

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(Appellate Side)

MAT 445 of 2022

with

CAN 1 of 2022

(Through Video Conference)

Reserved on : 19.05.2022

Pronounced on: 29.06.2022

M/s. Dbar Code Restro Bar & Club LLP & Anr.

...Appellants

-Vs-

CESC Limited & Ors.

...Respondents

Present:-

Mr. Joydeep Kar, Sr. Adv.,
Mr. Partha Chakraborty,
Mr. Savresh Chandra Shrivastava,
Ms. Sharmistha China,
Ms. Sangita Das Jana, Advocates

.... for the Appellants

Mr. Krishnaraj Thakar,
Mr. Chayan Gupta,
Mr. Rajesh Upadhyay,
Ms. Surabita Biswas, Advocates

..... for the Respondent Nos. 6 & 7

Mr. Debanjan Mukherji, Advocate

.... for the CESC

Mr. Sudipto Panda,
Ms. Munmun Tewary, Advocates

....for the State

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE**

**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Rajarshi Bharadwaj, J:

1. By this appeal, correctness of the order of the Learned Single Judge dated 15.02.2022 passed in W.P.A. No. 23338 of 2019 (Dbar Code Restro Bar & Club LLP and Another v. CESC Limited and Others) has been questioned by the appellant. This appeal is concerned with the judgement passed by the Single Judge, the Hon'ble Justice Sabyasachi Bhattacharya and after hearing the said writ petition, the Learned Single Judge was pleased to reject the abovementioned writ petition by a judgement dated 15.02.2022.

2. The facts of the case are that the writ petitioners/appellants herein being the lessees of the disputed premises under the private respondent nos. 6 and 7, had filed the said writ petition on the allegation that the lessors/respondent nos. 6 and 7 were disrupting electric supply to the tenanted premises regularly. The appellants herein run a bar and restraunt as well as a club from the said premises and due to such alleged disruptions, they are suffering serious loss of business and goodwill.

3. It was contended by the appellants that they had entered into a lease agreement dated July 19, 2016, but due to the alleged disruptions of electric supply by the lessors, the appellants had to apply for a fresh electric connection in their own name. However, the private respondents and their men and agents restrained the CESC personnels, thereby preventing them from giving such electric connection when they came for inspection for the purpose of giving such new connection in the name of the appellants.

4. It was submitted by the learned counsel for the private respondents that the appellants entered into as many as three agreements on July 19, 2016 and not one as indicated by the appellants. The commercial space was to be enjoyed at a lease rent of Rs. 60,000/- according to the lease deed disclosed in the writ petition. The appellants were entitled to enjoy power load capacity of 2 kVA only from one electric meter as per the said deed.

5. According to the second deed entered between the private parties on the same date as the first, it provided for scheduled maintenance, amenities, utilities in respect of the said premises and that the appellants would be entitled to 60 kVA power load capacity to be provided by the lessors making the total rent payable at Rs. 1,90,000/- per month as per the said agreement. For the signboard display, the appellants would pay Rs. 1,20,000/- per month according to the third agreement between the lessors and lessees.

6. The learned counsel for the respondents nos. 6 and 7 further argued that in terms of the first two agreements, the petitioners were already enjoying 62 kVA power load capacity. Moreover, the entire rent of the premises comprised of the composite amount of Rs.3,70,000/- (60,000/- + 1,90,000/- + 1,20,000) and it was contended that the lessee was seeking to modify the terms of the three agreements by obtaining an order from the writ court. It was also argued by the learned counsel for the respondent nos. 6 and 7 that such attempts by the appellants could not be encouraged by permitting them to take a new electric connection at the premises of the private respondents since it would be a gross and unlawful modification of the three subsisting agreements between the private parties.

7. The appellants have based their submissions on the right of a person to get electric supply as mentioned in Section 43 of the Electricity Act, 2003:

Section 43. (Duty to supply on request): --- (1) 1[Save as otherwise provided in this Act, every distribution] licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension

or commissioning or within such period as may be specified by the Appropriate Commission: Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

[Explanation.- For the purposes of this sub-section, "application" means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.]

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1) : Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for eachday of default.

8. However, as correctly held by the Learned Single Judge, such a right is not absolute and has to be exercised in a manner which does not violate the right of others and/or is contrary to any law or legal contract entered into by the consumer. The Learned Single Judge held that it was clearly evident from the affidavit in opposition of the CESC Limited that the writ petitioner Dbar Code Restro Bar & Club had applied for a separate meter connection against a connected load of 40 kW.

9. Thus, being aggrieved and dissatisfied with the above-mentioned judgement, the appellants have begged to move this instant appeal on the

grounds that the Learned Single Judge erred in law and in fact in dismissing the said Writ Application holding that section 43 of the Electricity Act, 2003 is not violated at all in the said case.

10. However, as per CESC's admission, the appellants were already enjoying electric supply having a meter load of 58.8 kVA from a dedicated meter at the premise in question, whereas they were entitled to have 62 kVA. Since, according to the three agreements themselves, the appellants are entitled, upon payment of a monthly contractual amount to more power than they were currently using, Section 43 the Electricity Act, 2003 is not violated in the instant case.

11. Moreover, the private respondent nos.6 and 7 are supplying such power from two electric meters, one in the name of respondent no. 6 and the other by a company named Accuphase which is owned and controlled by the private respondents. The additional meter in the name of respondent no.6 had an additional sanctioned load of 24.29 kW-from which the appellant bar also enjoyed electricity. Thus, the possibility of the appellants suffering from any dearth of electricity at the premises in question does not arise. Any disruption to the electric supply by the respondent nos. 6 and 7 is ruled out since one meter is solely dedicated to the appellants.

12. Having heard the learned counsel for the parties, on perusal of the records of the case and on consideration of the judgement passed by the Learned Single Judge, it cannot be denied that the appellants seek to avoid paying the substantial electric charges which is a part of the total lease rent, *i.e.*, the total amount payable by the lessees. Given the current pendency of a civil suit instituted by the appellants herein themselves claiming similar reliefs, such an effort cannot be sanctioned by this court.

13. Hence, this Court finds no reason to interfere with the judgement of the Learned Single Judge and thus the appellants are not entitled to the reliefs claimed by them. The Learned Single Judge was justified in disposing of the writ petition with no order as to costs. However, the said order shall not prevent the appellants from approaching the civil court in the suit pending between the parties and the civil court ought to independently decide on the matter without being influenced by any observation made herein.

14. For the foregoing reasons, the appeal is found to be devoid of any merit which is accordingly dismissed. All pending application are also accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata

29.06.2022

PA(BS)