

OD – 5

WPO/1599/2023

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

AISHA GHOSI

-Versus-

THE CESC LTD. AND ORS.

BEFORE :

THE HON'BLE JUSTICE SABYASACHI BHATTACHARYYA

Date : 29th September, 2023

Appearance:

*Mr. Tarique Quasimuddin, Adv.
Mr. Zainab Tahur, Adv.
Ms. Miina Shabnam, Adv.
for the petitioner.*

*Mr. Somnath Bose, Adv.
...for CESC Ltd.
Mr. Ovik Sengupta, Adv.
...for the State.*

*Mr. Imtiaz Ahmed, Adv.
Ms. Ghazala Firdous, Adv.
Mr. Md. Aammar Zaki, Adv.
Mr. Md. Arsalan, Adv.
Mr. Sk. Sahidullah, Adv.
...for the private respondent.*

The Court : The report filed by the State respondent be kept on record.

The petition is the second wife of the private respondent. In the present writ petition, the petitioner

challenges the refusal of the CESC Ltd. to give a new electricity connection in her name in respect of the first floor flat of a particular premises.

The private respondent/husband vehemently opposes such prayer.

Learned counsel for the CESC Ltd. submits that the petitioner already has an electricity connection in her name with regard to the second floor flat of the same building and, as such, is not entitled to have a new connection on the first floor.

The facts of the case, in a nutshell, are as follows:

The private respondent has married twice, the present petitioner being the second wife. The husband has sought to give divorce to the petitioner by issuing a first talaq i.e. talaq-e-hasan in writing. The petitioner has challenged the same and moved a suit before a competent civil Court which has granted an injunction restraining the private respondent/husband from giving a second and third talaq.

On the other hand, the wife has also moved the civil Court and obtained an order of injunction restraining the private respondent/husband from disturbing the petitioner's possession with regard to the first floor flat in dispute.

The husband has also filed an independent suit and has obtained an order of status quo with regard to the same flat.

In so far as the second floor flat is concerned, admittedly, third parties have been inducted. The wife/petitioner says that the said inductees are tenants. The private respondent/husband submits that they are licensees inducted by the wife by ousting the husband and his mother.

Apparently, the husband has challenged the grant of an electricity connection in the name of the petitioner/wife in respect of the second floor licensed-out flat. The matter is pending before the Ombudsman.

However, in so far as the first floor is concerned, admittedly the husband used to have an electricity connection which has been temporarily surrendered by the husband.

As such, since the husband claims that the petitioner has thrown him out from the first floor flat and the petitioner/second wife has obtained an injunction restraining the husband from disturbing her possession in respect of the same flat, it can very well be said that the petitioner is in settled possession of the property as envisaged under Section 43 of the Electricity Act, 2003.

Although the husband has obtained a counter injunction, the same is merely by way of status quo, without specifically attributing the possession of the flat to the husband. Hence, in the teeth of the injunction obtained by the wife, it can very well be said that the petitioner is in occupation of the

first floor flat and, thus, is entitled to electricity connection there.

The problem which arises now is that the petitioner is already enjoying another connection in respect of the second floor of the same building and the CESC Limited is setting up a defence that by way of second connection the petitioner will take advantage of splitting of load.

However, on query of Court the CESC Limited has admitted that there is no impediment if the petitioner uses the electricity taken at the second floor for the first floor as well and applies duly for enhancement of load in that regard.

Keeping in view the above circumstances, this Court is of the opinion that irrespective of the civil dispute between the petitioner and the private respondent, the petitioner is entitled to an electricity connection at the first floor of the disputed premises. However, keeping on balance the defence of the CESC Limited and the impediment faced regarding splitting of load, it would be suitable for the ends of justice if the petitioner is permitted to apply for an enhancement of load in respect of the meter already enjoyed by her.

Accordingly, WPO 1599 of 2023 is allowed, thereby permitting the petitioner to apply afresh for an enhancement of load with regard to the electricity connection standing in her name in respect of the second floor of the property-in-dispute.

Upon said enhancement application being made, the CESC Limited shall, within a week thereafter, raise an appropriate quotation in that regard. The petitioner shall comply with the formalities and make due payments. Upon such compliance of formalities by the petitioner, the CESC Limited shall, within a week thereafter, enhance the load of the said electricity meter standing in the name of the petitioner in respect of the second floor of the premises. It is made clear that the petitioner would be entitled to use the electricity connection given at the second floor of the premises for user in respect of the first floor as well, on the basis of the enhancement so given to her.

It is made clear that in the event the private respondent creates any obstruction to the CESC Personnel in doing so, it will be open to the CESC personnel to approach the respondent No. 3 i.e. Officer in Charge of Chitpur Police Station for adequate police assistance, which will be given by the respondent No. 3, if necessary by removing any padlock or other hindrance if put up to obstruct the access of the CESC personnel, at the cost of the petitioner.

It is further clarified that nothing in this order and/or enhancement of load given to the petitioner and user of the petitioner of electricity in respect of the first floor as well, confer any special right or equity in favour of the

petitioner which the petitioner otherwise does not have in law. The said enhancement of load or user of electricity by the petitioner shall not, *per se*, prejudice the rights and contentions of the petitioner and the private respondent in any civil suit/proceeding pending before any competent Civil Court.

No order as to costs.

Urgent certified website copy of this order, if applied for, be made available to the parties subject to compliance with the requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)