

(1982) 04 BOM CK 0038

Bombay High Court

Case No: Civil Revision Application No. 1077 of 1981

Maharashtra State Electricity
Board

APPELLANT

Vs

Trimbak Narayanrao Phulari and
Others

RESPONDENT

Date of Decision: April 1, 1982

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 1, Order 1 Rule 2, Order 39 Rule 1, Order 39 Rule 2, 80
- Electricity Act, 1910 - Section 24(1)
- Industrial Electricity Act, 1960 - Section 24(1)

Citation: (1982) 1 BomCR 749

Hon'ble Judges: D.M. Rege, J

Bench: Single Bench

Advocate: P.S. Patankar, for the Appellant; M.D. Pathak, for the Respondent

Judgement

D.M. Rege, J.

This civil revision application is by the Maharashtra Electricity Board, against the judgment and order of the Extra Assistant Judge, Nanded, dated 13-11-1981 confirming the order of temporary injunction granted by the learned Civil Judge (Junior Division), Nanded by his order dated 30-9-1981.

2. Respondent No. 1 is the owner of the premises being House No. 1-6-106 in Srinagar area, Nanded, and respondent No. 2 is a tenant of the premises. Respondent No. 1 is the consumer of the applicant and was supplied with two electricity meters bearing Nos. 9828 and 9550. The Maharashtra Electricity Board operating in the said area sometime in December 1978, served on the 1st respondent two electricity bills for the electricity consumed as shown under the said two meters. 23rd January was the last day for the payment of the said bills. On that

day itself the 1st respondent paid both the said bills. However, the payment of the said bills was entered in the records of the Board only against one Meter being No. 9550. As the record showed that no payment was made as against the other Meter No. 9828 for seven days after the service of the bills on 15-2-1979, the officers disconnected Meter No. 9828. On 6-3-1979, the respondent addressed a letter to the Board stating that the payment was made in full on 23-1-1979 itself. On 12-3-1979, electricity was restored to the 1st respondent by charging Rs. 8/- towards reconnection. The respondents thereafter by giving notice dated 18-4-1979 u/s 80 of the CPC filed a suit being Regular Civil Suit No. 238 of 1973. (1) for a declaration that the notice of disconnection in the bill itself was invalid u/s 24(1) of the Indian Electricity Act. (2) for a permanent injunction restraining the Board from issuing bills containing such notice, (3) for recovery of disconnection charges of Rs. 8/- and (4) for damage of Rs. 200/-.

3. The plaintiffs i.e. respondent Nos. 1 and 2 thereafter applied for a temporary injunction restraining the Board from issuing in future bills containing a notice of disconnection. On 5th September, 1979, the Court granted an ad interim injunction restraining the Board from issuing such bills to the respondents. The respondents' application, however, to restrain the Board from issuing such bills to the other consumers in Nanded Circle was not granted.

4. Appeal filed by the Board against the said order of ad interim injunction was dismissed by the District Court on 23-8-1980.

5. Thereafter on 30th September, 1980, the respondents made an application to the Court to treat the suit as a representative suit under Order 1, Rule 8 of the Civil Procedure Code. Sometime in December 1980, he has made another application (Ex. 27) to withdraw his claim for reliefs in connection with the reconnection charges of Rs. 8/- and for damage. On 17th January, 1981, the respondents were granted leave to convert the suit filed by them into a representative suit and were also allowed to withdraw the said reliefs. They were also allowed to join one Jadhav the owner of Raj Industries at Nanded, respondent No. 3 herein as party plaintiff to the suit. It may be pointed out that the said Raj Industries had in fact filed a suit being Civil Suit No. 107 of 1978 challenging his disconnection for non-payment of electricity bills. The said suit was dismissed and an appeal against the same was pending.

6. After the suit was converted into representative suit and the respondents were allowed to withdraw the said reliefs as to disconnection charges and damages the respondents made an application (Ex. 38) for an injunction restraining the Board from issuing bills containing the said notice of disconnection in respect of the consumers of electricity in entire Nanded Circle. The learned Civil Judge granted the injunction prayed for holding that the respondents had made a prima facie case that on the reading of section 24(1) of the Industrial Electricity Act, 1910 the notice of disconnection contained in the bills issued by the Board was invalid and, therefore, disconnection of electricity in pursuance of the bill was also invalid.

