

AD. 29.
January 21, 2022.
MNS.

(Through Video Conference)

WPA No. 5131 of 2021

Salim Khan
Vs.
The Chairman,
CESC Limited and others

Mr. Dipankar Aditya,
Ms. Tina Biswas

... for the petitioner.

Mr. Om Narayan Rai

...for the CESC Limited.

Mr. R. I. Sardar

...for the private respondents.

Mr. Jahar Dutta,
Mr. Jaladhi Das

...for the State.

Learned counsel for the petitioner submits, by placing reliance on the decision of ***Chandu Khamaru Vs. Nayan Malik and others***, reported at **(2011) 12 Supreme Court Cases 314**, that the CESC Limited ought to have given electric connection to the petitioner over the disputed passage, despite the pendency of a civil suit between the petitioner and the private respondents.

It is further submitted that although an order of injunction was passed by the civil court, the same is under challenge in an appeal before the appropriate court.

Learned counsel appearing for the CESC Limited as well as the private respondents argue that in view of the specific subsistence of the injunction order passed by the civil court, the ratio laid down in ***Chandu Khamaru*** (supra) cannot be applied to the present case.

Upon hearing learned counsel, it is evident that the judgment passed by the Supreme Court in ***Chandu Khamaru*** (supra) was rendered in the light of Section 43 and Section 67 of the Electricity Act, 2003. However, the gross distinction, which is *ex facie* evident, is that in the said report, no specific injunction order has been referred to either by the parties or by the court itself. Contrary thereto, as seen from the photocopy of the order dated November 19, 2019 passed by the Civil Judge (Junior Division), Fifth Court at Howrah in Title Suit No. 60 of 2016, the trial court had granted in the present case a specific order of injunction restraining the defendant nos. 1 and 2 therein, which includes the present petitioner as well, from taking electric connection through the 'B' schedule property and the defendant no. 3 from extending electric connection to the property of the defendants no. 1 and 2 through the 'B' schedule property until the disposal of the suit.

Although it is an admitted position that an appeal is pending against the said order, it is well-settled that mere pendency of an appeal cannot *ipso facto* operate as a stay and/or as a reversal of the position as recorded in the impugned order.

Hence, in view of the subsistence of the specific injunction order in the present case, restraining any electric connection from being given to the petitioner's property over the disputed plot, which corresponds with the 'B' schedule property in the suit, the general ratio as laid down in *Chandu Khamaru*(supra) cannot be applicable to the facts of the present case.

In such view of the matter, WPA No. 5131 of 2021 is disposed of with the observation that the CESC Limited shall give new electric connection to the petitioner, subject to compliance of all formalities by the petitioner, only upon an order being passed in favour of the petitioner in the pending appeal against the injunction order passed by the Civil Judge (Junior Division), Fifth Court at Howrah in Title Suit No. 60 of 2016.

However, this court has not entered into the merits of the respective contentions of the parties in respect of the suit property in any manner and it will be open to the civil court to adjudicate on the same independently and in accordance with law on its own merits.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)