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W.P.A. 10916 of 2020

Susanta Kumar Seal
Vs.
The Station Manager, West Bengal
State Electricity Distribution
Company Limited & Anr.

Mr. Prasanta Kumar Pakrashi
...for the petitioner

Ms. Suvasree Ghose
...for the WBSEDCL

At the outset, it is seen that no affidavit-of-opposition has been filed pursuant to the previous direction of a coordinate bench. As such, the writ petition is taken up without further affidavits.

The petitioner is a judgment-debtor in a civil suit, in which the respondent no. 2, the mother of the petitioner, has obtained an eviction decree against the petitioner.

Learned counsel for the petitioner submits that an appeal was preferred against the said decree, which was ultimately dismissed as well. However, it is contended that a second appeal has, thereafter, been preferred, which is pending for hearing under Order 41 Rule 11 of the Code of Civil Procedure in this Court. Pendency of an appeal, it is submitted, operates as continuation of the suit and, as such, should be taken into consideration for the purpose of conferring the right on the petitioner

to get an electricity connection as an occupant of a premises under Section 43 of the Electricity Act, 2003.

Learned counsel appearing for the petitioner places reliance on a coordinate Bench judgment, reported at *AIR 2023 CAL 112 (Madhab Das vs. WBSedcl & Ors.)*. In the said judgment, it is contended, despite the pendency of a civil suit, electricity was directed to be given to one of the parties, keeping the question taken in the civil suit open.

Learned counsel appearing for the Distribution Licensee submits that the respondent no. 2 (mother of the petitioner) has objected to an electricity connection being given to the petitioner.

The cited judgment placed reliance on the principle embodied in Section 43 of the Electricity Act, 2003. It was observed by the learned Single Judge that a civil suit was pending between the parties. However, irrespective of the pendency of the suit, the writ petitioner therein was a person in settled occupation of the property and was entitled to get electricity connection. However, it was clarified that such connection would be given without creating any special right or equity in favour of the writ petitioner therein and that it would be open to both the parties to raise their

respective contentions in respect of the ownership of the property in the civil suit pending between them.

It is well-settled by a plethora of judgments that a person in settled possession of a property, irrespective of the legality of such possession, is entitled to get an electricity connection at such premises.

The question which arises in the present case, however, is whether the writ petitioner can be said to be in settled possession for the purpose of getting an electricity connection in his name.

It is an admitted position that the writ petitioner is already suffering a decree of eviction by a competent civil court, which has been affirmed by the last court of facts, being the first appellate court.

Although a second appeal is pending against the said judgment and decree of the appellate court, there are certain factors which vitiate the petitioner's reliance on pendency of the appeal for the present purpose.

First, the second appeal is admittedly pending since the year 2009 and in view of the lapse of more than a decade in the meantime, without any visible effort by the petitioner to have the matter enlisted for being admitted within the contemplation of Order 41 Rule 11 of the Code of Civil Procedure till

date, it cannot be said that the petitioner has come with clean hands.

That apart, it is settled position of law and even as per the provisions of Section 100 of the Code of Civil Procedure, read with Order 42 in conjunction with Order 41 of the Code of Civil Procedure, that the involvement of a substantial question of law is a *sine qua non* for the purpose of considering a second appeal to be ‘pending adjudication’ in the true sense of the term.

Unless a competent bench has admitted the appeal within the contemplation of Order 41 Rules 11 of 13 of the Code upon the observation that there are certain substantial questions of law involved, which are to be specifically formulated by the said Bench, it cannot be said that the second appeal is “pending adjudication” before this court.

Hence, as of today, the petitioner is not merely in unlawful occupation of the property but the possession of the petitioner cannot also be termed to be “settled” within the contemplation of the rights conferred under Section 43 of the Electricity Act, 2003.

To be in settled occupation, the petitioner must show that the possession of the petitioner is within the knowledge of the true owner who has not taken any steps for disturbing such possession. In the present case, let alone the owner not taking any

step for disrupting the petitioner's possession, the respondent no. 2/owner is already armed with eviction decrees passed by two competent courts against the petitioner.

Hence, none of the criteria as contemplated by this court, particularly in the Full Bench judgment in *Abhimanyu Mazumdar Vs. The Superintending Engineer and another*, reported at *AIR 2011 Cal 64*, have been satisfied in the present case to show that the petitioner is in settled possession of the property for the purpose of satisfying Section 43 of the Electricity Act, 2003 and, hence, the present writ petition cannot succeed.

Accordingly, W.P.A. 10916 of 2020 is dismissed on contest without, however, any order as to costs.

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

(Sabyasachi Bhattacharyya, J.)