

M/s. Durga Construction Co. and Another Vs C.E.S.C. Ltd.

Court: Calcutta High Court

Date of Decision: Jan. 21, 2009

Hon'ble Judges: Sanjib Banerjee, J

Bench: Single Bench

Advocate: S.K. Mal and Bimalendu Das, for the Appellant; L.K. Poddar and Gaurav Khaitan for the C.E.S.C., for the Respondent

Final Decision: Allowed

Judgement

Sanjib Banerjee, J.

The Judgment of the Court was as follows:

1. The two interlocutory applications are for restoration of the writ petition and for the amount deposited with the Registrar to be made over to the

respondent licensee.

2. Sufficient grounds have been made out in G.A. No. 3310 of 2008 as to why the writ petitioner was not represented on July 17, 2008 when

W.P. No. 2521 of 2002 was dismissed in default. The order dated July 17, 2008 is recalled and the petition is restored to the file.

3. The application taken out by the respondent licensee, G.A. No. 3216 of 2008, was consequent upon the writ petition being dismissed. At the

initial stage the petitioner was required to deposit the entire amount covered by the impugned bill with the Registrar, Original Side and it is such

deposit together with accrued interest thereon that the licensee seeks upon the writ petition being dismissed in default. Since the petition now

stands restored the licensee's application has become meaningless and is disposed of without any order as to costs.

4. The writ petitioner says that one Bajrang Tea Manufacturing Company Private limited was a tenant under the writ petitioner and vacated the

relevant premises a few years before the impugned bill was issued. The writ petitioner says that the writ petitioner had no nexus with the erstwhile

tenant and was surprised to receive a Bill for the sum of Rs. 52,899/- in November 2002. The petitioner admits that the sum of Rs. 10,941.60 is

on account of the consumption of electricity by the writ petitioner but the adjustment to the extent of Rs. 40,748.14 demanded by the bill did not

pertain to the writ petitioner's consumption. The petitioner has referred to a notice dated June 21, 2002 issued by the licensee claiming that the

tenant had left bills from October 1998 to December 1999 unpaid to the extent of Rs. 40,185.44. The petitioner replied on June 27, 2002 saying

that the tenant had vacated the premises on July 12, 2000 and that the petitioner was not responsible to pay for the bills raised in the name of the

tenant. It is the subsequent action of the licensee to include the sum of Rs. 40,748.14/- in the November 2002 bill that prompted the petitioner to

come to Court.

5. An affidavit has been used by the licensee. C.E.S.C. says at Paragraph-3(c) of the said affidavit as follows:-

(c) That the supply of the same had been disconnected on November 26, 1999 for continued non-payment of bills since October, 1983 and the

total outstanding dues stood at Rs. 40,185.44p. It has been observed that the petitioner is liable for the outstanding dues of the defaulting

consumer namely M/s. Bajrang Tea Manufacturing Co. Ltd. as it is the beneficiary and both the supplies are for the same persons.

6. In addition, at Paragraph-5 of the affidavit the licensee claims that there was a positive nexus between the writ petitioner and its erstwhile tenant

for which the electricity charges on account of the erstwhile tenant were liable to be met by the petitioner. There is nothing further in the affidavit of

the licensee by way of seeking to establish the nexus between the writ petitioner and its erstwhile tenant.

7. On behalf of the petitioner the judgments reported at Isha Marbles Vs. Bihar State Electricity Board and Another, and Nabin Agarwal and

Another etc. Vs. C.E.S.C. Ltd. and Others, have been placed for the principle that the default on account of one consumer cannot be foisted on

another consumer by the licensee. In all the matters, particularly the judgment reported at 2002(2) Cal LJ 588, it has been held that merely

because a person was a subsequent occupant at a premises, he could not be held responsible for the default committed by the previous consumer

at the same premises. An inquiry into the liability of a consumer against whom the licensee proceeds for default of another could be initiated, but

only upon the licensee asserting and establishing a nexus between the consumer and the defaulting party.

8. In the present case, it is evident that between 1983 and 1999 no payment had been tendered in respect of the bills raised on Bajrang by that

entity. It appears that the matter was altogether missed by the licensee and it is suddenly woke up in 2002 to make a claim on the petitioner. Even

such claim could have been made if the licensee had made out cogent grounds that it was the petitioner who had been consuming the electricity that

had been supplied in the name of Bajrang. But in the absence of any material in such regard, even in the affidavit used on behalf of the licensee, it is

not possible to reach a conclusion that the writ petitioner and Bajrang were indeed the same entity in the matter of consuming electricity from the

same source.

9. The writ petition succeeds.

10. The claim of the licensee to the extent of Rs. 40,748.14 in the bill for November 2002 is. set aside. Since in terms of an earlier order of Court,

the entire amount covered by the bill remains deposited with the Registrar, Original Side, the Registrar is directed to make payment of the Principal

sum of Rs. 12151/- together with the apportioned interest on account thereof to the licensee and make over the rest of the deposit and the accrued

interest thereon, less the Registrar's usual commission, to the writ petitioner.

11. In the event the Registrar has not used his discretion to deposit the money in an interest bearing account, the Registrar will furnish an

explanation as to why the money has not been so deposited.

Urgent certified photostat copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.