

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

**COMMERCIAL NOTICE OF MOTION NO.192 OF 2017
IN
COMMERCIAL SUIT NO.250 OF 2017**

Jalgaon Energy Private Limited Applicant/Plaintiff

Vs.

Maharashtra State Electricity
Distribution Company Ltd. and Ors.Defendants

Mr. Gautam Ankhad I/b. Mr. Vedchetan Patil for applicant/plaintiff.
Ms. Deepa Chavan a/w. Mr. Kiran Gandhi I/b. Little and Company for
defendant no.1.
Mr. Rohit Sharma for defendant no.2.

**CORAM : K.R.SHRIRAM, J.
DATE : 8th JANUARY 2019**

P.C.:

1 The suit basically is a money suit. In the notice of motion, what applicant is seeking is to direct defendant no.1 to deposit a sum of Rs.11,00,000/- per month plus a sum of Rs.8,04,67,742/- and Rs.3,23,59,028/- which are the amounts claimed in the suit.

2 Mr. Ankhad in fairness agrees that there are no averments in the affidavit in support of the notice of motion to make out a case for attachment before judgment. At the same time, Mr. Ankhad submits that under Section 70 of the Indian Contract Act, 1872, where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to

restore, the thing so done or delivered. Mr. Ankhad states that the infrastructure for distribution of electricity being supplied by defendant no.1 to defendant no.2 was set up by plaintiff and plaintiff did not intend to do so gratuitously and therefore, the amounts as claimed in the notice of motion have to be deposited.

3 Whether plaintiff did not intend to set up the infrastructure gratuitously is something to be considered at the trial of the suit. At the interim stage, what is required to be seen is whether plaintiff is entitled to an order under Order 38 Rule 5 of the Code of Civil Procedure, 1908. Admittedly, no case is made out in the affidavit in support of the notice of motion itself.

4 Therefore, notice of motion dismissed. Costs to be cost in the suit.

5 Pleadings are completed. Therefore, suit to be listed for issues on 16th January 2019 on which date parties shall come with agreed draft issues and a separate list of issues on which they are unable to agree, failing which both the parties will be put to terms.

(K.R. SHRIRAM, J.)