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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.819 OF 2022
WITH
INTERIM APPLICATION NO.17465 OF 2022**

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Pannalal Dhimaram alias Pappu Bishnoi ..Appellant

vs.

Navin Jhaveri ..Respondent

Dr. Abhinav Chandrachud i/b. Khan Javed Akhtar a/w Mr. Amit J. for appellant.

Mr. Rajesh P. Khobragade a/w Raj S. Gupta, Ms. Gayatri Nayak, V. P. Khobragade and Mr. Abhijeet Naik for respondent.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 15, 2022.

P.C. :

1. The appellant-original plaintiff by this Appeal From Order filed under Order XLIII of the Code of Civil Procedure, 1908 challenges an order dated June 27, 2022 passed by the trial Court refusing ad-interim reliefs in the Notice of Motion filed by the plaintiff.

2. The plaintiff filed a suit for permanent injunction against the defendant from dispossessing the plaintiff or in any manner creating any hitch, hindrances, impediments,

obstacles or obstruction in the peaceful use, occupation and possession of the plaintiff in respect of the suit premises, viz. gala (hereafter "the suit gala", for short) of the dimension of 36 X 60 sq. ft. admeasuring 2160 sq. ft. situated at Plot No.72, 2nd Cross Lane, Mazagaon, Reay Road Station South, Darukhana, Mumbai. The plaintiff also prayed for an order of temporary injunction against the defendant to issue consent in favour of electric Company/Brihanmumbai Electricity Supply and Transport Undertaking (hereafter "BEST", for short) for the purpose of installing or re-installing of electric meter at the suit premises.

3. During the pendency of the suit, the plaintiff filed a Notice of Motion for interim reliefs and prayed for ad-interim reliefs. By the impugned order dated June 27, 2022, the trial Court refused ad-interim reliefs in favour of the plaintiff in the Notice of Motion.

4. It is an admitted fact that the suit gala was allotted to the defendant as a tenant of Bombay Public Trust (hereafter "BPT", for short). The plaintiff avers that he was inducted in

the suit property in the year 2016. According to him, he paid Rs.55,00,000/- to the defendant for buying the suit property. It is contended that the plaintiff has paid rent in respect of the suit gala. The plaintiff relied upon the letter of BPT dated March 16, 2020 to establish his case regarding occupancy of the suit gala. It is the case of the plaintiff that at the instance of the defendant, the BEST disconnected the electric supply to the suit premises. A request for appropriate directions is made in the form of no objection from the defendant in reinstalling the electric connection.

5. Mr. Chandrachud, learned counsel for the appellant submitted that the appellant is in a settled possession of the suit gala. According to him, a substantial sum of money was paid to the defendant for occupation of the suit premises. It is submitted that sometime in June 2022 when the BPT issued notice to the defendant that he has unlawfully sublet the suit gala to the plaintiff, that the defendant complained to the BEST. Learned counsel for the appellant submitted that such a complaint made by the defendant to the BEST is not in good faith and therefore, the trial Court should have

directed the defendant to issue a no objection certificate for restoration of the electricity connection which was in existence before the complaint was made by the defendant. Learned counsel for the appellant submitted that without even hearing the plaintiff, the three phase electricity connection was disconnected. It is submitted that the plaintiff was carrying on his business from the suit gala which is seriously affected due to lack of proper electricity connection. Learned counsel for the appellant submitted that there was no default on the part of the plaintiff in payment of electricity charges and for this purpose he relied upon the various electricity bills. It is further submitted that so far as the electricity charges for the suit gala is concerned, the plaintiff is ready and willing to pay the necessary charges and even though it is their case that there are no arrears, it is submitted that arrears, if any, will be cleared forthwith. My attention is invited to the statement of the defendant dated June 2, 2022. In the said statement the stand is taken that electricity meter No.B-147794 has been removed by the electricity department as

there was default on the part of the plaintiff in paying the electricity bill. However, according to learned counsel, there has been no default and it is on the basis of the complaint made by the defendant the electricity meter was removed. My attention is also invited to the complaint made by the defendant to the Senior Police Inspector, Sewri Police Station, wherein allegations are made that the electricity connection was obtained by the plaintiff with the use of fraudulent documents. Learned counsel for the appellant in support of his submissions that rent was regularly paid to the BPT and to support his case of settled possession relied upon several documents. In support of his submissions, learned counsel relied upon the following decisions :-

1. **Rame Gowda (Dead) By LRs. vs. M. Varadappa Naidu (Dead) By LRs. and another¹.**
2. **Manishi Maity vs. West Bengal State Electricity Distribution Company Ltd.².**
3. **Abhimanyu Mazumdar vs. Superintending Engineer and another³.**
4. **S. B. Noronah Vs. Prem Kumari Khanna⁴.**
5. **Ram Sarup Gupta (Dead) By LRs. vs. Bishun**

1 (2004) 1 SCC 769

2 2012 SCC OnLine Cal 4802

3 2011 SCC OnLine Cal 362

4 (1980) 1 SCC 52

Narain Inter College and others⁵.

