

D/L.13.
September 25, 2025.
MNS.

CO No. 966 of 2024

West Bengal State Electricity Distribution
Company Limited and another
Vs.
M/s G.D.A. Cement Industry Private
Limited

Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee

... for the petitioners.

Mr. Sujit Banerjee,
Mr. Nilay Sengupta

...for the opposite party.

1. The affidavit-of-service filed in Court today be kept on record.
2. The present revisional application arises from an order whereby the Appellate Court reversed the order of the Trial Court rejecting the injunction application of the plaintiff/opposite party and granting injunction till disposal of the suit.
3. The suit, which is the genesis of the present litigation, has been filed for declaration and permanent injunction, raising a billing dispute regarding electricity charges for a connection given by the

defendant no. 1/Distribution Company to the plaintiff/opposite party.

4. The revisionists/petitioners raised an objection before the learned Trial Judge during hearing of the temporary injunction application that the suit is not maintainable in view of the operation of Section 145 of the Electricity Act, 2003 (in short “the 2003 Act”) and the extant Regulations enacted by the West Bengal Electricity Regulatory Commission (WBERC), whereby the appropriate forum designated for deciding billing disputes is the concerned Regional Grievance Redressal Officer (RGRO).
5. On such premise, the injunction application was dismissed on contest. Subsequently, an appeal was preferred by the plaintiff/opposite party against such order, where the learned District Judge, who admitted the appeal initially, granted an order of mandatory injunction to the effect that the defendant/Distribution Company shall restore the power supply to the opposite party within twenty-four hours, subject to deposit of Rs. 10,00,000/- by the plaintiff/opposite party.

6. However, learned counsel for both the parties submit that the tenor of the said order was erroneous to the extent that disconnection of power supply was never effected. Only a notice of disconnection was issued by the Distribution Company to the opposite party.
7. Be that as it may, both parties proceeded on the premise that the said ad interim order was a prohibitory order restraining the defendant no. 1 / Distribution Company from disconnecting the electricity supply of the plaintiff, subject to deposit of Rs. 10,00,000/- by the latter. Such deposit having been made, the disconnection has not yet been effected.
8. Learned counsel for the petitioners argues that the learned Appellate Judge, while allowing the miscellaneous appeal, mechanically reiterated the ad interim order of the learned District Judge and made the same absolute, without entering into the merits of the matter and/or ascertaining the maintainability of the suit at all.

9. Learned counsel further submits that, taking undue advantage of the said order, the plaintiff/opposite party is also not paying the current electricity charges.

10. Learned counsel for the plaintiff/opposite party submits that there is no injunction on the Distribution Company/revisionist petitioner no. 1 to raise bills regarding current consumption of electricity on the opposite party.

11. It is further submitted by the plaintiff/opposite party that the appropriate relief of the defendants/petitioners would at best be an application under Order VII Rule 11 of the Code of Civil Procedure. The Court, while deciding the injunction application, it is submitted, cannot decide the question of maintainability of the suit.

12. Heard both sides.

13. There is a cardinal fallacy in the arguments of the opposite party. It is well-settled that if an objection is raised regarding the maintainability of the suit on the ground of inherent lack of jurisdiction before the Civil Court, the same forms a component to be decided by the court within the

contemplation of whether the defendants/petitioners have a *prima facie* case for grant of injunction.

14. Maintainability of the suit is an essential element of a *prima facie* case and as such, no separate application for rejection of plaint is required for the court, even at the injunction stage, to enter into such question.

15. Proceeding on such premise, this Court finds that the Trial Judge was perfectly justified in dismissing the injunction application on the ground that in view of Regulation 55 of the WBERC, read with Section 145 of the 2003 Act, the RGRO is the appropriate authority to decide the billing disputes and not the civil court.

16. Thus, the civil court, *prima facie*, does not have jurisdiction to entertain the suit and/or to grant interlocutory reliefs in connection therewith.

17. The learned Appellate Judge exercised jurisdiction vested in him by law illegally and with material irregularity in not entering into the issue of maintainability of the suit even *prima facie* and mechanically

making absolute the ad interim order passed by the learned District Judge while entertaining the appeal.

18. It is also a well-accepted proposition of law that the principle of *res judicata*, although applicable at different stages of the suit, does not operate vis-à-vis ad interim and temporary injunction orders.

19. At the stage of ad interim injunction, the tests are different from the subsequent stage where a temporary injunction application is decided on merits upon hearing both sides.

20. Thus, an ad interim order of injunction, either by way of grant or refusal, does not operate as *res judicata* at subsequent stages of the injunction application itself, since the tests at each stage are different.

21. Hence, the learned Appellate Judge acted without jurisdiction in mechanically making absolute the initial ad interim order passed in the appeal, without independently adjudicating the issues involved, particularly the issue of maintainability of the suit, and/or adverting to the materials on record.

22. Secondly, since the suit is not *prima facie* maintainable in view of the above discussions, the learned Appellate Judge acted without jurisdiction in allowing the miscellaneous appeal, thereby setting aside the order of dismissal of the injunction application passed by the Trial Judge, without adverting to the reasoning given by the learned Trial Judge.

23. Thus, CO No. 966 of 2024 is allowed on contest, thereby setting aside the impugned judgment and order dated January 22, 2024 passed in Miscellaneous Appeal No. 18 of 2022 by the learned Additional District Judge, Fast Track Court No. 1, Purulia.

24. There will be no order as to costs.

25. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)