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

+ **RFA 420/2007**

B.S.E.S.YAMUNA POWR LTD.

.....Appellant

Through: Mr.Manish Kumar Srivastava,
Mr.Moksh Arora and Mr.Santosh
Ramdurg, Advocates.

versus

VINOD KUMAR

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

28.10.2024

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1. The instant first appeal has arisen out of the judgment and decree dated 30.11.2006 (hereinafter referred to as the "*impugned judgment*"), whereby, the suit filed by the respondent had been decreed in part.
2. Learned counsel appearing on behalf of the appellant submits that the impugned judgment suffers with material perversity, in as much as, the learned Trial Court has erred in setting aside the impugned bill and directed for levying limited charges to the extent of excess load, misuse, installation, etc and holding that the impugned bill should not be treated to be the part of theft.
3. I have considered the submissions made by learned counsel appearing on behalf of the appellant and also perused the record.
4. The facts of the case would clearly indicate that the respondent, namely Vinod Kumar was the registered consumer of connection bearing No.1351014, with sanctioned load of 6.60 KW installed at premises Khasra



No.299 of Village Gokalpur, Delhi-110094 and the said premises was being used for dyeing of clothes. On 27.02.1998, on an inspection conducted by the appellant, it was found that the electricity meter no.4D-960370 was found to be used by Shri G. Dyeing C/o Sh.Sanjay Kumar Jain and the registered consumer was S. Vinod Kumar i.e. the respondent herein. It was also found that the seal of the meter was fictitious and certain joints were also found in cables.

5. Show cause notices appears to have been given on 05.03.1998 and 15.09.1998 and thereafter, a theft bill of Rs.8,95,358/- was raised against the respondent.

6. The suit was instituted *inter alia*, seeking declaration, permanent and mandatory injunction. The suit has been decreed in part to the extent of modification of the theft, however, the appellant was held to be entitled to raise the modified bill, limiting to the extent of excess load, misuse and installation of inadequate shunt capacitor. Consequent thereto, injunction had also been directed.

7. Concluding part of the Trial Court order is reproduced as under:-

“As the plaintiff has filed suit for declaration after more than three years, therefore, case law referred to here in above and the provision of Item 56 to 58 Part II of the Schedule appended to the Limitation Act attracted to the fact of the present case and accordingly it is held that this part relief sought by the plaintiff, is barred by the period of limitation.

25. The plaintiff has also sought relief of mandatory injunction i.e. direction to the defendant to restore the supply of electricity vide connection in dispute at the suit premises. On perusal of file, I find that I.d. Civil Judge, vide his order dated 18.5.1998, has already granted this relief by directing the defendant to restore the electricity supply of the plaintiff, temporarily subject to completion of formalities, if any. The counsel for the plaintiff during the course of arguments informed



this court that plaintiff is still enjoying the facility of electricity vide the connection in dispute at the suit premises.

Consequent upon the discussion made under the heading. Connected Load, Misuser, Shunt Capacitor, it is held that plaintiff is not entitled for the relief of permanent injunction. However, in view of the discussion made under the heading Meter Box Scals, Joint in the Service Cable and consumption Pattern, it cannot be held that plaintiff was indulging either in Fraudulent / Dishonest Abstraction of linergy or direct the an acor cioe de cal bpaun or impuged bit 1 e Rs.8,95,398/- from the plaini. The impunied bill has to be modified in the light of the decision made under the heading, Connected Load, Misuser and Shunt Capacitor.

In view of the foregoing discussion both the issues, stands decided accordingly purtly in favour of the plaintiff and partly in lavour of the defendant.

ORDER

Consequent upon the part decision of issues in favour of the plaintiff and part of the decision in favour of the delendant, suit of the plaintiff is partly decreed and partly dismissed.

Defendant is directed to modify the impugned bill of Rs.8,95,398/- and levy only charges in respect of excess load, misuser and installation of inadequate shunt capacitor after following the due procedure provided under the law and the rules made there under, if applicable.

Defendant is further directed to supply the modified bill to the defendant within a period of three months from the date of this decision. Defendant is further restrained to disconnect the supply of cletricity if plaintiff makes the payment of modified bill within the period of one month from the issuance of modified bill.

Suit of the plaintiff regarding remaining relief is dismissed. However, parties are left to bear their own costs keeping in view the peculiar facts and circumstances of this case."

8. The evidence available on record would indicate that DW-1 namely, Shri OP Rajput, Assistant Manager (Enforcement) and DW-2 namely, Shri Anurag Gupta, Assistant Manager, Commercial Department, have not been able to establish any artificial means during inspection used by the consumer.



9. The Supreme Court in the case of ***Ram Chander Prakash Sharma vs. State of Bihar & Anr***¹ has held that before a presumption under Section 39 of the Electricity Act, 1910 arises, no theft of electricity can be presumed, unless there is presence of a prescribed artificial means for abstraction of energy. The relevant paragraphs of the said decision read as under:-

“12. Insofar as the conviction under Section 39 is concerned the matter stands on a different footing. It is not sufficient to say that a meter had been tampered with and that it was under the control of the accused person. It is further necessary to show that there was dishonest abstraction, consumption or use of electrical energy by the accused person. Before raising a presumption thereunder that there was dishonest abstraction the presence of an artificial means which would render abstraction of energy possible has to be established. Here we have three-phase meters and, therefore, unless all are tampered with abstraction of energy without fear of detection is not possible. It is difficult to presume that the appellant would have knowingly done something to the meter which would not have escaped detection of a Meter Reader and facilitated the abstraction of electric energy. In fact what he had said in his confession was that Jai Narain, a Meter Reader of the company had done something to the meter. That may or may not be so. Jai Narain who was co-accused with the appellant was acquitted by the trial court and his acquittal was not challenged by the State. There is no material on the basis of which it could be held that there was either a perfected artificial means of abstraction or there was in fact any abstraction of electrical energy. In the circumstances the presumption permissible under Section 39 can not be raised in favour of the prosecution. It follows, therefore, that the appellant's conviction under Section 39 is unsustainable. We accordingly set it aside as also the sentences passed upon him in respect of that offence.”

10. In view of the aforesaid, there is nothing on record to indicate that any artificial means of abstraction of energy such as wire etc. were used by the consumer at the site in question. The findings of the Trial Court, therefore, are unassailable and no interference is called for.

11. Accordingly, the instant appeal stands dismissed.

PURUSHAINDRA KUMAR KAURAV, J

OCTOBER 28, 2024

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¹ AIR 1967 SC 349