

CR-2194-2023 (O&M)

116

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2194-2023 (O&M)

Date of decision: April 17, 2023

The Executive Engineer “OP” Division DHBVNL Haryana and another
....Petitioners

versus

Ram Phal
....Respondent

CORAM: HON’BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Arvind Seth, Advocate for petitioners.

ARUN MONGA, J. (ORAL)

Petition herein is for quashing/setting aside impugned order dated 22.09.2020 (Annexure P-1) passed by learned Civil Judge (Senior Division), Charkhi Dadri, whereby application filed by plaintiff/respondent herein seeking *ad interim* injunction under Order XXXIX Rules 1 and 2 read with Section 151 of Code of Civil Procedure, 1908 (for short ‘CPC’), was allowed; and impugned order dated 26.07.2022 (Annexure P-2) passed by learned Additional District Judge, Charkhi Dadri vide which appeal preferred by petitioner/defendants against aforesaid order, was dismissed.

2. Learned counsel for Petitioner/defendants would contend that respondent-plaintiff filed suit for mandatory injunction directing defendants to release electricity connection and install electric meter in the premises of plaintiff. He would contend that plaintiff filed an application seeking *ad interim* injunction under Order XXXIX Rules 1 and 2 read with Section 151 of CPC, which was disposed of vide impugned order dated 22.09.2020 (Annexure P-1) directing petitioner/defendants to release new electricity connection. Aggrieved, defendants preferred an appeal against aforesaid order, which was dismissed vide order dated 26.07.2022 (Annexure P-2).

CR-2194-2023 (O&M)

2.1. Learned counsel further contends that allowing application of plaintiff/respondent would amount to decreeing the suit itself and that no new connection can be released on defaulter's premises. Plaintiff is not entitled for new electricity connection. In the premises in question, there was electricity connection in the name of one Ravinder s/o Shri Hari Ram, which was disconnected vide permanent disconnection order dated 21.01.2019 due to non-payment of outstanding amount of Rs.97,778/-.He would further submit that plaintiff/respondent vide application dated 21.01.2019 applied for new connection, which was rejected on 25.01.2019. Premises of plaintiff were raided by team of Vigilance and plaintiff was found indulging in theft of electricity. A complaint was lodged that there was theft of electricity and total outstanding amount was Rs.2,20,422/-.

3. I have heard learned counsel for petitioners and gone through the record.

4. Long and short of the controversy before this Court is that since respondent-plaintiff has committed theft of the electricity, he ought not to have been given benefit of the equitable orders passed by the Courts below *qua* restoration of the electricity supply. No doubt, arguments *qua* theft in abstract are admissible only when the theft has been proved by any competent Court below. Merely, registration of an FIR does not amount to any conclusive proof of the theft, as has been pleaded. In any case, orders passed by learned Courts below being interim in nature are subject to outcome of the trial, I find no grounds to interfere. Needless to say, electricity being a basic requirement, cannot be deprived to a consumer when allegations *qua* his being an erring party are yet to be adjudicated. Therefore, balance of convenience, at this stage, is in favour of consumer and no irreparable loss would be caused as the outstanding dues, needless to say, will be

CR-2194-2023 (O&M)

recoverable from the consumer, in case the same are found admissible as per claim of petitioner-Nigam.

5. Apart therefrom, impugned order dated 26.07.2022 (Annexure P-2) passed by learned Additional District Judge, Charkhi Dadri is premised, *inter alia*, on the following reasoning:

“9. In present case, respondent/plaintiff has sought a declaration that demand of arrears amounting Rs.97,778/- is wrong & illegal and also sought an injunction directing appellants/defendants to release electricity connection to the premises of respondent provisionally. Admittedly, respondent has purchased some land in Rect. & Khasra No.143//1/1 in the name of his wife and has constructed house thereon. After that he applied for installation of a domestic electric connection in said premises and completed all usual formalities for installation of new electric connection. Earlier said application of respondent was allowed, but lateron appellants refused to install electric connection on account of pending defaulting amount of Rs.97,778/- qua the premises in dispute in the name of its earlier owner from whom respondent/plaintiff has purchased the land in question. This court has gone through documents placed on record by both the parties and is of the firm opinion that since respondent has purchased the land as a bonafide purchaser by way of registered sale-deed and constructed his house thereon, thus, at this stage question as to whether such subsequent vendee has been acting in collusion with his earlier vendor in order to default the electricity department, is to be decided at the end of the trial of the civil suit for which both the parties have yet to lead their respective evidence in the case. Thus, at this stage, learned trial court has rightly passed injunction order in favour of respondent/plaintiff by holding that if injunction is not granted, then respondent will suffer an irreparable loss. On perusal of the entire record, this court has reached at the conclusion that learned trial court neither committed any illegality or irregularity nor there is any infirmity of any nature in adjudicating upon the injunction application vide impugned order dated 22.09.2020.

10. Resultantly, in view of above discussion, appeal in hand being devoid of merits, the same stands dismissed. Nothing observed herein shall be construed as an expression of opinion of this Court on the merits of the case, which shall be adjudicated on leading respective evidence by the parties. Trial court record, with a copy of this judgment, be sent back. Parties through their counsels are directed to appear before learned trial court on the date already fixed. Appeal file be consigned to the record-room, after due compliance.”

6. Having heard the arguments of learned counsel for petitioner, I am of the opinion that there is no room for interference in the aforesaid valid reasons recorded by learned Court below.

CR-2194-2023 (O&M)

7. No material irregularity in law or procedure has been committed by learned Court below, so as to exercise extraordinary revisional jurisdiction herein.
8. In the premise, instant revision petition is dismissed.
9. In the parting, I may hasten to add here that any observations made hereinabove shall not be any reflection on the pending criminal proceedings instituted by petitioner-Nigam against respondent-consumer *qua* allegations of theft.
10. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

April 17, 2023
mahavir

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No