6. Mr. Khobragade, learned counsel for the respondent-original defendant on the other hand invited my attention to the findings of the trial Court. In his submission, the three phase electricity supply was obtained by the plaintiff by playing fraud and forgery. Learned counsel invited my attention to the criminal complaints filed in respect of the said fraud and forgery while obtaining the electricity connection. It is further submitted that the electricity supply has been rightly disconnected as the plaintiff was in arrears of electricity charges. Learned counsel submitted that the plaintiff is raising contradictory stands, as on one hand, the plaintiff says that the suit gala was purchased by him, whereas on the other, claims to be paying rent to the BPT. Apart from justifying that the trial Court has not committed any error in refusing the ad-interim relief to the plaintiff, learned counsel submitted that the Appeal From Order should not be entertained as the plaintiff has failed to approach the Court with clean hands and there is suppression of material facts. In support of his submissions,

5 (1987) 2 SCC 555

he relied upon the decision of the Supreme Court in the case of **Kishore Samrite vs. State of U. P. and others**⁶.

7. Heard learned counsel at length.

8. Before considering the submissions advanced by learned counsel, a brief reference to the reasons assigned by the trial Court while rejecting the prayer for ad-interim relief in the Notice of Motion need to be quoted. The same read thus :-

"5. Considering the available material on record and rival contentions, it appears that the plaintiff is in possession of the suit property. There are two electric meters. The plaintiff has not pleaded details of the electric meter which is disconnected. He has also not placed on record copy of electric bill with the particulars of the Consumer Number. The plaintiff has not given details of electric meter or consumer number which is to be reinstalled. The plaintiff has not only suppressed the material fact of two electric meters connection but also avoided to plead particulars of the electric meter connection which he wants to reinstall. As the plaintiff has not approached to the court with clean hands. The particulars of the fact pleaded by him are vague and demonstrate intentional suppression of facts. It would not be appropriate to grant ad interim or interim relief without conducting hearing in the notice of motion by taking affidavit in reply of the defendant on record. It is pertinent to note that the defendant had filed short reply immediately on the next day of his appearance in the matter. Hence, prayer for ad interim relief in Notice of Motion No.1910 of 2022 is rejected."

6 (2013) 2 SCC 398

9. The trial Court records that it appears plaintiff is in possession of the suit gala. A reading of the reasons assigned by the trial Court would show that it proceeded on the footing that the plaintiff has not approached the Court with clean hands and suppressed the material fact of two electric meter connections and also avoided to plead particulars of the electric meter connection which he wants to reinstall. The trial Court was of the view that the facts pleaded by him are vague and demonstrate intentional suppression of facts. In my opinion, the trial Court has completely misdirected itself as regards the controversy involved and the purpose of the plaintiff approaching the Court with a prayer for ad-interim relief. The trial Court has proceeded on technicalities. The Supreme Court in **S. B. Noronah** (supra) in paragraph 6 has observed that "Pleadings are not statutes and legalism is not verbalism. Common sense should not be kept in cold storage when pleadings are construed." The Supreme Court then in **Ram Sarup Gupta (Dead) By LRs.** (supra) held that the pleadings should be liberally considered and the substance

has to be seen. No doubt, in the present case what is under consideration is only a refusal of an ad-interim order, even then, the trial Court ought to have to take into consideration the principles of a *prima facie* case, the balance of convenience and the irreparable loss, if the plaintiff seeks ad-interim protection.

10. The facts in the present case, *prima facie*, reveal that the plaintiff is in possession of the suit gala and had applied for a three phase electric meter connection for the purpose of carrying out his commercial activities. There are rent entries on record which indicate that the rent was being paid by the plaintiff. There appears to be a transaction between the plaintiff and the defendant in the course of which the plaintiff came in possession of the suit gala. It is the defendant's case that the plaintiff fraudulently obtained the electricity connection by using false and bogus documents purportedly signed by the defendant. These are issues which are subject matter of trial. From the pleadings on record, at this juncture, it is seen that the plaintiff was in possession and was utilising the electricity from the electric

meter installed at the time of its disconnection allegedly on the complaint made by the defendant. The suit gala was allotted to the defendant as a tenant of the BPT. The BPT on March 16, 2020 informed the joint tenants that the suit gala was unauthorisedly sublet to the plaintiff. The BPT objected to such subletting and called upon the joint tenants to rectify the breach. Till then, they (defendant including) did not have any objection to the plaintiff's electricity connection being used for commercial activities. It is only thereafter that the defendant started taking steps against the plaintiff, which in my *prime facie* opinion, was only to escape the rigours of BPT taking back the suit gala upon termination of defendant's tenancy. The defendant filed criminal complaints against the plaintiff, and according to the plaintiff approached the BEST for disconnection of the electric supply. In my opinion, if the electric supply has been disconnected only on the basis of the complaint made by the defendant, such action is prejudicial to the plaintiff.

