



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO.36/2007

Maharashtra State Electricity
Distribution Company Ltd.,
Through its Executive Engineer,
Divisional Office, Khamgaon,
Tq. Khamgaon, Dist. Buldhana.**APPELLANT**

...V E R S U S...

Rambilas Amarchand Agrawal,
r/o Khamgaon, Opp. Sarafa Post Office,
Tq. Khamgaon, Dist. Buldhana. ...**RESPONDENTS**

Mr. R. E. Moharir, Advocate for appellant.
Mr. Y. Sodhi, Advocate instructed by Dr. Anjan De, Advocate for
respondents.

CORAM:- ANIL L. PANSARE, J.
DATED :- 23.04.2024

ORAL JUDGMENT

Heard Mr. R. E. Moharir, learned counsel for appellant
and Mr. Y. Sodhi, learned counsel instructed by Dr. Anjan De,
learned counsel for respondents.

2. The appeal has been admitted on the following
substantial questions of law.

*“1. Whether the appellate Court was justified in
reversing the finding that the plaintiff was not entitled to a
grant of electric connection, without considering the
material evidence considered by the trial Court to hold that
the plaintiff had not submitted the test report and also paid
the installation charges for the electric connection?”*

2. *Whether the appellate Court could have held that the plaintiff was entitled to seek mesne profits from appellant board and directed an inquiry as provided under Order XX Rule 12 of the Code of Civil Procedure when the plaintiff had deposited the connection charges finally in the year 1994 and had not submitted the test report which was a mandatory requirement before releasing the electric connection?”*
3. The respondent-plaintiff filed suit for grant of electric connection. According to the appellant-defendant, the respondent did not complete the required formalities. Though he deposited the amount, he did not submit test report. The suit came to be dismissed with a direction to the respondent to submit the documents. The appellant was directed to release the connection once the requisite documents are submitted by the respondent. The respondent, however, did not complete the formalities, particularly he did not obtain the test report in terms of Rule 47 of the Indian Electricity Rules, 1956 (For short the, “Rules of 1956).
4. Learned counsel for the appellant submits that the test report is necessary for the safety of the consumer, premises and the user as well.
5. During the course of arguments, learned counsel for the appellant has invited my attention to the judgment passed by the First Appellate Court, which has, while rejecting the request of the

respondent to release the connection, noted that the respondent has already sold the suit property i.e. the land bearing Survey No.103/2, situated in village Sutala (Bk.), District Buldhana. The First Appellate Court also noted that the respondent, who was appellant before the First Appellate Court, is no more the owner and thus not entitled to get the electricity.

6. The respondent-in-person was present before the First Appellate Court and he admitted that since he was not the owner of the suit field and since he was/is not in possession of the same, he is not entitled to get the electricity supply because he is no more an occupier as defined in Rule 2(aaa) (af) of the Rules of 1956. Accordingly, the First Appellate Court has answered the second point i.e. “Whether the appellant is entitled to get electricity supply in the suit field in Survey No.103/2 of Sutala Bk.?” in the negative. The respondent has not challenged the said findings.

7. In view of the above, the learned counsel for the appellant submits, and rightly so, that the first substantial question of law does not arise for consideration. The same is answered accordingly.

8. So far as the second question of law is concerned, there are two reasons why should the First Appellate Court not directed

the mesne profit inquiry. The first reason is that the respondent has not placed on record the test report, which was mandatory. And the second is, that the respondent has sold the suit property pending appeal and has now no locus to seek such relief. The second substantial question of law is accordingly answered in the negative.

9. The net result of the above is that the appellant has made out a case in its favour. Hence following order.

ORDER

- (i) The appeal is allowed.
- (ii) Judgment and order dated 22.12.2004, passed by First Ad hoc Additional District Judge, Khamgaon in Regular Civil Appeal No.88/1995 is quashed and set aside. Judgment and decree dated 26.09.1995 passed by 2nd Jt. Civil Judge Junior Division, Khamgaon in Regular Civil Suit No.1/1989, is restored.
- (iii) The appeal is disposed of in the above terms. No order as to costs.

(Anil L. Pansare, J.)

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