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

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Date of Judgment: 05.07.2022+ **RFA 275/2022 and C.M. Nos. 29069/2022 & 29070/2022**

BSES YAMUNA POWER LTD & ORS. Appellants
Through: Mr. Anil Bhasin, Advocate.

versus

KAUSHALYA DEVI & ANR. Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

GAURANG KANTH, J. (ORAL)

1. The present appeal originates from the judgment dated 07.09.2021 passed by the learned Principal District and Sessions Judge (HQs) Tis Hazari Courts, Delhi in Civil Suit No. 616482/2016 titled as *Smt. Kaushalya Devi & Anr. Versus BSES YPL & Ors.*
2. By the impugned judgment, the learned Trial Court was pleased to decree the suit filed by the Respondents herein (the original plaintiffs) with cost in favour of the Respondents. Aggrieved by the said impugned judgment, the Appellants have filed the present appeal before this Court.
3. The facts which are relevant for consideration of the present appeal are as follows:-
4. Respondent No. 1 alongwith her family is residing in House No.16/697H, Bapa Nagar, Karol Bagh, New Delhi ("**the said premises**"). Respondent No. 1 is a registered consumer of electricity connection bearing



CA No. 100627681 installed at the said premises. Respondent No. 1 received a notice dated 28.10.2014 from the Appellants under Section 163 of the Electricity Act, 2003, exhibited as PW1/X1. It was stated in the said notice that on 28.10.2014, one Mr. MPS Tyagi, an Officer of Appellant No.1 visited the said premises for carrying out inspection, however, Respondent No. 1 denied access to the officer of Appellant No.1 to the said premises. In view thereof, the Appellants, vide notice dated 26.10.2014, called upon Respondent No. 1 to grant access of the said premises to the officials of Appellant No.1 for carrying out inspection in terms of the earlier notice dated 28.10.2014. It was further mentioned in the said notice that failure on the part of Respondent No.1 to provide access to the said premises may lead to disconnection of electricity. The Appellants called upon Respondent No. 1 to communicate her consent within 24 hours.

5. Since no response had been received from Respondent No. 1, Appellant Nos. 2 & 3 alongwith other staff reached the said premises on 11.11.2014 for disconnection of electricity. The inspection in the said premises was carried out in the presence of the Respondents. It is the case of the Appellants that there was no display in the electricity meter installed at the said premises. During the course of inspection, the officials of the Appellants found that the Respondents were involved in direct theft of electricity. Based on the said inspection, Appellant No. 2 prepared an inspection report, exhibited as DW1/3.

6. The officials of Appellant No.1 prepared a Seizure Memo for the inspection conducted on 11.11.2014. The Appellants contend that they had seized the punctured cable, which was used by the Respondents for the purposes of carrying out theft of electricity; however, Respondent No. 2



snatched the said crucial piece of evidence from the officials of Appellant No.1. The officials of Appellant No.1, vide Seizure Memo, seized one Aluminium Cable and one Yellow Service Line from the Respondents. The Seizure Memo separately records, “A 3 feet (approx.) yellow punctured cable was snatched by user Sanjay”. The officials of Appellant No.1 left the said premises on 11.11.2014 after disconnecting the electricity connection. It is the case of the Appellants that the Respondents refused to sign the inspection report and further allowed them to paste the said report on the said premises.

7. Respondent No.2 visited the office of Appellant No.1 on 12.11.2014 requesting for restoration of the electricity connection. He further submitted a representation dated 12.11.2014 for restoration of the electricity connection however the same was not restored.

8. Based on the said inspection carried on 11.11.2014, the Appellants raised theft bill dated 17.11.2014 for an amount of Rs.4,11,123/-, which is exhibited as PW-1/3.

9. Aggrieved by the action of the Appellants, the Respondents filed Civil Suit being CS No. 616482/2016 titled as *Smt. Kaushalya Devi & Anr. Versus BSES YPL & Ors.* for declaration, permanent and mandatory injunction. It was *inter alia* prayed in the said Civil Suit for grant of decree of declaration to the effect that the electricity bill dated 17.11.2014 and the inspection report dated 11.11.2014 are illegal, false, fabricated, null and void. The Respondents further prayed that a decree of mandatory injunction be granted thereby directing the Appellants to restore the electricity connection in the said premises and further a permanent injunction be granted in favour of the Respondents thereby restraining the Appellants and their agents from forcibly disconnecting the electricity connection being CA No. 100627681



installed at the said premises without following the due process of law.