11. It is true that BEST is not a party to the proceedings. If the electricity connection is disconnected for non-

payment of dues, it is for the plaintiff to clear the arrears and apply for re-connection which the BEST will consider. However, when the plaintiff is in a settled possession, the remedy of the defendant is to proceed against the plaintiff in accordance with law, if according to him the plaintiff's possession is unauthorised. On the date of disconnection of the electricity connection the plaintiff was carrying on the commercial activities on the basis of the electricity connection which was obtained by him. Till the plaintiff continues in occupation, there is no reason why at the instance of the defendant, the electricity connection should be disconnected by the BEST. Even the defendant should have no objection to the plaintiff's using electricity as an occupier of the premises. In the present facts, *prima facie* it is seen that the defendant has objected to the user of the three phase electricity connection only after the BPT pointed out that the plaintiff is in unauthorized occupation of the premises.

12. It is of course open for the BPT to proceed against such alleged unauthorized occupation/subletting or even the

defendant may take steps against the plaintiff in accordance with law but the insistence on the part of the defendant that the electricity connection of the premises (three phase) should be disconnected only on the ground that some issues have arisen between the plaintiff and the defendant is not in consonance with fair play and justice. Subject to clearing the arrears and subject to any other legal impediments, there is no reason why the BEST should not restore the electricity connection in respect of the suit gala as claimed by the plaintiff. So far as possession is concerned, even the trial Court found that the plaintiff is in possession.

13. In the light of the judgment of the Supreme Court in **Rame Gowda (Dead) By LRs.** (supra), the plaintiff being in a settled possession cannot be dispossessed without recourse to law. Further, the plaintiff being the occupier of the premises, in terms of Section 43 of the Indian Electricity Act, 2003 it is the duty of the electricity company to supply electricity on request of the occupier. Learned counsel for the plaintiff is justified in placing reliance on the decision of the Calcutta High Court in the case of **Abhimanyu**

Mazumdar (supra) in support of this submission. Further, the objections raised by the respondent that no proper details of electricity meter connection are furnished which weighed with the trial Court, according to me, at this stage need to be regarded as technical objections. The Supreme Court in the case of **S. B. Noronah** (supra) has in paragraph 6 held that common sense should not be kept in cold storage when pleadings are construed. In the present case, the question of grant of ad-interim relief is to be decided only on the basis of the pleadings and the materials on record as the evidence is yet to be led. So far as the decision relied upon by learned counsel for the respondent in **Kishore Samrite** (supra) is concerned, on facts the decision is distinguishable. At this stage, it cannot be said that the plaintiff approached the City Civil Court with unclean hands. Suffice it to observe that the allegations of the respondent about the fabrication made by the plaintiff while obtaining the electricity connection is something that needs to be proved by him in the course of trial based on evidence. Even otherwise, as an occupier the plaintiff can

apply for electricity connection in accordance with law. The Notice of Motion filed before the trial Court deserves to be allowed.

14. Hence, the following order :-

ORDER

- (i) The Appeal From Order is allowed.
- (ii) The impugned order of the City Civil Court dated June 27, 2022 is set aside.
- (iii) The prayer of ad-interim relief in terms of prayer clauses (a) and (b) of the Notice of Motion No.1910 of 2022 filed before the City Civil Court is granted. Clauses (a) and (b) read thus :-

“(a) That this Hon’ble Court may be pleased to pass an Order and temporary Injunction against the Defendant restraining the Defendant, his family members, his agents, representatives, servants and agents, officers from dispossessing the Plaintiff or in any manner creating any hitch, hindrances, impediments, obstacles or obstruction in the peaceful use, occupation and possession of the Plaintiff in respect of the suit premises, viz. gala admeasuring about 36 X 60 sq.ft. admeasuring about 2160 sq.ft. situated at Plot No.72, 2nd Cross Lane, Mazagaon, Reay Road Station south, Darukhana, Mumbai – 400 010.

(b) That this Hon'ble Court may be pleased to pass an Order and temporary Injunction against the Defendant to issue consent in favour of electric Company/BEST Undertaking for the purpose of installing or re-installing of electric meter at the suit premises, viz. gala admeasuring about 36 X 60 sq. ft. admeasuring about 2160 sq.ft. situated at Plot no.72, 2nd Cross Lane, Mazagaon, Reay Road Station south, Darukhana, Mumbai – 400 010.”

(iv) In case the respondent does not give his consent within three days from today, the BEST may proceed with installing or re-installing the electric meter subject to clearing of the arrears and payment of necessary charges by the appellant and subject to any other legal impediments.

(v) The trial Court may proceed to decide the Notice of Motion No.1910 of 2022 on its own merits and in accordance with law and preferably within a period of twelve weeks from today.

(vi) The trial Court not to be influenced by any observations made by me in this order while deciding the Notice of Motion which may be decided on its own merits.

15. The Appeal From Order stands disposed of with no

order as to costs.

16. In view of the disposal of the Appeal From Order, nothing survives for consideration in the Interim Application and the same stands disposed of accordingly.

17. After the order is pronounced, a request is made by learned counsel for the respondent for stay of this order. The request is rejected.

(M. S. KARNIK, J.)