

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-2684-2022(O&M)

Date of decision:-9.12.2022

Kiran Sharma

...Appellant

Versus

Dakshin Haryana Bijli Vitran Nigam, Ltd. and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Jagmohan Ghumman, Advocate
for the appellant.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Kiran Sharma had brought a civil suit against Dakshin Haryana Bijli Vitran Nigam, Ltd. (hereinafter referred to as DHBVNL) and others; along with the suit she had moved an application for ad interim injunction restraining defendant No.1 from disconnecting the electricity supply to the demised premises contending if it was so done, then the plaintiff will suffer irreparable loss and injury, which cannot be compensated in terms of money.

2. The application was opposed on behalf of the defendants contending that it was not maintainable; in terms of the order dated 8.1.2015 passed by the then Additional District Judge, Gurugram on

a petition filed by the present plaintiff, the defendants were directed to restore the electricity supply to the premises of the plaintiff on deposit of Rs.4.5 lakhs, which had been so done; however on 15.3.2017, the petitioner had withdrawn the petition with liberty to file civil suit before the Civil Judge (Sr.Divn.), Gurugram; therefore the suit was filed in the Civil Court. According to the respondents, the plaintiff had been acquitted by the Court from the allegation of commission of theft of electricity and no prima facie case was made out in favour of plaintiff and no irreparable loss would be caused to the plaintiff if stay was not granted to her.

3. After hearing arguments, the trial Court vide order dated 29.9.2017 being alive of the fact that applicant had challenged the checking report No.3309-2013 and 3308-2013 dated 18.12.2004 and admittedly an amount of Rs.4.5 lakhs had already been deposited by the applicant and further electricity is the basic need for survival, directed the defendants not to disconnect the electric supply, subject to the deposit of 40% of the claim amount, subject to adjustment of amount in the sum of Rs.4.5 lakhs, which had already been deposited by the applicant with the DHBVNL.

4. The plaintiff had preferred an appeal against such order before District Judge, Gurugram, notice of which was given to respondents/defendants, which put in appearance through counsel.

Vide judgment dated 5.11.2022, that appeal was dismissed.

5. Now the plaintiff/appellant has approached this Court challenging the judgment dated 5.11.2022, passed by Additional District Judge, Gurugram and order dated 29.9.2017 passed by Civil Judge(Jr.Divn.), Gurugram being without application of judicious mind. The direction issued by the trial Court to deposit 40% of the claim amount subject to adjustment of amount in the sum of Rs.4.5 lakhs, which had already been deposited has been condemned as wrong and erroneous.

6. I have heard learned counsel for the appellant besides going through the record and I do not find any merit in the appeal.

7. I find that the trial Court had rather shown over indulgence to the plaintiff directing the defendants not to disconnect the electric supply subject to deposit of 40% of the claim amount and subject to adjustment of amount in the sum of Rs.4.5 lakhs, which had already been deposited by the applicant with the Nigam. The order is silent as to whether the plaintiff was found to have a good prima facie case and balance of convenience was in her favour or she would suffer irreparable loss and injury in case of denial of ad interim injunction to her. The order seems to have been passed more on humanitarian grounds showing a sympathetic view rather than by adopting judicious approach.

8. The plaintiff is not shown to have complied with this order passed way-back on 29.9.2017 rather as stated by learned

counsel for the revisionist, the operation of that order was got stayed from First Appellate Court of Additional District Judge, Gurugram. The plaintiff seems to be enjoying the luxury of electricity without paying the due amount towards the electricity charges to respondent No.1. The plaintiff was successful in getting the operation of order stayed from the First Appellate Court of Additional District Judge, Gurugram, which seems to have lasted for quite some time and plaintiff is enjoying the electricity without paying the charges and its arrears.

9. Therefore, I do not find any merit in the present appeal.

The same stands dismissed accordingly.

9.12.2022

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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No