

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

+ **RFA No.586/2006**

% **23rd October, 2018**

N.D.M.C.

..... Appellant
Through : Mr.Sriharsha Peechara,
Standing Counsel
(Mob.9717466788)

versus

RAVINDER SINGH & ORS.

..... Respondents

Through : None.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the Judgment of the Trial Court dated 27.04.2006 by which the trial court has decreed the suit filed by the respondent/plaintiff for the sum of Rs.7,98,000/-, for an amount of Rs.50,000/- with interest @

12% p.a. from the date of the judgment till recovery. The claim of the respondent/plaintiff for a sum of Rs.7,98,000/- was broken up in the plaint as under:-

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| i | Compensation for rent paid for the period about six weeks @ Rs.12,054/- per month for the rent paid without electricity. | Rs.18,000/- |
| ii | Loss of business on the occasion of Diwali & Gurpurav during the relevant period. | Rs.50,000/- |
| iii | Litigation expenses in two suits, appeal and LPA | Rs.25,000/- |
| iv | Loss of reputation humiliation in the business community general and market in particular. | Rs.4,00,000/- |
| v | Mental torture | Rs.3,00,000/- |
| vi | Notice fee | Rs.5,000/- |

2. The appellant/defendant contested the suit and denied the claim of the respondent/plaintiff. It was pleaded that the respondent/plaintiff was in default of payment of licence fee and in

fact proceedings for eviction were going on. The suit was thus prayed to be dismissed.

3. Trial court framed the following issues:

“(i) Whether the plaintiff is entitled to the relief of the said amount as prayed? OPP

(ii) Whether the plaintiff is entitled to the amount of damages, as claimed? OPP”

4. Trial court has dismissed the suit for all claims except decreeing the claim of loss caused of Rs.50,000/- to the business on account of electricity been illegally disconnected for a period of 12 days from 8.11.2000 to 20.11.2000. Trial court has held that the appellant/defendant was not justified in disconnecting the electricity for the Claim of Rs.2,81,844.50/- in as much as how this figure was arrived at, was not proved by the appellant/defendant. In fact the trial court notes that as per the case of the respondent/plaintiff only a sum of Rs.8,434/- was due from the respondent/plaintiff to the appellant/defendant. Trial court though has held that the respondent/plaintiff failed to prove the loss suffered by him on account of disconnection of electricity, however, the trial court has

held that since the electricity was disconnected for 12 days during festival time, therefore damages of Rs.50,000/- was awarded for the loss of business suffered on account of illegal disconnection of electricity and mental agony and harassment to the respondent/plaintiff. The relevant discussion of the trial court in this regard is contained in the following paragraphs of the impugned judgment: -

“The defendant had not filed on record any demand notice raised by them and despite having appeared in the witness box, they have failed to show how they have claimed a sum of Rs.2,81,844.50/- from the plaintiff. To sum up the things, the defendant had only taken a cryptic stand in the WS and the witness produced by it was also vague in answering to the questions put to him in the cross-examination. Besides, he was unable to give any details of the amount due from the plaintiff. It is an admitted fact that the defendant had disconnected the electricity supply of the plaintiff and after going through the evidence, it can be said that the defendant has failed to show that the electricity supply had been disconnected for any justifiable reason. More so in the light of the fact that there were so many letters written by the plaintiff continuously to the defendant to settle the accounts, but, instead of clarifying its decision, the defendant arbitrarily disconnected the electricity supply to the shop of the plaintiff. The plaintiff was, thus, put to disadvantage by the unlawful exercise of the powers by the officials of the defendant; the defendant has, thus, caused injury to the plaintiff. It was the right of the plaintiff to be able to carry on his business peacefully from his shop which had been allotted to him. Also, he was entitled to the amenities including electricity supply therein when he had made all the payments and no

electricity dues were there against him nor, his licence could be cancelled in view of the judgment of the Hon'ble Supreme Court. The plaintiff was put to harassment and disadvantage during the festival time by the wrongful disconnection of the electricity by the defendant. The defendant is, thus, liable to compensate the plaintiff for the disadvantage.

However, the plaintiff has failed to prove what was the loss suffered by him by the disconnection of the electricity supply. There is nothing on record to show what was the quantum of the business he normally gets every month and what business he could have done in the festival time. However, it cannot be denied that the electricity supply was disconnected for eleven days and was restored only on 12th day during the festival time; the plaintiff was obviously put to harassment and mental agony.

In the facts & circumstances of the case, I deem fit to grant a sum of Rs.50,000/- as compensation/damages for the loss suffered by the plaintiff by the wrongful disconnection of the electricity from his shop from 08.10.2000 to 20.11.2000; due to which he could not transact his business briskly during the festival time and also had to underg mental agony and harassment. The suit of the plaintiff is accordingly decreed for a sum of Rs.50,000/- along with interest @ 12% pa from the date of this order till its recovery and costs. Decree sheet be prepared in terms of the order. File be consigned to the record room."

न्यायमेव (Underlining is added)

5. Learned counsel for the appellant/defendant has argued that the trial court has committed grave illegality by decreeing the suit for a sum of Rs.50,000/- by overlooking the cross-examination of the respondent/plaintiff on 10.03.2005 by the appellant/defendant, as the very first few lines of the cross-examination show that though the

respondent/plaintiff has claimed to file Income Tax Returns, but no Income Tax Returns or any other documentary evidence was filed to show claim of loss of business for a sum of Rs.50,000/- on the eve of Diwali. It was further argued that no evidence of status was filed of carrying on business for having allegedly suffered mental agony and harassment. The counsel for the appellant/defendant is justified in arguing that in the entire plaint as well as in the evidence led on behalf of the respondent/plaintiff, it is not stated as to what was the type of business which the respondent/plaintiff was carrying on in the licenced shop and, therefore, the trial court could not have substituted requirement and analysis of evidence by making a wholly unjustified guesswork of the loss suffered.

6. In my opinion, the arguments urged on behalf of the appellant/defendant have to be accepted. No doubt the electricity remained illegally disconnected for a period of 12 days in the shop of respondent/plaintiff from 08.10.2000 to 20.11.2000, however in every case where the damages are claimed, such damages have to be proved by showing how the loss was suffered. Admittedly, in the entire plaint or the evidence there is not even a whisper as to what was the business

which the respondent/plaintiff was carrying out in the licenced shop run by the respondent/plaintiff, besides the fact that not a single document was filed by the respondent/plaintiff, be it the Bill Book or Income Tax Returns to show the volume of business being done by the respondent/plaintiff from the licenced shop. Consequently the profits which could have been lost by the respondent/plaintiff on account of illegal disconnection of electricity for 12 days and causing of mental agony and harassment do not stand proved.

7. In view of the aforesaid discussion, this appeal is allowed. The impugned Judgment of the trial court dated 27.04.2006 is set aside and the suit of the respondent/plaintiff is dismissed. Parties are left to bear their own costs. Decree-sheet be prepared. Trial court record be sent back forthwith.

OCTOBER 23, 2018

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VALMIKI J. MEHTA, J