

(2000) 01 CAL CK 0002

Calcutta High Court

Case No: C.O. No. 538 of 2000

West Bengal State Electricity
Board

APPELLANT

Vs

Amalendu Sahoo

RESPONDENT

Date of Decision: Jan. 7, 2000

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115

Citation: 104 CWN 675

Hon'ble Judges: Prodyot Kumar Sen, J

Bench: Single Bench

Advocate: Subhro Kamal Mukherjee, for the Appellant; Joytosh Majumder, for the Respondent

Final Decision: Dismissed

Judgement

Prodyot Kumar Sen, J.

This revisional application u/s 115 of the CPC is at the instance of defendant State Electricity Board and is directed against a judgment and order dated 7.1.2000 passed by Md. A. Ghani. Additional District Judge. 1st Court, Midnapore in Misc. Case No. 121 of 1999 affirming-the order dated 9.12.99 passed by Sri S. P. Chatterjee, Civil Judge, Sr. Division, 1st Court. Midnapore. The plaintiff, who is respondent before this court, filed a suit being No. T. S. No. 33/95 before Civil Judge, Sr. Division. Midnapore for a declaration that some electrical bills as mentioned in Schedule "B" of the plaint are illegal, arbitrary, without basis and not according to meter reading with a prayer for accounting. In the said suit upon the prayer of the plaintiff there was an order made by the Ld. Civil Judge. Sr. Division. Midnapore wherein while disposing for plaintiffs prayer for temporary injunction, directed the defendant to reconnect the electric line within 15 days from the date of the order failing which law will take its own course. On being aggrieved by the order, the State Electricity Board preferred a 1st Misc. Appeal which was dismissed thus appointing the impugned judgment and

order. On being aggrieved by that order, the instant revisional application has been preferred before this court.

2. The Id. Advocate moving this appeal u/s 115 of the CPC has submitted before me that the suit, out of which this revisional application, has arisen, is not maintainable in law and in support of such submission he has drawn my attention to a decision of the Supreme Court in *Judgement Today* 1991(5) S.C. 182 and another reported in *CHN* 1991(1) page 50. Now, it may be mentioned in this connection that for the first time, the State Electricity Board is raising such point. There was no argument either before the Trial Court or before the court of first instance with regard to the non-maintainability of the suit. The Id. Advocate for the petitioner submits that he is still entitled to raise that point. But, this is a petition u/s 115 C.P.C, wherein the scope of hearing is very limited inasmuch as, this court will see with regard to the illegality or impropriety of the impugned order or whether there was any jurisdictional error. Therefore, the points which were not raised before the Trial Court or before the first appellate court cannot be taken now because this court cannot anticipate what would have been the findings of the courts" below had the points of maintainability been canvassed before the said courts.

3. The Id. Advocate appearing for the plaintiff respondent has drawn my attention to a decision of the Supreme Court reported in *AIR* 1988 SC page 71. It was held that dispute with regard to the defects in the meter is to be decided by Electrical Inspector and pending such dispute electricity board cannot issue supplementary bill or threaten dis-connection of supply. Here in this case as I find from paragraph 8 of the written statement filed by the electricity board before the Trial Court that they admitted that the meter installed at the shop of the plaintiff was defective. No steps appear to have been taken by the Electricity Board to get it checked by any Electrical inspector as required under the law. But they are claiming the electricity charges from the respondent depending on such defective meter. Mr. D. Pal, Id. Advocate appearing for the respondent has submitted before me that his clients had already deposited 50 per cent of the outstanding bill and, therefore, they are entitled to get re-connection as per orders of the Trial Court. The said order of the Trial Court appears to have been made on 9.12.99 and this petitioner that is the Electricity Board has not yet reconnected the line. They are delaying the process of re-connection by taking some abstract plea. So far the impugned order is concerned, I do not find any illegality or irregularity in the order itself inviting interference by this court, nor there is any jurisdictional error. The order passed was perfectly justified in the facts and circumstances of the case. The Id. Advocate has submitted that in view of the judgements of the Supreme Court the suit is not maintainable, but such plea having not been taken at the earliest stage, I am not inclined to go into those questions because in that event it will be pre-judging the entire suit which this court will not. Therefore, the decisions referred by the Id. Advocate for the petitioner are not applicable at the present stage. The court below may consider such decisions at the hearing of the suit. In any view of the matter, I

do not find any ground to interfere into the matter. This revisional application is accordingly rejected. On the prayer of the petitioner 7 days time is given to restore connection.