

(2014) 09 CAL CK 0067

Calcutta High Court

Case No: C.S. No. 661 of 1989

Exhibitors Syndicate Ltd.

APPELLANT

Vs

Shree and Uttara Merchants"
Association

RESPONDENT

Date of Decision: Sept. 12, 2014

Citation: (2015) 2 CHN 491

Hon'ble Judges: Debabrata Mookerjee, J

Bench: Single Bench

Advocate: Swapan Kr. Mullick, Advocate for the Appellant

Judgement

Debangsu Basak, J.

The suit relates to realization of electricity charges from the occupants of two premises at Kolkata.

2. The plaintiff claims itself to be the lessee of premises Nos. 138/1 and 138/2, Bidhan Sarani, Kolkata-700 004. According to the plaintiff, there are 158 tenants under the plaintiff at the two premises. These tenants are liable to pay electricity charges. Such tenants were not paying the electricity charges. The plaintiff therefore filed the suit seeking declaration that, all the tenants at the 2 premises consuming electricity are liable to pay electricity charges for the consumption of electricity and for other reliefs.

3. The plaintiff obtained diverse interim orders in the suit. A Receiver subsequently named as Special Officer was appointed in the suit for the purpose of realizing the electricity charges from the tenants of the two premises. The Special Officer realized electricity charges from the tenants in terms of orders of Court.

4. At the time of filing of the suit, there were arrears of electricity charges in respect of the two premises. The plaintiff alleged that, the arrears accumulated due to non-payment of electricity charges by the tenants. In order to meet the arrears of electricity charges, the Court directed that, the tenants will pay 20% extra than the

electricity consumed by them so that the arrears could be met. The tenants acted in terms of the said order and paid extra than what they consumed over a considerable period of time.

5. The tenants applied to the Court for obtaining separate electric connections. The tenants subsequently obtained separate electric connections.

6. At the time of obtaining new electricity connection, the tenants found that, the arrears of the electricity charges standing at the time of filing of the suit and during the period of the Special Officer, had increased, and that the Special Officer had realized payments in respect of electricity charges at an arbitrary rate. Upon such facts being drawn to the notice of the Court, leave was granted to the defendants to make a counterclaim in their written statement.

7. The Defendant No. 1 is an Association of tenants of the two premises concerned. The Defendant No. 7 is the secretary of the Defendant No. 1.

8. The Defendant Nos. 1 and 7 filed a written statement contesting the claim of the plaintiff. In the written statement the Defendant Nos. 1 and 7 made a counterclaim against the plaintiff on the basis that, the plaintiff realized excess payments on account of electricity charges and that, the plaintiff stood benefited out of the arbitrary rate of electricity charges realized by the plaintiff and the Special Officer pursuant to orders of Court. According to the Defendant Nos. 1 and 7, the plaintiff is liable to account for the excess payments collected by it.

9. The Defendant Nos. 1 and 7 claim that, immediately after the institution of the suit a Special Officer was appointed by the Court at the instance of the plaintiff for the purpose of collecting electricity charges from the various members of the Defendant No. 1. By an Order dated December 17, 1991 the Court directed the Special Officer to collect 20% over and above the bills for actual consumption of electricity with a direction that, the extra 20% collected to be utilized for payment of the arrear dues to CESC Limited. The Special Officer pursuant to the Order dated December 17, 1991 collected 20% extra over and above the bills for actual consumption of electricity on and from the month of September 1991.

10. According to the Defendant Nos. 1 and 7 that, a sum of Rs. 6,68,768.14p. was the principal dues to CESC Limited as in November 1991. The average monthly collection from September 1991 was Rs. 1,00,000/-. 20% extra collection, therefore, meant collection of Rs. 2,40,000/- per year. At such rate the entire dues towards CESC Limited should have been paid off in five to six years time. However, the Defendant Nos. 1 and 7 came to learn that, in July/August 1997 the arrears to CESC Limited stood increased to Rs. 22,00,000/- instead of the entire arrears being paid off by reason of the 20% excess collection.

11. According to the Defendant No. 1, its members complained to the Special Officer and his agent M/s. Baidyut. The Special Officer made over few charts showing the

collections and the rate of collections to the Defendant Nos. 1 and 7. The Defendant Nos. 1 and 7, therefore, came in possession of charts from 1998.

