

(2008) 09 DEL CK 0280

Delhi High Court

Case No: CS (OS) No. 1469 of 2007

New Delhi Municipal Council

APPELLANT

Vs

Ashok Kumar Ahuja

RESPONDENT

Date of Decision: Sept. 15, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11, 151
- Delhi Municipal Corporation Act, 1957 - Section 283, 455
- Electricity Act, 1910 - Section 24, 24(1)
- Electricity Act, 2003 - Section 56(2)
- Limitation Act, 1963 - Section 15(2)
- New Delhi Municipal Council Act, 1994 - Section 200, 363
- Railways Act, 1989 - Section 77

Citation: (2008) 154 DLT 50 : (2009) ELR 773

Hon'ble Judges: Hima Kohli, J

Bench: Single Bench

Advocate: Arjun Pant, for the Appellant; Naveen Chawla, for the Respondent

Final Decision: Allowed

Judgement

Hima Kohli, J.

I.A. No. 10888/2007(by the defendant under Order 7 Rule 11(d) read with Section 151, CPC)

1. The present application is filed by the defendant, praying inter alia for rejection of the plaint on the ground that the same is barred by the law of limitation.
2. It is stated by the counsel for the defendant that a bare reading of the plaint on the record shows that the plaintiff has filed a suit for recovery of Rs. 30,26,178/- against the defendant on the allegation that the defendant has not paid the bills for

electricity consumption for the period from April 1996 to August 2002. He states that, as per the averments made in the plaint, without admitting the contents thereof to be correct, the amount alleged to be due and payable by the defendant to the plaintiff was for the period upto August 2002, and the period of three years, if calculated from August 2002 expired in August 2005, whereas, the present suit was admittedly filed on 09.7.2007. He further submits that the perusal of the bills annexed to the plaint for the period w.e.f January 1996 to April 1999 show that the cause of action had arisen in favour of the plaintiff to institute the present suit within three years from the due dates mentioned in the bills and taking into consideration the last bill, the period of three years expired in April 2002, whereas the present suit was filed after a period of five years therefrom. It is, therefore, stated that the plaint is barred by limitation as prescribed under the Limitation Act and u/s 363 of the New Delhi Municipal Council Act 1994. In support of his submissions, counsel for the defendant relied upon the following judgement:

(1) [Union of India\(UOI\) Vs. Kedar Nath Babulal,](#)

(2) [H.D. Shourie Vs. Municipal Corporation of Delhi and Another,](#)

(3) Administrator of Union Territory of Deman and Diu and Ors. v. R.D. Valand

3. Counsel for the plaintiff opposes the present application and denies the fact that the suit is barred by limitation. He submits that the cause of action arose when the bill dated 22.4.1999 was not paid by the defendant. He further submits that for the purpose of filing the suit, cause of action lastly arose in August 2002, when the last bill was raised by the plaintiff against the defendant.

4. Before dealing with the contentions of both the parties, a perusal of the relevant provisions of the NDMC Act are necessary. Section 200 of the NDMC Act (Charges for supply of electricity) stipulates as under:

Section 200:- The charges shall be leviable for the supply of electricity by the Council at such rates as may, from time to time, be fixed by the Council.

Section 363 of the NDMC Act (Mode of recovery of certain dues) stipulates as under:

Section 363:- In any case not expressly provided for in this Act or any bye-law made there under any sum due to the Council on account of any charge, costs, expenses, fees, rates or rent or on any other account under this Act or any such bye-law may be recoverable from any person from whom such sum is due as an arrear of tax under this Act.

Provided that no proceedings for the recovery of any sum under this section shall be commenced after the expiry of three years from the date on which such sum becomes due.

5. The provisions of Section 363 are para materia with Section 455 of the Delhi Municipal Corporation Act 1957. The aforesaid provision was considered in the case

of H.D. Shourie Vs. Municipal Corporation of Delhi and Another, in the context of calculation of the period of limitation. In the aforesaid case, the Court took notice of the provision of Section 24 of the Electricity Act and Section 455 of the DMC Act and observed as below:

Para 11:- As I read Section 24 of the Electricity Act and Section 283 of the Corporation Act, it appears to me that the amount of charges would become due and payable only with the submission of the bill and not earlier. As has been mentioned hereinabove, it is the bill which stipulates the period within which the charges are to be paid. The period which is provided is not less than 15 days after the receipt of the bill. If the word ~~due~~ in Section 24 is to mean consumption of electricity, and if the argument of the learned Counsel for the petitioner is correct, it would mean that electricity charges would become due and payable the moment electricity is consumed and if charges in respect thereof are not paid then even without a bill being issued a notice of disconnection would be liable to be issued u/s 24. This certainly could not have been the intention of the Legislature. Section 24 gives a right to the licensee to issue not less than 7 days~~due~~ notice if charges due to it are not paid. The word ~~due~~ in this context must mean due and payable after a valid bill has been sent to the consumer. It cannot mean 7 days~~due~~ notice after consumption of the electricity and without submission of the bill. Even though the liability to pay may arise when the electricity is consumed by the petitioner, nevertheless it becomes due and payable only when the liability is quantified and a bill is raised. Till after the issue and receipt of the bill the respondents have no power or jurisdiction to threaten disconnection of the electricity which has already been consumed but for which no bill has been sent.

