

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO 486/2019**

Date of Decision: 19.12.2022

IN THE MATTER OF:

RAJINDER KAUR Appellant

Through: Dr. R.S. Sasan, Advocate

Versus

GOLDI TANEJA & ORS. Respondents

Through: Mr. Pradeep Kumar, Advocate for
respondent Nos. 1 and 2
Mr. Sunil Fernandes, Standing
Counsel BSES-RPL with Mr.
Shubham Sharma & Ms. Muskan
Surana, Advocates for respondent
No. 3

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

CM APPL.52174/2019 (Delay)

1. By way of present application filed under Section 5 of the Limitation Act read with Section 151 CPC, the applicant seeks condonation of delay of 25 days in filing the present appeal.

2. It is averred that the instant appeal is filed through her Special Power of Attorney, namely, *Sh. Varinder Singh* as the appellant is a senior citizen and based in the United States of America. It is also stated

that notarized copy of Special Power of Attorney signed and attested by the appellant was received by courier in the last week of October, 2019 and the appeal was filed on 01.11.2019.

3. For the reasons stated in the application, the same is allowed and delay of 25 days in filing the accompanying appeal is condoned.

4. The application stands disposed of in above terms.

FAO 486/2019

1. By way of present appeal filed under Order XLIII Rule 1 CPC read with Section 10 of the Delhi High Court Rules, the appellant/plaintiff has assailed the order dated 09.07.2019 passed by the learned ADJ/West/Delhi in CS No. 1150/2017, whereby her application under Order XXXIX Rules 1 and 2 CPC was dismissed. The appellant also seeks directions to respondent No. 3/BSES-RPL to install a new/restore electricity meter at property bearing No. WZ-3A/I A, *Mukherjee Park, Tilak Nagar, New Delhi* (hereinafter, referred to as the 'subject property').

2. Dr. R.S. Sasan, learned counsel appearing for the appellant submits that the parties are related to each other inasmuch as the appellant is the mother of respondent No. 1 and mother-in-law of respondent No. 2.

3. The appellant has claimed that she is aged about 65 years, an NRI and a permanent resident of the United States of America. It is averred that the appellant had purchased the subject property vide Sale Deed dated 28.10.1991. Learned counsel for the appellant submitted that in the year 2013-2014, the subject property was in occupation of some relatives and in order to get them evicted, a General Power of Attorney dated 09.12.2013 was executed in favour of respondent No. 1 by the appellant.

4. It was further claimed that respondent No. 1 thereafter misused the said General Power of Attorney and sold the subject property to her husband/respondent No. 2. Learned counsel contended that initially an electricity meter was installed in the name of the appellant at the subject property, however the same was stolen in her absence. He has drawn attention of the Court to the order dated 29.07.2016 passed by the Trial Court in CS No. 612737/2016 wherein it has been noted '*As of now, it is admitted that the plaintiff is in possession of the suit property*'.

5. On a specific query, learned counsel for respondent Nos. 1 and 2 concedes that the subject property is in possession of the appellant, however denies the appellant's right to continue to reside in the same. Learned counsel contends that after executing the General Power of Attorney and having knowledge of the fact that respondent No. 1 had executed a Sale Deed in favour of respondent No. 2, the relief sought in the appeal cannot be granted.

6. On a careful analysis, it is borne out from the record that the appellant had initially filed a suit seeking relief of declaration and cancellation of General Power of Attorney dated 09.12.2013. Later, the suit was amended and amongst other reliefs, the appellant had also sought cancellation of Sale Deed dated 04.02.2014. Concededly, the subject property is in the possession of the appellant. Further, vide order dated 02.07.2016 passed by the Trial Court, respondent Nos. 1 and 2 were restrained from dispossessing the appellant from the subject property as well as from creating any third party interest therein.

7. There is no gainsaying that electricity is an essential service and the appellant has claimed possession of the subject property. At this juncture, this Court deems it apposite to refer to the observations made

by the Supreme Court in Dilip (Dead) through Lrs. v. Satish & Others, Criminal Appeal No. 810/2022, wherein it has been held as under: -

“It is now well settled proposition of law that electricity is a basic amenity of which a person cannot be deprived. Electricity cannot be declined to a tenant on the ground of failure/refusal of the landlord to issue no objection certificate. All that the electricity supply authority is required to examine is whether the applicant for electricity connection is in occupation of the premises in question.

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The impugned order cannot be sustained and the same is set aside. The appeal is, accordingly, allowed. Pending applications, if any, shall stand disposed of.

It is however made clear that electricity supply granted, shall not be discontinued, subject to compliance by the Respondents of the terms and conditions of supply of electricity by the electricity department including payment of charges for the same.”

8. Keeping in view the aforesaid, this Court is of the *prima facie* opinion that the Trial Court erred in not considering the appellant's request for restoration/installation of the electricity connection at the subject property. Resultantly, the impugned order dated 09.07.2019 is set aside and the appeal is disposed of in the following terms:

- (i) Appellant or her authorized representative shall make an application for grant of a fresh electricity connection in her own name.
- (ii) Respondent No. 3 shall process the appellant's application for providing fresh electricity connection forthwith within two weeks from the date of filing of the application.
- (iii) Appellant or her authorized representative shall comply with all the codal and commercial requirements of respondent No. 3.

(iv) Appellant or her authorized representative shall pay the consumption charges in accordance with the bills raised by respondent No. 3 from time to time/till the time she occupies the subject property.

(v) Appellant shall not seek adjustment of the security deposit. However, on the appellant vacating the premises or being evicted and surrender of the electricity meter, appellant shall be entitled to refund of the security deposit subject to adjustment of any dues of respondent No. 3.

(vi) Respondent No. 3 shall be entitled to disconnect the electricity supply at the subject property in case appellant fails to pay the electricity consumption charges.

(vii) Application of the appellant shall be processed and electricity connection shall be installed within two working days of the appellant or her authorized representative completing all the formalities.

9. It is clarified that this order is without prejudice to the rights and contentions of the parties and shall not be construed as recognizing rights of any nature, whatsoever, including ownership and possessory rights of the appellant in relation to the subject property. The observations made hereinabove are *prima facie* and without prejudice to the pending dispute of the appellant with respondent Nos. 1 and 2. As such, no special equities shall flow in favour of the appellant on account of this order.

10. Pending application, if any, is disposed of as infructuous.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 19, 2022

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By: SANGEETA ANAND
Signing Date: 21.12.2022
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