supply Code and Performance Standard Regulations 2007 in the present case there is a full fledged trial in the suit and in fact trial court clearly holds that the appellant/plaintiff has no dispute on merits to challenge the amount which was claimed as against the disconnected electricity connection. Therefore, in my opinion the judgment relied upon in the case of *Harpal Singh (supra)* does not help the appellant/plaintiff as the issue to be decided is as per Clause 2.1 (iv) of General Conditions of Supply and that principles of natural justice have been followed in this case.

9. In view of the above, there is no merit in the appeal and the same is hereby dismissed.

**DECEMBER 8, 2017**

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**VALMIKI J. MEHTA, J**