02.12.2022

Court : 04
Item : DL-166
Matter : FMAT
Status : DISMISSED
Transcriber: nandy

FMAT (ARBAWARD) 57 of 2022
with
CAN 1 of 2022

Origami Cellulo Private Limited
Vs.
Machino Transport Private Limited & Anr.

Mr. Chayan Gupta, Advocate
Ms. Debdutta Saha, Advocate
Mr. Rahul Poddar, Advocate
Ms. Sahana Mukherjee, Advocate
……for the Petitioners
Mr. Jishnu Chowdhury, Advocate
Mr. Arnab Sardar, Advocate
……for the Respondent No. 1
Mr. Kishore Dutta, Senior Advocate
Mr. Anirban Ray, Advocate
Mr. Ratnesh Kumar Rai, Advocate
Mr. S.N. Pandey, Advocate
Mr. Ankan Ray, Advocate
Ms. Vipra Garg, Advocate
Mr. Sayantan Das, Advocate
Mr. Asuthosh Singh, Advocate
……for the Respondent No. 2

The temporary injunction has been refused by the commercial Court despite noticing the fact that the supply of electricity was disrupted by the respondent no. 2 voluntarily on the pretext that the appellant may apply for a separate electric supply at the premises from the service provider. The trial Court refused to pass an *ex parte ad interim* order of injunction as it thought it fit to hear the respondents despite the relevant documents were annexed to the said application indicating that the disconnection of electricity must be viewed seriously and cannot be done unilaterally.

The appellant as a lessee was inducted in to the demised premises on the basis of an agreement of lease dated October 15, 2020, entered into by the appellant and the respondent no. 1 for a period of five years and the tenure has not expired as yet. Though the respondent no. 2 is not a signatory to the said agreement but one of the clause appearing in the said agreement postulates that the electricity upto 75 KW shall be supplied and provided from the transformer installed at the premises of the respondent no. 2 and the appellant shall pay all the charges for electric consumption at the demised premises and shall directly pay the same to the respondent no. 2 on the basis of the reading pertaining to consumption of electricity through an exclusive submeter to be installed at the demised premises. The said agreement contains an arbitration clause and the moment the electricity is disconnected which is an obligation of the lessor, the dispute shall be referred to arbitration and the arbitration proceeding shall be guided by the provisions of the Arbitration and Conciliation Act.

It appears from the documents annexed to the instant application that the respondent no. 2 was raising bill for the consumption of electricity at the demised premises, on the basis of the recording registered in an exclusive submeter installed thereat and there is no due on account of the same. The arrangement which continued for a considerable period was suddenly disrupted at the behest of the respondent no. 2 on the pretext that the CESC has intimated about the overdrawal of electricity beyond the sanctioned load by the different occupants of the said premises. There is a dispute as to whether the said premises has been divided between the Respondent No. 1 and Respondent No. 2 or still a joint property, therefore, there was no obligation on the part of the CESC to provide electricity supply line as according to them one supply line would be provided to each premises.

We do not want to make comment thereupon as the occasion has not arisen nor the CESC is before us. The fact discerned from the record would corroborate the stand of the appellant that the respondent no. 2 was providing the facility by supplying the electricity and the charges for the consumption was paid and accepted by them without any demur. The electricity being the essential features not only of the life but also commercial activities, sudden disconnection that too unilaterally, cannot be permitted. Since the consumption is restricted upto 75 KW, we do not find any reason for abrupt disconnection at the instance of the respondent no. 2. We, therefore, do not support the conclusion of the Court below that it is not a fit case for passing an *ex parte ad interim order* of injunction.

Amidst hearing, we have been informed that the appellant has applied for a separate electric connection at the premises and all the norms and paraphernalia required therefor, has been complied with but it is submitted that the access to the service provider has not been given because of the interdict as the respondent no. 2 approached the Magisterial Court and obtained an order under Section 144(2) of the Code of Criminal Procedure. We have not been provided the copy of the said order and, therefore, we cannot make any comment thereupon, more particularly, whether such order would put any fetter to the CESC to enter upon the property, admittedly belonging to the respondents.

The sole question remains whether the electricity supplied by the respondent no. 2 can be disconnected on such pretext when, in fact, there was an uninterrupted supply of electricity upon payment of charge and admittedly there is no dues on such account.

In view of the above, we feel that this is a fit case where an interim order of injunction should have been passed directing the respondent no. 2 to restore the supply of electricity to the extent of 75 KW within two days from the date of the order.

With these observations, the appeal being **FMAT (ARBAWARD) 57 of 2022** and the connected application being **CAN 1 of 2022** are **disposed of**.

The application under Section 9 of the Arbitration and Conciliation Act is pending before the Court. The *ad interim* orders are normally passed in aid of the final relief and, therefore, the Court in seisin of the said proceeding shall not be swayed by any facts and/or reasons recorded herein at the time of final disposal thereof.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)