Thus, the Court held that only when the bill has been sent, does the cause of action arise to recover the amount. The period of limitation would therefore come to an end after lapse of three years from the date the electricity charges become due and payable on a bill being sent and if the payment is not made within three years thereof, the right of the aggrieved party to file a suit for recovery would lapse.

6. In the present case, it is not disputed that the bills were raised by the plaintiff upon the defendant for electricity consumption on monthly basis, from April 1996 to August 2002, and that the electricity connection was disconnected by the plaintiff on 18.5.1999. It is also not disputed that the last bill raised by the plaintiff on actual reading basis was dated 31.1.1998 and the same was payable by 19.2.1998. Thereafter, while the bill amount for electricity consumed remained the same, the amount claimed towards surcharge kept escalating from time to time, as levied by the plaintiff in accordance with its policy. Thus, the cause of action arose in favour of the plaintiff and against the defendant on each date when a bill was raised by the NDMC on the defendant for electricity consumption and the period of limitation of three years for recovery of the same commenced once the bill was sent to the defendant. In other words, the cause of action arose in favour of the plaintiff against

the defendant on different dates depending on when the bills were sent by the plaintiff to the defendant and when they became due and payable by the defendant upon quantification of his liability.

7. However, taking the case of the plaintiff at the highest and assuming that the cause of action lastly arose when the last bill was raised by the plaintiff on the defendant in August 2002, even then the period of limitation cannot extend beyond August 2005. Reliance has also been placed by the counsel for the plaintiff on the provision of Section 56(2) of the Electricity Act, 2003 which mandates as below:

56. Disconnection of supply in default of payment:

(1) ...

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

8. Counsel for the plaintiff states that it is apparent from a perusal of the aforesaid provision that the amount due and payable by a consumer is recoverable within a period of two years from the date when such a sum became first due and payable and that in the present case, as the plaintiff kept raising demands on the defendant from time to time, the last one being the demand letter dated 09.9.2005, the entire outstanding sum remained continuously recoverable from the defendant as arrears of charges for electricity supply.

9. In the first instance, it may be noted that the bills, subject matter of the dispute relate to the period w.e.f. April 1996 to August 2002. Therefore, the provisions of Section 56(2) of the Electricity Act 2003, may not be available to the plaintiff. Rather, reference to the provisions of Section 24(1) of the Indian Electricity Act, 1910 may be more relevant. The said provision reads as follows:

24. Discontinuance of supply to consumer neglecting to pay charge:

(1) Where any person neglects to pay any charge for energy or any sum, other than a charge for energy, due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days~~◆~~ notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer.

(2) ...

10. The submission of the counsel for the plaintiff is that the repeated notices sent by the plaintiff to the defendant dated 14.1.2004, 05.4.2005, 31.5.2005 and lastly, 09.9.2005, extend the period of limitation for the purpose of instituting the suit for recovery. The aforesaid submission is taken note of only to be rejected as repeated notices or reminders sent by one party to another cannot extend the period of limitation in favour of such a party. The plaintiff has been sleeping over its rights all along and cannot be permitted to take recourse to demand notices issued in the years 2004-2005, in respect of outstanding dues for the period w.e.f. April 1996 to August 2002, only to claim extension of limitation.

11. The contention of the counsel for the defendant is well founded that the present case is not one where the provision of Section 15(2) of the Limitation Act would come to the rescue of the plaintiff, for the reason that it was not mandatory for the plaintiff to issue a notice, in accordance with any requirement of the law before raising a demand on the defendant. Furthermore, as contemplated u/s 15(2) of the Limitation Act, the notice, if any, was required to be given to the defendant as envisaged u/s 24 of the Indian Electricity Act, 1910, in the context of disconnecting the electricity supply. But such a notice was not a condition precedent for the purpose of filing a suit for recovery of outstanding arrears for electricity consumed. In this regard, counsel for the defendant is justified in relying on the judgement in the case of Kedar Nath Babulal (supra), wherein the provision of Section 15(2) of the Limitation Act was considered in the light of Section 77 of the Railways Act and it was held that absence of notice does not mean that a suit cannot be brought but only provides that it cannot be decreed and that the Court always has the jurisdiction to decide the necessity of a notice before granting a decree. Even in the present case, there is nothing placed on the records to establish that no suit could be brought by the plaintiff against the defendant in the Court in the absence of a notice. Rather, no prior notice is contemplated by the statue. In the aforesaid circumstances, the contention on behalf of the defendant that the present suit instituted by the plaintiff is barred by limitation and is, therefore liable to be rejected, is upheld.

12. The application is allowed. The suit is rejected as being barred by limitation.