10. Based on the pleadings, the learned Trial Court framed the following Issues:-

1. *“Whether plaintiff is entitled for the relief of declaration as prayed for? OPP*
2. *Whether plaintiff is entitled for the relief of mandatory injunction as prayed for? OPP*
3. *Whether plaintiff is entitled for the relief of permanent injunction as prayed for? OPP*
4. *Relief.”*

11. The parties led evidence to substantiate their respective claims. After examining the contention of both the parties, the learned Trial Court passed the impugned judgment, whereby the Suit filed by the Respondents was decreed with cost. Aggrieved by the said impugned judgment, the Appellants have filed the present appeal before this Court.

Submissions on behalf of the Appellants

12. It is the submission of learned counsel for the Appellants that the impugned judgment is perverse and based on selective piece of evidence. There was no enmity between the officials of Appellant No.1 and the Respondents and hence no mala fide can be attributed to the officials of Appellant No.1. The factum of the inspection dated 11.11.2014 was admitted by both the parties. It was clearly mentioned in the said inspection report that the Respondents were indulging in direct theft of electricity and the officials of Appellant No. 1 seized many relevant materials in this regard. The learned Trial Court failed to appreciate the punctured cable, which was a crucial piece of evidence, which was snatched by Respondent No. 2 from the officials of Appellant No. 1 and the said fact has been recorded in the Seizure Memo.



13. Learned counsel for the Appellants further submitted that the non-registration of police complaint regarding the said incident cannot be treated to be of much significance as there were other evidences to substantiate the theft of electricity by the Respondents. It has further been submitted by the counsel for the Appellants that the electricity meter was not seized by the officials of Appellant No. 1 as the Respondents did not allow the Appellant No. 1 to do the same. Learned counsel for the Appellants further submitted that the learned Trial Court failed to appreciate the oral evidence given by Respondent Nos. 1 & 2.

14. In view of the aforesaid submissions, counsel for the Appellants argued that the impugned judgment is based on erroneous appreciation of evidence on record and accordingly prays for setting aside the impugned judgment.

Legal Analysis based on facts of the present appeal

15. This Court has heard the arguments advanced by the counsel for the Appellants and has further examined all the documents placed on record. The learned Trial Court had examined the matter in detail and has further recorded its issue wise findings, which, *inter alia*, reads as follows:-

“ISSUE No. 1

12. *To begin with, as described above, defendant no. 3 in his cross examination as DW2 admitted that the voice in CD Ex. PW1/4 was his voice, stating that “wo vakeel zyada ban raha hai, vakeel ko zyaada lappet te hain”. That audio recording was heavily relied upon by learned counsel for plaintiff in support of his contention that the entire case set up by the defendants was out of vendetta because plaintiff no. 2 happens to be an advocate. I find substance in the submission of learned counsel for plaintiff that the said admitted audio recording is strongly suggestive of vendetta on the part of officials of the defendant while registering the case of electricity theft against*



the plaintiffs. But that in itself cannot be a sufficient reason to throw out the entire case set up by the defendant if the same otherwise inspires confidence. Keeping that in mind, I analyzed further evidence brought on record.

13. According to the defendants, the service line from the pole outside the said premises entered the meter installed inside the premises through wall and it is in the portion of service line concealed inside the wall that the service line was punctured and a cable was attached to supply electricity to the implements inside the premises avoiding the electricity meter and thus, the electricity consumed by the plaintiffs could not get recorded in the electricity meter, thereby, it being a case of dishonest abstraction of electricity.

14. The alleged puncturing of the service line inside the wall was sought to be proved by the defendants by taking out the punctured portion of the service line after breaking a hole around the entrance of the service line. But the portion of service line bearing the point of puncture was allegedly snatched away by plaintiff no. 2 after which he fled the spot. Admittedly, thereafter, the said piece of service line bearing the punctured portion was never recovered and never saw light of the day. Also admittedly, despite the plaintiff no. 2 having fled away after snatching such a crucial piece of evidence, the defendants did not lodge any complaint with the local police.