12. In 1997 an application was made in the suit which eventually resulted in the Order dated January 15, 1999. By such order CESC Limited was directed to envisage methods for giving direct supply of electricity to the various members of the Defendant No. 1 and to other occupants at the two premises. Pursuant to such order, members of the Defendant No. 1 received electric connection in their individual name. However, they were made to pay a portion of the dues outstanding to CESC Limited in respect of the said two premises. In such process, the members of the Defendant No. 1 paid a sum of Rs. 50,00,000/- which according to the Defendant Nos. 1 to 7 and the members of the Defendant No. 1 they were not liable to pay. The Defendant Nos. 1 and 7 also claim that, the rates at which the plaintiff charged and received payment for electricity consumed from the Defendant No. 1 and its member were arbitrary. Consequently, the plaintiff realized sums in excess of their entitlement to receive from the Defendant Nos. 1 and 7 and the members of the Defendant No. 1. The Defendant No. 1 claims suitable compensation with regard thereto.

13. By an Order dated May 3, 2006 the suit was dismissed. The counterclaim of the Defendant Nos. 1 and 7 was allowed to proceed.

14. The counterclaim was dismissed for default on April 28, 2014. An application for restoration made at the behest of the Defendant Nos. 1 and 7 was allowed on May 14, 2014. The plaintiff did not appear in spite of notice of the restoration application being served on it.

15. The issue therefore before me, is whether the Defendant Nos. 1 and 7 are entitled to the counterclaim as made in their written statement. The other issue is the rate of interest that is required to be awarded in favour of the Defendant Nos. 1 and 7, in the event, I allow the counterclaim of the Defendant Nos. 1 and 7.

16. In support of their claim, the Defendant Nos. 1 and 7, produced two witnesses and proved various documents. The Defendant Nos. 1 and 7 wanted the Special Officer to adduce evidence in the suit. Such attempt to have the Special Officer to give evidence in the suit was resisted by the Special Officer. Ultimately the defendant numbers 1 and 7 could not get the Special Officer to give the evidence in the suit. The Special Officer, during the pendency of the suit, left for his heavenly abode.

17. I have considered the pleadings made in the written statement of the Defendant Nos. 1 and 7. I have also considered the evidence adduced on behalf of the Defendant Nos. 1 and 7 and also the materials on record.

18. The plaintiff filed the suit seeking a declaration that, all the tenants/occupants at premises Nos. 138/1 and 138/2, Bidhan Sarani, Kolkata consuming electricity at the

said two premises including the Defendant Nos. 1 to 10 and the Defendant No. 1 are liable to pay electricity charges for such consumption of electricity and for other reliefs. The case of the plaintiff is that, the plaintiff is a lessee of premises Nos. 138/1 and 138/2, Bidhan Sarani, Kolkata. There are mainly four separate buildings at the said two premises which included well-known cinema halls, namely, Sree and Uttara. There are large numbers of tenants/occupants at the premises. The plaintiff claimed that about 158 tenants are at the premises. Such tenants/occupants were supplied electricity from meters of the plaintiff. Such tenants/occupants were not paying the charges for the electricity consumed by them respectively requiring the plaintiff to file the suit.

19. The Defendant Nos. 1 and 7 contested the suit. They filed their written statement containing a counter-claim. The sum and substance of the counter-claim of the Defendant Nos. 1 and 7 is that, the plaintiff realized excess payment through the mechanism of the Special Officer from the members of the Defendant No. 1 towards electricity charges. The plaintiff did not give accounts for the collection made by the plaintiff on account of electricity charges. Consequently, the plaintiff is liable to compensate the Defendant Nos. 1 and 7 and the members of the Defendant No. 1 for the excess collections that the plaintiff made through the mechanism of the Special Officer.

20. On the application of the plaintiff, a Special Officer was appointed by the order dated August 28, 1989. Such order required the Special Officer to make an enquiry as to how much electricity charge is due from the tenants and also the arrears payable to the electricity authorities. The Court, being prime facie satisfied, that there were arrears of electricity charges payable to the electricity authorities, by an order dated December 17, 1991 directed the Special Officer to collect 20% more than the amount payable by the tenants for consumption of electricity until further orders. This mechanism of collecting 20% more continued till 1997.

21. In 1989 when the suit was filed the arrears of electricity charges due in respect of the two premises was in the region of Rs. 6,68,000/-. This arrears increased to Rs. 25,00,000/- in 1997.

22. The tenants approached the Court for separate electric connection. By an Order dated March 10, 1999, the electricity authorities were directed to effect supply to the individual tenants. The individual tenants were directed to pay 60% of the then dues of the electricity authorities in respect of the two premises.

23. The tenants in respect of the two premises acted in terms of the order dated March 10, 1999 and obtained separate electric connections. In the process the tenants paid a sum of Rs. 13,00,000/- to the electricity authorities.

