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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ FAO 27/2024, CM APPL. 4072/2024

BIHARI LAL JANGIR ..... Appellant

Through: Mr. M. A. Niyazi, Mr. Sandeep Khatri, Ms. Kirti Bhardwaj, Ms. Nehmat Sethi and Mr. Arquam Ali, Advs.

versus

TATA POWER DELHI DISTRIBUTION LIMITED ..... Respondent

Through: Mr. Manish Kumar Srivastava, Mr. Moksh Arora, Mr. Santosh and Mr. Yash Srivastava, Advs.

**CORAM:**
**HON'BLE MS. JUSTICE SHALINDER KAUR**

**<u>O R D E R</u>**

**% 05.02.2024**

1. The present appeal under Order XLIII Rule 1 of the Code of Civil Procedure, 1908 ("CPC") has been preferred impugning the order dated 06.01.2024 passed by the learned Additional District Judge in CS DJ 331/2022 titled as "Bihari Lal Jangir vs. Tata Power Delhi Distribution Ltd." thereby partly allowing the application under Order XXXIX Rule 1 & 2 of the appellant and directed appellant to deposit Rs. 4 lacs with the respondent within 30 days.

2. The appellant is stated to be beneficiary of electricity connection installed at his commercial establishment since 2005.

3. It is the case of the appellant that almost every month, employees of

the respondent used to inspect his premises to open the seal of the appellant's electricity meter and thereafter used to download data from the meter. On 27.01.2022, the electricity meter of the appellant caught fire and appellant immediately informed the respondent through telephonic call. A new meter was installed at the appellant's premises within few days.

4. The learned counsel for the appellant submits that respondent raised a demand note towards the said replacement, which amount was duly paid by the appellant. On 01.04.2022, the respondent issued show cause notice on the basis of third party lab report of the burnt electricity meter, which the appellant was not aware of. However, a report prepared of the old electricity meter is concocted and false. The appellant filed his representation to the show cause notice on 12.04.2022 challenging the forensic report and subsequently, denying the allegations of any internal involvement in burning of the electricity meter inter-alia of the appellant and others.

5. It is further stated that respondent without giving any opportunity to the appellant passed order dated 18.04.2022 and raised a demand of Rs. 8,23,398/- alleging electricity theft and raised plea of disconnection of the electricity supply of the appellant. Constrained by the said circumstances, the appellant filed a suit bearing CS No. 331/2022 titled as "Bihari Lal Jangir vs. Tata Power Delhi Distribution Limited", for declaration, injunction and damages challenging the order dated 18.04.2022 along with application under Order XXXIX Rule 1 & 2 CPC.

6. On 27.05.2022, learned Trial Court passed an ad interim order on application under Order XXXIX Rule 1 & 2 CPC thereby directing the respondent to maintain status quo, however, while disposing of aforesaid application on 27.10.2023, the learned Trial Court partially allowed the

application of the appellant and directed him to deposit Rs. 4 lacs with the respondent within 30 days failing which the respondent will be at liberty to disconnect the electricity of the appellant.

7. Aggrieved by the said order, the appellant filed FAO no. 304/2023 titled as "Bihari Lal Jangir vs. Tata Power Delhi Distribution Limited" challenging the order dated 27.10.2023 passed by the learned Trial Court.

8. The learned Single Judge of this Court remanded the matter back to the learned Trial Court with direction that arguments on the application under Order XXXIX Rule 1 & 2 CPC be heard afresh.

9. Learned counsel submits that however, without appreciation of facts and law, the learned Trial Court again disposed of the application and directed the appellant to deposit Rs. 4 lacs with the respondent within 30 days.

10. During the course of arguments, the learned counsels on behalf of the parties raised various contentions issues, which undoubtedly are to be adjudicated upon. However, learned counsel for the appellant submits that the appellant is willing to deposit Rs. 2 lacs instead of Rs. 4 lacs as ordered by the learned Trial Court vide impugned order dated 06.01.2024, which shall be without prejudice to the rights of the appellant and in case, appellant shall succeed in suit, the respondent shall adjust the said deposited amount with it with respect to the future electricity bills to be raised by the respondent in favour of the appellant.

11. In view of the above submissions, the appellant is directed to deposit the sum of Rs. 2 lacs with the respondent within a period of 2 weeks from today. Subject to aforementioned deposit, the respondent is restrained from disconnecting the electricity connection of the appellant till the disposal of

the suit before the learned Trial Court.

12. Before parting, it is relevant to observe that it was bounded duty of the learned Trial Court to have decided the application moved under Order XXXIX Rule 1 & 2 CPC by the petitioner afresh after hearing the arguments of the parties and thereafter, to pass a reasoned order as directed by the learned Single Judge vide order dated 24.11.2023, however, the learned Trial Court has passed the impugned order dated 06.01.2021 in haste and from the tone and tenor of the impugned order, it appears that the same is somewhat derogatory and inappropriate, which is not only irrational but also hits at the foundation of judicial proprietary. Accordingly, the learned Trial Court to take more care in future.

13. In view of the above, the present appeal stands disposed of.

**SHALINDER KAUR, J.**

**FEBRUARY 05, 2024**/ss