15. The alleged puncturing of the service line was also sought to be proved by the defendants with the help of some photographs clicked with the digital camera and stored in CD Ex. PW1/D1. I examined the CD Ex. PW1/D1 and found that the same contains a number of photographs which only depict the electrical appliances installed in the said premises. Some of those photographs did not open on the computer of the court room. But none of those photographs depicts the meter installed in the said premises, so it is not clearly established that there was a wire for pilferage, joined with the service line prior to the meter. Only one of the photographs, Mark A1 depicts a yellow service line but it cannot be ascertained as to whether the said photograph depicts the service line entering from outside the said premises or exiting the wall towards inside of the said



premises. Even the photograph Mark A1 of CD Ex. PW1/D1 and its enlarged portion marked as Mark A2 are completely blurred and do not depict the allegedly punctured portion of the service cable. In other words, photographs submitted by way of CD do not establish that there was a puncture in the service line inside the wall at which point, a wire for supplying the electricity to the appliances inside the said property was connected.

16. As regards the alleged snatching of wire by plaintiff no. 2, even in the inspection report allegedly prepared on the spot, no such observation was recorded. It is only in the seizure memo that a note was appended to the effect that a three feet yellow punctured cable was snatched by the user Sanjay (plaintiff no.

2), but even that note did not mention that plaintiff no. 2 after snatching the cable fled the spot. Not just this, even in the complaint lodged by the defendant with PS Prasad Nagar vide DD No. 31B dated 19.11.2020, not even a whisper was made that plaintiff no. 2 snatched away the crucial piece of evidence and fled the spot.

17. The defendant no. 3 in his cross examination as DW2 stated that as a matter of practice they always seize the meter when the same does not display the reading. But in the present case, though there was no display found on meter, the same was not seized by them. To explain this, DW2 came up with a totally distinct story stating that they did not seize the meter because plaintiffs and brother of plaintiff no. 2 snatched their wire and locked the doors from inside leaving them outside the subject premises.

18. Going by above analysis of evidence on record, I am not convinced at all that defendants have established even by way of preponderance of possibilities that plaintiff no. 2 snatched the punctured portion of the service cable and fled the spot. This vital fabrication of story by the defendant taints their entire version of the alleged electricity theft. Thus, there was no occasion for the defendants to raise a theft bill against the plaintiffs.

19. In view of above discussion, issue no. 1 is decided in favour of plaintiffs and it is accordingly held proved that plaintiffs are entitled to the relief of declaration to the effect that



the impugned inspection report dated 11/12.11.2014 as well as the impugned electricity bill dated 17.11.2014 are illegal, null and void.

ISSUE No. 2

20. According to defendants, on 28.10.2014 the plaintiffs did not allow the officials of the defendant to enter the said premises for the purpose of inspecting, testing, repairing or altering the electricity meter, so notice dated 28.10.2014 under Section 163 Electricity Act was issued to them and when on 11.11.2014, officials of the defendant visited the said premises to cut off electricity due to non-compliance with notice under Section 163 of the Act, they found theft of electricity in the said premises in the manner described above, so the electricity was disconnected.

21. Coming to the issue of notice Ex. PW1/X1 under Section 163 of the Electricity Act, in his application Ex. PW1/2 dated 12.11.2014 addressed to the reporting officer of the defendant, plaintiff no. 2 stated that on 28.10.2014 his mother received notice under Section 163 Electricity Act, indicating that the meter display of date and time was disturbed so the authorized representative of defendant be allowed to enter the premises; and that accordingly on 11.11.2014, defendants no. 2 and 3 alongwith four laborers visited the subject premises and after carrying out inspection disconnected the electricity supply and took away the electricity meter without installing new meter, so he requested the electricity connection to be restored.

22. In his cross examination PW1 explained that on 28.10.2014 his mother did not prevent the defendant officials from conducting inspection and had only told them that none else was present at home, after which notice under Section 163 Electricity Act was served on his mother, the plaintiff no. 1. Although PW1 was cross examined at length, his testimony to that effect was not challenged.

