

(2007) 03 CAL CK 0018

Calcutta High Court

Case No: C.O. No. 2450 of 2005

Syed Anwar Hussain

APPELLANT

Vs

CESC Ltd. and Another

RESPONDENT

Date of Decision: March 7, 2007

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, 151
- Constitution of India, 1950 - Article 227
- Electricity Act, 2003 - Section 127

Citation: (2008) 1 CHN 824

Hon'ble Judges: Prabuddha Sankar Banerjee, J

Bench: Single Bench

Advocate: J.K. Sanwarwala, for the Appellant; Subir Sanyal and Naba Kumar Das, for the Respondent

Final Decision: Dismissed

Judgement

Prabuddha Sankar Banerjee, J.

This revisional application is one under Article 227 of the Constitution of India and is directed against Order No. 36 dated 4th May, 2005 passed by the learned Civil Judge, Junior Division, First Court, Alipur, in connection T.S. No. 32 of 2001.

2. The said suit was brought by the present petitioner against the opposite parties with prayer for declaration that the threatening made by the defendant No. 2 is not proper and is fictitious and the defendant has no right to do so. He also prayed for permanent injunction restraining the defendants from disconnecting the electric line.

3. The present petitioner also filed an application under Order 39 Rule 1 & 2 read with Section 151 of Civil Procedure Code.

4. The learned Trial Judge refused to pass any interim order of injunction and against that order, the plaintiff filed one Misc. Appeal which was numbered as 56 of 2001. By order No. 1 dated 13.2.2001, the learned District Judge, Alipur allowed the prayer for interim injunction and directed the parties to maintain status quo with respect to meters in the suit.
5. The said appeal was allowed by the learned Civil Judge, Senior Division who directed the parties to maintain status quo with respect to subject-matter till disposal of the temporary injunction petition.
6. Subsequently, the learned Trial Judge i.e. Civil Judge, Junior Division by order No. 18 dated 18.1.2003 allowed the application under Order 39 Rules 1 & 2 of CPC and restrained the defendants from disconnecting the suit meter otherwise than in due course of law till disposal of the suit.
7. Subsequently, the defendants disconnected the line.
8. The present petitioner filed application for restoration of the electric line to the factory of the plaintiff.
9. The said application was contested by the defendants by filing written objection.
10. By the order impugned, the learned Trial Judge rejected the application dated 17.1.2005 filed by the plaintiff for restoration of the electric line.
11. Against that order the instant revisional application has been preferred by the plaintiff.
12. Mr. J.K. Sanwarwala, learned Lawyer for the petitioner challenged the order impugned on the ground that the Court ignored the fact that there was order of status quo. He also challenged the order impugned on the ground that the Court ignored the fact that the disconnection was made without any notice and the Court should have allowed the application for restoration of electric line.
13. At the same time, Mr. Sanwarwala challenged the impugned order on the ground that the present petitioners informed the defendants that after the line was repaired, the persons who repaired the line did not re-seal the meter and meter box and this fact was brought to the notice of the defendants by letter dated 27.8.2004.
14. The said letter has been annexed as Annexure "P-9".
15. On the basis of the same, it was contended on behalf of present petitioner that the subsequent notice of disconnection on the ground that the meter has been tampered can never be accepted. It was the further contention on behalf of present petitioners that it was fault on the part of the present opposite parties and the present petitioner had to suffer due to illegal act on the part of the opposite parties.
16. It was argued further on behalf of the petitioners that the amount claimed was Rs. 7,46,09,300/- which is false, inflated and can never be accepted. It was the

further contention on behalf of the present petitioner that the said assessment was against the statute and the Court below ignored the same.

17. Mr. Subir Sanyal, learned Lawyer for the opposite party, however, challenged the said pleas mainly on the ground that enough opportunity was given to the petitioner to place his case and after that, the assessment was made. He drew the attention of the Court to page 84 i.e. final order of assessment dated 25.1.2005 which goes to show that the provisional assessment dated 5.1.2005 and reminder thereto dated 17.1.2005 to the present petitioner were given within the stipulated period. However, no representation or any document was submitted by the consumer within the stipulated period and finding no other alternative the matter was taken up ex parte.

18. He also drew the attention of the Court to the Annexure "P-9" and on the basis of the same he contended that the petitioner never took the plea that the seal of the meter was broken and request was made for re-sealing the meter. On the contrary the petitioner asked for sealing of the meter box.

19. He also drew the attention of the Court to page 79 which is a letter dated 5.1.2005 where it has been mentioned specifically that seal on the meter body was found tampered. He further drew attention of the Court to the contents of the said letter where it has been mentioned that the present petitioner was entitled to file objection, if any, against the order of provisional assessment within 10 days from the date of order of provisional assessment.

20. Mr. Sanyal contended further that there was pilferage of energy and it is to be presumed that the petitioner was expert in this regard. For this he drew the attention of the Court to the Annexure "P-7" where it has been mentioned that the "thimble" was burnt out and the said letter was addressed to the defendants.

21. He also contended that the disconnection was made on the basis of subsequent event resulting to different cause of action due to pilferage of electricity.

22. Even before disconnection, notice was duly served and thereafter the disconnection was made.

23. Mr. Sanyal contended that provision of West Bengal Regulatory Commission Regulations, 2004 as per Clause 5.2.1 was also duly complied with.

24. Mr. Sanyal also challenged the maintainability of the instant revisional application in view of provision of Section 127 of the Electricity Act, 2003. It was the contention of Mr. Sanyal that option was with the present petitioner to challenge the assessment before the appropriate forum as per Section 127 of the Electricity Act, 2003 and without opting for the same he preferred this revisional application under Article 227 of the Constitution.

25. As alternative remedy was available to the present petitioner, the instant revisional application under Article 227 is not maintainable.

26. In support of his contention, Mr. Sanyal relied upon the following cases:

i) [P. Maharajan alias Nadarajan Vs. Chakalayil Kunju Sarojini](#) .

ii) Smt. Shukla v. Brij Bhushan Makkar reported in AIR 1982 Delhi 223.

iii) 2002(1) CHN Page 144, CESC Ltd. v. Jain Poly Plastics.

27. Mr. Sanyal relied mainly upon paragraph 4 of the case reported in 2002(1) CHN 144.

28. In this case serious allegation of pilferage of electricity was brought against the present petitioner on the basis of tampering of the meter.

29. Though the petitioner took the plea that CESC was requested to re-seal the meter, the letter which was referred or relied upon by the petitioner does not show that any request was made in the year 2004 regarding re-sealing of the meter and it relates to sealing of the meter box.

30. Being asked by the Court learned Counsel for the petitioner failed to mention the provision of law which provides that the meter box is required to be sealed.

31. In view of the said position and also considering the materials on record, I am of clear opinion that the present petitioner cannot get the protection of law as the disconnection was made on the basis of subsequent allegation giving fresh cause of action. As such, the plea that the present opposite parties violated the order of status quo passed by the learned Trial Judge cannot be accepted. The said order clearly provides that the present opposite parties were given the liberty to proceed further as per law. Accordingly, the instant revisional application is dismissed being devoid of any merit but without any cost.

Interim order of stay, if any, is vacated.

Urgent xerox certified copy of this order be given to the parties within 10 days from the date of this order on proper application.