24. The tenants, therefore, claim that, they are not liable to pay such sum.

25. The Defendant Nos. 1 and 7 represent the interest of the tenants in respect of the two premises. Evidence in the suit demonstrates that, two Cinema Halls were running at the two premises at the material point of time. The two premises at the time of the filing of the suit, was supplied through a high tension electric supply. At the time of filing of the suit of the arrears in respect of electricity charges was in the region of Rs. 6,68,000/-. The suit was filed on the pretext that, the tenants were not paying the electricity charges. The Court put in a mechanism for realizing the arrears of the electricity charges from the tenants. The Court by the order dated December 17, 1991 directed the Special Officer to collect 20% more than the amount payable by the tenants for consumption of electricity. The Special Officer collected 20% more than the amount payable by the tenants for consumption of electricity till about 1997. In spite of such collection of extra 20 %, the arrears of electricity charges did not come down. Instead it increased to Rs. 25,00,000/- in 1997.

26. This increase in accumulated arrears of electricity charges, forced the tenants, to pay 60% of such arrears to the electricity authorities when the tenants applied for and obtained electric connection in their individual names. The tenants paid a sum of Rs. 13,00,000/- as extra. The tenants are not liable to pay such sum. The tenants cannot be called upon to discharge liabilities of the plaintiff to the electricity authorities. The arrears accumulated due to the wrongdoings of the plaintiff, although the tenants had paid 20% extra than the electricity consumed by them. In any event, the tenants had paid for the electricity consumed by them. They also paid 20% extra towards arrears of electricity. This extra payment continued from 1991 still 1997. By this time the accumulated arrears of 1989 ought to be wiped out. It is not so. The tenants were made to pay 60% of the arrears standing on account of the plaintiff when they obtained individual connections. In this process they paid Rs. 13,00,000/- to the electricity authorities on account of the plaintiff. The Defendant Nos. 1 and 7 and the members of the Defendant No. 1 are not liable to pay such sum. Such sum being paid by the members of the Defendant No. 1, on account of the plaintiff, the Defendant Nos. 1 and 7 are entitled to recover such sum from the plaintiff.

27. The Defendant Nos. 1 and 7 also claim that, the plaintiff utilized electricity for running its cinema halls and for personal use and did not pay the entire charges for such user. The plaintiff realized the payments in respect thereof from the tenants of the two premises. In order to do so, the plaintiff adopted a differential method of calculation. The plaintiff prevailed upon the Special Officer to continue with such differential method of calculation.

28. The Defendant Nos. 1 and 7 rely upon charts showing the consumption of electricity every month received from the Special Officer. The charts have marked as Exhibit "4" series. The charts show the total billed amount of the electricity consumption for a particular month as also the total units consumed. The chart also records the actual units consumed by each tenant. The chart however does not give

the actual consumption figures of the two Cinema halls. The chart also showed that consumption of electricity recorded is multiplied by 10.

29. This multiplier of 10 is without any basis. By applying such multiplier, the plaintiff obtained payments from the tenants on account of electricity charges much in excess of their actual consumption.

30. The Special Officer was collecting electricity charges from 1989 to April 1999. This period is nearly 10 years. The Special Officer did not make over the charts for every month to the Defendant Nos. 1 and 7. The Defendant Nos. 1 and 7 have no other evidence than the chart made over by the Special Officer to them at their disposal. The Defendant Nos. 1 and 7 appointed a Chartered Accountant for the purpose of investigating into such charts as made over by the Special Officer to them. The Chartered Accountant conducted such investigation and had submitted its report. The Defendant Nos. 1 and 7 called upon the Chartered Accountant who looked into the charts and had written the report to give evidence. From such evidence it appears that the plaintiff realized a sum of Rs. 60 lakhs in excess from the tenants.

31. The Defendant Nos. 1 and 7, therefore, have proved a sum of Rs. 60 lakhs to be realized by the plaintiff from the tenant in excess than the liability of the tenants. The Defendant Nos. 1 and 7 will, therefore, be entitled to a decree for Rs. 60 lakhs against the plaintiff.

32. The Defendant Nos. 1 and 7 claimed interest at the rate of 24% per annum. There is no agreement as to interest. The nature of transactions between the parties however, is commercial. Keeping in mind, the commercial nature of the transactions, interest at the rate of 8% is awarded on and from May 1, 1999 until realization on Rs. 73 lakhs being the aggregate of Rs. 13 lakhs and Rs. 60 lakhs.

33. The Defendant Nos. 1 and 7 are, therefore, entitled to the counterclaim as allowed herein. The Defendant Nos. 1 and 7 will be entitled to costs assessed at Rs. 50,000/-. C.S. No. 661 of 1989 is decreed accordingly.

34. The department will draw up and complete the decree as expeditiously as possible.