

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.47 OF 2015

Noorja Hafizulla Khan Petitioner
Vs.
The State of Maharashtra & Others Respondents

Mr. E.A. Sasi for the Petitioner.
Ms P.H. Kantharia, Government Pleader with Ms Deepali
Patankar, Asst. Government Pleader, for Respondent
Nos.1 & 2.
Mr. Satish Kamat for Respondent No.3.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : JANUARY 19, 2018

P.C:

1. By this petition under Article 226 of the Constitution of India, the petitioner says that her son died in an accident and which was caused on account of negligence of the electricity company.

2. The Bombay Suburban Electric Supply Company Limited, now having been taken over by the fourth respondent,

is in-charge of supplying electrical energy to domestic and industrial consumers in the Mumbai Suburban District.

3. For that purpose, underground cables and wires have been laid. The petitioner complains that on the fateful day, namely, 18-6-2010 at about 6:00 p.m., her son Mohd. Saddam Hussein alias Saddam Khan, aged 17 years, came in contact with such electricity wire connected to an electric D.P. Box and died of electrocution. This incident, according to the petitioner herself occurred on 18-6-2010, which was a rainy season. In para 3 of this petition, it is stated that being a rainy season, water had accumulated around this D.P. Box behind which there is a water pipeline and as a result of open wire touching the D.P. Box, the petitioner's son died of a shock. The petitioner says that her son was walking by the side of the road and at the above spot the open electric wire touched his part of the body, as a result of which he was thrown in the nearby nullah. Even in the nullah, there was an open electric wire lying which again touched the body. The impact of all this resulted in his instantaneous death and even before reaching the Municipal

Hospital at Rajawadi, Ghatkopar.

4. Relying on all this, a claim for compensation is laid in this writ petition alleging carelessness, negligence and deficiency in service on the part of the respondents and particularly respondent No.4.

5. Pertinently, this petition is filed in this Court on 3-7-2014. The date of the incident is 18-6-2010.

6. We have before us annexures to the petition, including copies of the post-mortem report, a spot panchnama and the statements recorded by the police. We have also copy of some affidavit filed before the Consumer Disputes Redressal Commission, Maharashtra State, Mumbai. With all this, we also have a copy of an Advocate's Notice dated 5-9-2013, addressed to the Bombay Electric Supply and Transport Undertaking. Then, we have a Notice of the present Advocate dated 25-1-2014. That is a fairly detailed one.

7. While replying to this Advocate's Notice on

14-3-2014, the fourth respondent denied the allegation of negligence. It gave its version and which reads as under:-

“With reference to para 2 of your letter, we deny that electric wire/s of any D.P. Box, mini pillar, near Electric Pole No.YJD/025/006 was ever kept open. In fact, area around which the accident occurred i.e. P.L. Lokhande Marg, Near Sunni Bairveli Masjid, Chembur, is an electricity theft prone area and in spite of our best efforts to monitor the area, it is likely that attempt may have been made by miscreants on that eventful day to connect wire/s through the mini pillar for distribution of electricity to the slums. It would be pertinent to point out that on the day of the above incident, i.e. 18/06/2010, more particularly at around 6 p.m. it was raining heavily. Unfortunately, the live illegal wire connected through our mini pillar, as mentioned in your letter, may have been cut/broken by unknown persons for their nefarious activity and thrown/fallen into the accumulated water.

With reference to para 3, we state that any live wire in accumulated water, causes electric current to flow in its vicinity and thus in the present case there was flow of electric current near the mini pillar. At that particular time on 18/06/2010 around 6 p.m. your client's son may have waded through the water and received electric shock due to the exposed electric wire, resulting in his accidental death.

With reference to para 4, we admit that police have conducted enquiry at the accident spot. Also as per the provisions of Electricity Act, 2003, we have intimated the Electrical Inspector about the said incident. The death due to eletrocution was simply an

accident due to the exposed live wire used for illegal tapping of electricity through our mini pillar by electricity thieves. Observations in respect of illegal wire tapping have also been confirmed by the concerned authorities.”

Thus, it is expressly denied that the exposed electric wire belongs to the fourth respondent. It is denied that safety is compromised and therefore the petitioner cannot hold the fourth respondent liable.

8. On the earlier occasion and even today, we expressed our inability to entertain this petition. We told Mr. Sasi, appearing for the petitioner, that he may rely upon a Division Bench Judgment of this Court rendered at Nagpur in Writ Petition No.3644 of 2000 {**Anandrao Budha Gaidhane Vs. Maharashtra State Electricity Board**}, decided on 14-7-2004, and the Judgment of the Hon'ble Supreme Court in the case of **Shashikalabai (Smt.) v. State of Maharashtra & Anr.**, reported in 1998 (5) S.C.C. Page 332 but the factual position therein was not identical. The Maharashtra State Electricity Board had issued a Circular. That Circular stated that in the

event any accident is caused at any site where the said Board has undertaken either construction activity or any activity of laying of cables and wires so as to ensure electricity distribution, then, in the event of any accident occurring at such site the Circular would apply and the compensation in terms thereof would be offered to those victims or their families who suffered. Meaning thereby, if there is an accident caused not by the fault of the victim.

9. It is apparent that in writ jurisdiction if we undertake such a scrutiny as is now desired by Mr. Sasi, it will be risky. If we allow the petitioner to prosecute this petition despite clear factual dispute, it would mean that the petitioner would produce documents or rely upon the contents of the statements recorded by the police machinery even though the petitioner has knocked the doors of the Consumer Court earlier. We do not know the fate of the complaint before the Consumer Court. We also do not know as to what transpired after the police machinery intervened. Once there is a clear dispute and no admission of the liability, then the allegation of negligence and carelessness

would have to be established and proved by the petitioner. The burden is squarely on her. We cannot convert the proceedings under Article 226 of the Constitution of India into a trial of a civil suit. We cannot, therefore, allow the petitioner to proceed with this petition when the doors of the Civil Court are open. Whenever a person knocks the doors of a Civil Court and brings a suit, he/she exercises inherent right. He/she does not require any liberty or permission to bring such a suit. Once this Court observes that there is a factual dispute which cannot be resolved in limited jurisdiction, then, its natural consequence is that suit is the appropriate remedy. The suit in the Civil Court is an appropriate remedy or otherwise will have to be determined by the Civil Court once the suit is brought before it. Before such a suit is brought, the petitioner's Advocate cannot presume that it will not be entertained or dismissed only on the ground of limitation. It is for the petitioner to plead and prove as to how the claim is within limitation and how earlier, on legal advice, the petitioner acted *bona fide* and approached the Consumer Court and this Court in writ jurisdiction and therefore that time

be excluded while computing the period of limitation for bringing a suit. With all the provisions in law intact, we cannot award compensation for the death of the petitioner's son on account of the alleged negligence or acts of omission and commission attributed to the fourth respondent. We keep open the contentions of all parties and particularly the petitioner on the point of jurisdiction, limitation and merits and dispose of this writ petition.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)