* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **RFA No. 311/2018**

% **16th April, 2018**

MULKH RAJ ..... Appellant

Through: Mr. D. Bhattacharya, Advocate.

versus

TATA POWER DDL/NDPL ..... Respondent

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No. 14334/2018 (delay of 150 days in filing)

For the reasons stated in the application, delay in filing is condoned.

CM stands disposed of.

CM No. 14336/2018 (Exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

RFA No. 311/2018 & CM No.14335/2018 (Stay)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the judgment of the trial court dated 4.8.2017 by which the

trial court has dismissed the suit for declaration and injunction filed by the appellant/plaintiff for quashing of the bill for an amount of Rs.50,486/- raised by the respondent/defendant on account of direct theft of electricity committed by the appellant/plaintiff.

2. The facts of the case are that the appellant/plaintiff is the user of electricity through a connection bearing K. No.60012236695 installed at D-7/49, Sultan Puri, Delhi. The connection is for non-domestic purpose and is with respect to a shop. A team of officers of the respondent/defendant is said to have conducted a raid in the shop of the appellant/plaintiff on 7.4.2014 and when it was found that the shop was in fact being operated by one Smt. Sat Kaur wife of Sh. Kewal Singh, and as per the inspection report there was no meter found at site and the user was found to be indulging in direct theft of electricity using illegal external black colour wires tapped deliberately and directly from TPDDLLV System. Appellant/plaintiff claimed that the shop was lying closed and that he was not indulging in theft of electricity.

3. After pleadings were complete the trial court framed the following issues:-

"1. Whether the plaintiff was committing direct theft of electricity as alleged during the inspection dt. 7.4.2014? (OPD)
2. Whether the plaintiff is entitled to a decree of declaration thereby declaring the inspection report dt. 7.4.14 and impugned bill bearing dt. 24.4.14 bearing EAC No. 172006 as null and void? (OPP)
3. Whether the plaintiff is entitled to a decree of permanent injunction thereby restraining defendant, their officials and associates to disconnect the electricity meter of the plaintiff installed at House No. D-7/49, Ground Floor, J.J. Colony, Sultan Puri, Delhi (OPP)
4. Relief, if any."

4. Trial court has held the appellant/plaintiff guilty of theft of electricity by referring to the fact that the inspection report has been proved by a member of the inspecting team DW-2 Sh. Ashok Rajak. DW-2 deposed with respect to the direct theft of electricity and inspection being carried out at the shop premises in the presence of Smt. Sat Kaur. DW-2 also deposed that Smt. Sat Kaur informed the inspecting team that the present appellant/plaintiff was the owner of the suit shop. Inspecting team also verified from neighbours with respect to ownership of the suit shop of the appellant/plaintiff.

5. DW-3 Sh. Devi Sahai of the respondent/defendant proved the photographs with respect to the inspection as Ex.PW1/DX (colly) and also proved the CD of the photographs as Ex.DW3/1, and which proved that direct theft was taking place.

6. It is important to note that the inspection was conducted in April, 2014 and the units consumed by the appellant/plaintiff for November 2013 to January 2014 were only 13 units, clearly showing that appellant/plaintiff was guilty of fraudulent abstraction of energy i.e direct theft of electricity.

7. The relevant discussion of the trial court in the impugned judgment for holding the appellant/plaintiff guilty reads as under:-

> "**ISSUE NO. 1**
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> 5. PW1 has proved his affidavit tendered into evidence as Ex. PW1/1. In Ex. PW1/1, PW1 has deposed on the same lines as per his allegations as made in the plaint. He has proved the impugned bill as Ex. PW1/A.
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> In cross examination, PW1 has denied the suggestion that at the time of inspection Smt. Sat Kaur was using the premises in question. Vol. Smt. Sat Kaur is the owner of the shop No. 1 and 2 and he is owner of the shop No. 3. The electricity bill dt. 3.12.13 which is Ex. PW1/DY shows the reading as one unit only. On 30.11.13 and 14.1.14 his consumption was 13 units only. Vol. His premises remained closed most of the time.
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> PW2 has proved his affidavit tendered into evidence as Ex. PW2/A. In Ex. PW2/A, PW2 has deposed the same fact as deposed by PW1 in his affidavit Ex. PW1/A.
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> DW1 has proved his affidavit tendered into evidence as Ex. DW2/A. He has proved the final assessment bill for the direct theft dt. 24.4.14 as Ex. DW1/A.
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> <u>DW2 Shri Ashok Rajak has proved his affidavit tendered into evidence as Ex. DW2/A. DW2 has deposed that he is working with the defendant company as Manager. A technical inspection was carried out on 7.4.14 by the enforcement team of the defendant at the said premises. He was a member of that team. During the said inspection, the plaintiff who is a registered consumer and is running a shop at the said premises, was found to be committing direct theft of electricity. The said inspection was carried out in the presence of Smt. Sat Kaur, the owner of the said premises. Enforcement team prepared a detail inspection report which is Ex. DW2/1.</u> At the time of inspection, a

