

AD-08
Ct No.09
27.03.2023
TN

WPA No. 5932 of 2023

Sri Rajendra Kumar Chopra and others
Vs.
CESC Limited and others

Mr. Soumyen Datta,
Mr. Sudhir Kumar Sadhukhan

.... for the petitioners

Mr. Amitava Chaudhuri,
Mr. N. Roy

.... for the CESC Limited

Ms. Anyasha Das

.... for the respondent no.3

The supplementary affidavit filed in court today by learned counsel for the petitioners be kept on record.

It is disclosed from the annexures to the said supplementary affidavit that the petitioners herein are enjoying a decree declaring that the petitioners' partnership firm is a tenant in respect of the premises under the private respondent (defendant in the suit) and that the defendant and/or his men/agents have no right to take forcible possession of the suit premises otherwise than in due process of law. The defendant/private respondent and/or his men and agents were further restrained by a decree of permanent injunction from taking forcible possession

of the suit premises otherwise than in due process of law.

Learned counsel appearing for the CESC Limited supports the contention of the petitioners that due to resistance put up by the private respondent, the connection is not being given to the petitioners.

Learned counsel appearing for the private respondent/landlord submits that her client does not have instruction with regard to the decree at all. Hence, learned counsel seeks an opportunity to file an affidavit-in-opposition thereby disclosing relevant facts.

However, on query of court, it is evident that the only reason why the private respondent is seeking to affirm affidavit is to have further instructions on the *ex parte* decree.

However, since photocopies of certified copies of the *ex parte* decree and the connected judgment have been annexed to the supplementary affidavit by the petitioners and are being produced before this court on oath, a presumption of correctness is attached to those. There cannot be any conceivable reason to disbelieve the said documents.

Thus, the petitioners have, indeed, obtained a decree, although *ex parte*, against the defendant/private respondent as indicated above. It

is well-settled that an *ex parte* decree has equal legal force and binding value as a contested decree and the court cannot distinguish between the two for the purpose of considering whether the same is binding upon the parties thereto. In such view of the matter, there is no scope of disregarding the decree of the civil court.

Such decree shows the possession of the petitioners. It is trite that Section 43 of the Electricity Act, 2003, empowers the occupier of a premises to take independent electricity connection.

Hence, there is no reason why the petitioners' prayer for new electricity connection at the premises, where the petitioners are in occupation, should be refused.

Accordingly, WPA No. 5932 of 2023 is allowed, thereby directing the CESC Limited to give a new electricity connection to the petitioners at the premises-in-question subject to compliance of all formalities in that regard by the petitioners, within a fortnight from date and/or from the date of compliance of formalities, whichever is later.

In the event any obstruction is raised by the private respondent and/or his men and agents in doing so, it will be open to the CESC personnel to approach the local police station for adequate police

assistance, which will then be given by the said police station, acting on the basis of the communication of the learned Advocates for the parties along with a server copy of this order. In case any padlock or other hindrance is put up, it will be open to the police personnel to break open such padlock for the limited purpose as indicated above. The cost of the police help shall be paid by the petitioners.

It is further recorded that since no affidavits have been invited, rather the prayer for affidavits of the private respondent has been refused, it is deemed that the allegations made in the writ petition are not admitted by the respondents. Moreover, it is clarified that mere giving of an electricity connection to the petitioners at the premises shall not create any special right or equity in favour of the petitioners which the petitioners otherwise do not have in law.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)