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

% ***Date of decision: 09th July, 2024***

\+ CM(M) 2878/2024 & CM APPL. 37961-37962/2024

CHANDAN YADAV .....Petitioner

Through: Mr. Vaibhav Sinha, Advocate

versus

BSES RAJDHANI POWER LIMITED & ANR. .....Respondent

Through: Mr. Rishab Raj Jain, Standing Counsel for BSES with Mr. Raghav Awasthi, Advocate

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T *(oral)*

CM APPL. 37962/2024

Exemption allowed subject to all just exceptions.

CM(M) 2878/2024 & CM APPL. 37961/2024

1. Petitioner is plaintiff before the learned Trial Court and is aggrieved by order dated 18.03.2024 passed by the learned Trial Court whereby he has been directed to comply with the direction contained in order dated 16.07.2022 failing which his suit would be deemed to be dismissed.

2. Learned counsel for respondent no. 1-BSES Rajdhani Power appears on advance notice and accepts notice.

3. Attention of this Court has been drawn towards the relevant portions of order dated 16.07.2022.

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4. Paras 37 & 38 of said order is extracted as under; -

> *"37. Keeping in view the law laid down in the above said judgment, it is hereby held that defendant no. 1 is obligated to supply electricity to the plaintiff and equal obligation has been cast upon the plaintiff to pay the amount subject to determination of the controversy in the suit. In view of the same, the application under Order XXXIX rule 1 & 2 CPC is partly allowed and disposed off accordingly.*
>
> *38. The plaintiff is directed to deposit an amount of Rs. 39,96,258.43 (Rupees Thirty Nine Lakhs Ninety Six Thousand Two Hundred Fifty Eight and Fourty Three Paise) with the defendant no. 1 within a period of three months from today. Needless to say that the said deposition is subject to the final fate of proceedings pending in the present suit."*

5. Admittedly, as on date, the premises in question is not having any electricity supply and learned counsel for respondent no. 1-BSES has, very fairly, admitted that there is no restoration of electricity supply to the premises in question. It is quite obvious from the aforesaid order dated 16.07.2022 that an obligation has been cast upon both the parties. On one hand, the plaintiff had been directed to deposit a sum of Rs. 39,96,258.43, on the other, defendant no. 1 i.e. BSES was also directed to ensure electricity supply to the premises in question.

6. When asked, learned counsel for petitioner has, very fairly, admitted that aforesaid order dated 16.07.2022 passed by the learned Trial Court was never taken in appeal. He does admit that the petitioner could have easily challenged the same to get such condition expunged.

7. Be that as it may, his grouse in the context of the present petition is totally different.

8. It is contended that the learned Trial Court has gone to the extreme extent of observing that in case the aforesaid amount is not deposited, suit

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would be deemed to be dismissed.

9. It is apprised that the suit is already at the stage of plaintiff's evidence.

10. The plaint is admittedly in the nature of declaration and permanent injunction. The injunction sought is qua restraining the defendant from disconnecting the electricity supply. In *W.B. State Electricity Board Vs. Fakir Chand Rice Mill & Ors.* (1996) 8 SCC 647, Hon'ble Supreme Court has observed that the obligation is mutual and if electricity provider is obliged to ensure electricity supply, an equal obligation is cast on consumer to pay the amount subject to determination of controversy in the suit.

11. Admittedly, this is not a money claim and during course of the consideration, learned counsel for BSES has apprised that BSES has already filed separate complaint before learned Special Court which is also pending adjudication.

12. Be that as it may, admittedly, there is no electricity supply to the premises in question and since plaintiff also, as of now, does not even seek restoration of electricity supply, it would be travesty of justice if suit is dismissed merely on the ground that he has failed to deposit the aforesaid amount. Moreover, the aforesaid amount was to be deposited under the expectation that the electricity supply would be restored. Therefore, the observation of the learned Trial Court in the impugned order seems unwarranted. Accordingly, the impugned order, to that extent, is set aside and consequently, plaintiff is permitted to continue with the present suit, irrespective of non-deposit of said amount.

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13. Needless to say, by necessary inference, there is no obligation on the part of BSES to provide any electricity supply to the premises in question.

14. Petition stands disposed of in the aforesaid terms. It is, however, made clear that the learned Trial Court would be at liberty to pass any direction, as it may deem necessary, at the time of final disposal while keeping in mind the evidence led by the parties and considering the scope and ambit of the issues involved.

(MANOJ JAIN)
JUDGE

JULY 9, 2024/*dr*

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