23. That being so, I am unable to find any fault, let alone any Culpability on the part of plaintiffs if the old lady expressed reluctance to let a stranger person enter the premises when none else was present in her house. Rather, admittedly, plaintiff no. 2 fairly countersigned the notice Ex. PW1/X1 under Section 163 of the Electricity Act which was issued to her on the same



day.

24. Further, the defendant no. 2 in his cross examination as DW1 admitted that on 11.11.2014, their entry for inspection of the subject premises was not obstructed by anyone.

25. According to Section 163(3) of the Electricity Act, supply of electricity to the consumer can be cut off so long as refusal to allow the officials of the electricity department to perform duties under sub-section (1) or (2) of Section 163 of the Act continues. In the present case, the defendants having been provided unhindered access to the said premises on 11.11.2014, notice dated 28.10.2014 under Section 163 of the Act stood complied within. Therefore, on account of the alleged non-compliance, electricity supply in the said premises could not be disconnected.

26. The stand taken by the defendants that they disconnected the electricity supply in the said premises having found theft of electricity is not sustainable in view of above discussion that there is no evidence of the alleged theft.

27. Therefore, issue no. 2 is decided in favour of plaintiffs and it is accordingly held proved that plaintiffs are entitled to decree of mandatory injunction, thereby directing the defendants to restore electricity supply to the said premises with immediate effect.

ISSUE No. 3

28. In view of above analysis of material on record, plaintiffs are held entitled to the relief of permanent injunction thereby restraining the defendants from disconnecting the electricity supply in the said premises without following due process of law. Accordingly, issue no. 3 is decided in favour of plaintiffs.

ISSUE No. 4 (Relief)

29. In view of above findings, the suit is decreed with costs in favour of plaintiffs for declaration that the impugned Inspect on Report dated 11/12.11.2014 and the impugned Electricity Bill dated 17.11.2014 for Rs 4,11,123/- are illegal, null and void; for mandatory injunction thereby directing the defendants to immediately restore electricity supply in the said premises



bearing no. 16/697H, Bapa Nagar, Karol Bagh, New Delhi; and for permanent injunction thereby restraining the defendants from disconnecting the electricity supply to the said premises without following due process of law.”

16. It is the case of the Appellants that the Respondents were indulging in theft of electricity. The burden of proof to establish the said allegation was on the Appellants. In order to prove the said fact, the Appellants led evidence and relied on the Inspection Report, Load Report, Seizure Memo and photographs taken during the said inspection. As rightly pointed out by the learned Trial Court, the photographs placed on record do not prove theft of electricity. The factum of inspection and seizure of material as mentioned in the Seizure Memo, is not disputed by the Respondents. However, these documents are not conclusive proof for establishing the commission of theft of electricity by the Respondents. The crucial piece of evidence to establish theft would have been the punctured cable. However, according to the Appellants, the said punctured cable was snatched by Respondent No.2 from the officials of the Appellant No.1, who fled away from the spot. Moreover, no police complaint was registered by the Appellants in this regard. The said fact has also not been mentioned in the inspection report. Further, no attempt was made on part of the Appellants to recover this crucial piece of evidence.

17. The Appellants further contended that at the time of inspection, there was no display in the electricity meter. The seizure of electricity meter would have thus been another piece of crucial evidence for establishing the case of theft of electricity by the Respondents. It is further admitted by the Appellant's witness that the normal procedure in a case of theft is to seize the electricity meter when the same does not display the reading. However, in the present case, the electricity meter was not seized. The explanation



provided by the Appellants is that the Respondents did not permit them to take out the said electricity meter. The said explanation is hard to believe as rightly held by the learned Trial Court. Therefore, this Court is of the considered view that the Appellants have failed to prove that the Respondents were indulging in theft of electricity. In view thereof, the learned Trial Court has rightly granted the relief of declaration and permanent and mandatory injunction in favour of the Respondents as sought for in the Suit.

18. In view of the above-stated discussion, this Court finds no infirmity in the impugned judgment passed by the learned Trial Court and hence, the present appeal is dismissed. No order as to cost.

19. All pending applications are also dismissed accordingly.

GAURANG KANTH, J

JULY 05, 2022

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