

8th December,
2021
(AK)
18

W.P.A 20854 of 2018

Sri Asis Das
Vs.
CESC Limited and others

Mr. Kushal Chatterjee
Mr. Abir Lal Chakraborti
...for the petitioner.

Mr. Debanjan Mukherji
...for CESC Limited.

Mr. Prosenjit Mukherjee
Mr. Tirthankar Mukherjee
Ms. Madhurima Sakar
Mr. Munshi Ashiq Elahi
...for the private respondent.

Learned counsel for the petitioner contends that the petitioner has suffered an eviction decree passed in favour of the private respondent nos.3 and 4 and has preferred an appeal against the said decree, in which an interim order of stay was granted on condition of payment of occupation charges.

Learned counsel contends that, as of date, the petitioner is an admitted occupant of the premises-in-question, but the CESC personnel, when they came to inspect and give new connection at the locale, respondent nos.3 and 4 and their men and agents objected to the same and resisted the said personnel, for which such connection could not be given.

Learned counsel appearing for the CESC Limited submits that when the CESC personnel went to the premises, the door of the premises was locked.

As such, the personnel could not get access to the location of the electric meter board. Hence, learned counsel for the CESC iterates that, if necessary, police help may be necessary for breaking open the padlock to have access to the existing electric meter board, in the event an order is passed directing the CESC to give such connection.

Learned counsel for the private respondent no.3 vociferously argues that the document annexed at page-43 of the writ petition is forged and manufactured.

By placing reliance on a photocopy of the certified copy of the order sheet of the connected suit, learned counsel appearing for the respondent no.3 contends that the said orders, as annexed to the affidavit-in-opposition, clearly indicate that no such order, as disclosed in the information slip, annexed at page-43 is concerned.

Learned counsel submits that, in view of such patent forgery, the writ petition ought to be dismissed and appropriate steps are to be taken against the petitioner.

Learned counsel further argues that even if an application on similar lines as the writ petition is pending in the trial court, this court is barred under the principle

of Order XXIII of the Code of Civil Procedure from taking up a similar prayer for adjudication.

Learned counsel further submits that the tenant, even after accepting an amount of Rs. 60,000/- for surrendering the premises, is going on litigating against the private respondents, thereby causing unnecessary harassment to the said respondents, who cannot enjoy the fruit of the decree.

Upon hearing learned counsel for the parties, taking the first issue raised by learned counsel for the private respondent no.3 first, if we look at the document annexed at page-43, it appears that the same is a photocopy of an information slip.

Although learned counsel for respondent no.3 has sufficiently proved from the order sheet of the suit itself that no such order, dismissing the application of the petitioner in the court below for non-prosecution, was passed, such error may not have been on the part of the petitioner.

It cannot be inferred from the error in the information slip *ipso facto* that the petitioner is guilty of forgery and/or manufacturing the document.

There is equal scope of doubt that the information given by the concerned official of the court below committed an error in giving the information. Hence, this is not a case fit to draw up a proceeding under Section

340 of the Criminal Procedure Code and/or to come to a conclusion that the document is forged.

The argument of the private respondent regarding the applicability of Order XXIII defeats logic since, in the same breath, respondent no.3 is arguing that there is no document to show that the petitioner's similar application was not pressed and is manufactured and, on the contrary, that the said application is pending and such pendency debars this court from taking up a similar application.

That apart, there is no legal provision that debars a court, which is not of competent jurisdiction to hear the previous application, from deciding a similar matter. Mere filing and pendency of an application for restoration of electric connection in the court below does not, in any way, prevent the writ petitioner from taking out the present writ application seeking a direction against the CESC Limited, since no decision has been taken on the petition before the court below at all.

That apart, the only effect of any order which is passed in this writ petition would be to render such application in the court below infructuous.

As such, the argument as to bar of this court from taking up the writ petition on the ground of pendency of a similar application in a different court which does not

have concurrent jurisdiction with this court, cannot be accepted.

Although the respondent no.3 has categorically claimed that the petitioner has not surrendered the premises despite having received an amount of Rs.60,000/- for such purpose, this court cannot go into the merits of such allegation and adjudicate the pending appeal, sitting in writ jurisdiction.

Such an act would tantamount to usurping the jurisdiction of the appellate court without the writ court having any determination to do so.

The writ petition has been filed on the cause of action that the CESC personnel are being prevented by the private respondents from entering into the premises and inspect it as well as give new connection to the petitioner.

As such, since the petitioner is admittedly in possession, even irrespective of the subsistence of any stay order from the appellate court, the petitioner is entitled under Section 43 of the Electricity Act, 2003 to apply and get a new connection in the petitioner's name.

Since the CESC has submitted that there is no impediment otherwise to hold an inspection and, if found feasible, to give new connection to the petitioner subject to compliance of formalities, the private respondents have

no right whatsoever to obstruct the CESC personnel from doing so.

In such view of the matter, WPA 20854 of 2018 is disposed of by directing the CESC Limited to hold inspection, if required, and to give a new connection to the petitioner from the existing electric meter board at the premises-in-question pursuant to the petitioner's application and subject to the compliance of all formalities, as early as possible, positively within a week from date, upon prior notice to the petitioner as well as to the respondent nos.3 and 4, directly or through their learned advocates, intimating the date and time of visit of the CESC personnel.

If any obstruction is created by the respondent nos.3 and 4 and/or their men and agents in the CESC personnel from giving such new connection to the petitioner, the CESC personnel will be at liberty to approach respondent no.5, the Officer-in-Charge, Maheshtala Police Station for adequate police help for the purpose of giving such connection.

If so approached, respondent no.5 shall immediately co-operate in the matter by granting adequate police help at the cost of the petitioner.

It is further clarified that, in the event such action is necessary, the police personnel shall be entitled to break open any padlock to the meter room or other

resistance/hindrance to the access to such existing electric meter board position for the limited purpose of giving inspection and new connection.

It is also made clear that the courts below, taking up the civil appeal and/or the execution case, shall not be influenced in any manner whatsoever by any of the observations made herein, and the observations made in this order shall not create any special equity and/or right in favour of the petitioner vis-à-vis the premises-in-question, unless such right is otherwise available in law to the petitioner.

The parties as well as all concerned shall act on the written communication of the learned advocates, accompanied by the server copy of this order without insisting upon prior production of a certified copy.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)