load of 1.34 KW was found to be connected. From the site, illegal wires were removed and seized vide seizure memo Ex. DW2/2. At the site, photographs Ex. PW1/DX (Colly.) was taken showing the alleged theft at the premises. On the basis of the inspection, the plaintiff has been found to be indulged in direct theft of electricity at said premises and has caused wrongful gain to themselves and wrongful loss to the defendant.

In cross examination by the plaintiff, DW2 has deposed that they were approximately 6 people who had gone to the site including him. They reached at the site at around 12.30 p.m. One lady Smt. Sat Kaur met them at the spot who told them that Shri Mulkh Raj is the owner of the shop. He has denied the suggestion that Smt. Sat Kaur was indulging in the theft of electricity and Mulkh Raj was not indulging in theft of electricity as his shop is different from the one which was inspected. They had verified from the neighbours regarding the ownership of the shop who had informed that the same belongs to the plaintiff.

DW3 Shri Devi Sahai has proved his affidavit tendered into evidence as Ex. DW3/A. In Ex. DW3/A, DW3 has deposed that on 7.4.14 he had accompanied the inspection team and has taken the necessary photographs at the said premises of the plaintiff. The photographs ae Ex. PW1/DX (Colly.). He has also proved the CD of the photographs taken at the time of inspection as Ex. DW3/1.

DW2 is the material witnesses of the defendant to prove the fact that the plaintiff was found committing direct theft of electricity at the said premises during the inspection on 7.4.14. DW2 has supported the case of the defendant. He has been cross examined by the plaintiff but no such material has been come on record to disbelieve his testimony. Moreover the testimony of DW2 has also been corroborated by the inspection report Ex. DW2/1 and photographs Ex. PW1/DX.

Perusal of the Ex. DW2/1 shows that during inspection no meter was found at the said premises and direct theft was detected at the said premises which was committed by using illegal external wire from TPDDL LV system. The said illegal wires were seized vide seizure memo Ex. DW2/2.

The photographs which has been proved on record as Ex. PW1/DX (Colly.) also shows the illegal wires connected to the LV mains of the TPDDL outside the said premises and these illegal wires further connected to the internal wiring of the said premises.

The case of the plaintiff is that the raid was conducted on the adjoining shop and the plaintiff has nothing to do with that adjoining shop.

In cross examination, PW1 has deposed that he is the owner of the shop No. 3. The inspection report Ex. DW1/1 clearly shows that the inspection was conducted at shop No. 3.

In cross examination PW1 has admitted that as per the bill dt. 3.12.13 which is Ex. PW1/DY shows the reading as one unit and on 30.11.13 and

14.1.14 his consumption was 13 units. The date of inspection is 7.4.14. These little consumption of the units shows that the plaintiff was not using the electricity through electric meter and it supports the case of the defendant that the plaintiff was consuming the electricity through illegal means at the said premises. The plaintiff has not produced any reliable independent witnesses to support his plea that no raid was conducted at the said premises.

In view of the above discussion, I am of the opinion that from the evidence on record, the defendant has proved that the plaintiff has been committing direct theft of electricity at the said premises as found during the inspection on 7.4.14. Accordingly, Issue No. 1 stands decided in favour of the defendant and against the plaintiff." (underlining added)

8. I do not find any illegality whatsoever in the aforesaid findings and conclusion of the trial court because except a self-serving statement of the appellant/plaintiff that he was not present at the shop, it has not been established that appellant/plaintiff was not guilty of direct theft of electricity, and which stands duly proved by the member of the inspecting team along with photographs with respect to direct theft of electricity. The inspecting team had also verified the ownership of the premises at the time of inspection not only from Smt. Sat Kaur who was present in the subject premises but also from the neighbours, and therefore I cannot agree with the arguments urged on behalf of the appellant/plaintiff that the subject shop was closed when the inspection took place.

9. There is therefore no merit in the appeal. Dismissed.

APRIL 16, 2018/ib **VALMIKI J. MEHTA, J**