7. In appeal the Assistant Judge by his order dated 23-4-1980 confirmed the order. Hence this civil revision application by the Board against the said order.

8. The principles on which a Court should grant interim injunction under Order 39, Rules 1 and 2 of the CPC are now well laid in several decisions. A reference may be made in that connection firstly to the decision of the Supreme Court in the case of *United Commercial Bank v. Bank of India* 1981(2) S.C.C. 977. There the Court in connection with the grant of injunction by the lower Court under Order 33, Rules 1 and 2 laid down that before granting injunction firstly there must be a prima facie case, and secondly even if there was a serious question to be tried, the Court had to consider the balance of convenience. In that case the Court found that the plaintiffs had not made out a prima facie case and had failed to prove that he would be put to irreparable loss unless interim injunction was granted.

9. The other decision that may be referred to in this connection is of the Division Bench of this Court in the case of [Narayandas S. Kanuga Vs. Sarasvatibai D. Joshi and Another](#), There the injunction was being sought for preventing the defendant from constructing a building on the ground of the breach of certain Development Rules and Regulations. There the Court at p. 288 of this report observed as under :---

"The trial Judge has very lightly granted the injunction. Principles of granting temporary injunctions are well settled. Order 39, Rules 1 and 2 provide for such injunction. Rule 1 does not apply. Rule 8 requires that some injury must be threatened, injury must be a legal injury and not any fancied injury. In all cases where injury is alleged the Court is put on an enquiry as to what are the contents of the rights claimed by the appellants. Assuming that some such right is shown, the second element to be considered is whether irreparable injury or inconvenience may result to the plaintiffs if the same is refused... .We have dealt with the question in somewhat details for in recent days cases after cases came to our notice where we find injunctions are granted without due care and circumspection and without thought to the consequences of the same to the other side..... The duty of being careful even in the case of ex parte applications cannot but be emphasised. It is the duty of the Judge to be careful in the exercise of this power and must by careful questioning of the applicant ascertain whether a real case exists for the grant of the same. He must be satisfied that the law permits it and the emergency demands it. It should not be granted lightly or inadvised. Even if granted, the absent party ought to be sufficiently protected."

10. The same view has been reiterated by a Division Bench of this Court in its decision in the case of *Hindusthan Antibiotics Ltd. and another v. Ramdas Trimbak Deshmukh and others* 1977 Mh.L.J. 32. In that case Court while dealing with the question of injunction observed as under :---

"Having regard to the casual manner in which the ad interim injunction has been granted by the trial Court, it is necessary to the power to grant injunction should be

cautiously exercised and that too upon clear and satisfactory grounds. Courts must grant relief of injunction only in situations which so clearly call for it as to make its refusal work real and serious hardship and injustice. Injunction is a preventive relief against irremediable mischief. An injury is deemed to be irremediable and mischief is said to be irreparable where damage apprehended from the threatened act cannot be compensated with money. If a right being assailed is not justifiable, no relief in the form of injunction, temporary or perpetual, can be granted. Before an ad interim ex parte injunction is granted, the Court must, therefore, find out whether,

- i) the plaintiff has established a prima facie case,
- ii) the plaintiff will suffer irreparable loss which cannot be compensated by damages if injunction is refused, and
- iii) on what side lies the balance of convenience."

11. In the light of the observations in the said decisions, it may not be considered whether the lower courts have taken into consideration the above mentioned factors required to be considered before granting an injunction.

12. Firstly it may be pointed out that in the application by the plaintiffs for interim injunction on which the lower courts have passed the impugned order, the only emphasis is on their legal contention that the notice of disconnection of electricity contained in the bill was invalid by reason of section 24(1) of the Indian Electricity Act. It does not even remotely mention that any injury or loss much less irreparable injury or loss was likely to be caused to them if injunction was not granted to them or that balance of convenience was in their favour for grant of an injunction.

13. The order of the learned Civil Judge dated 30-9-1981 granting function shows that although the learned Judge had initially raised for determination points as to (1) prima facie case, and (2) balance of convenience he has in the operative part of the order rest content in dealing only with the question as to prima facie case, without not even a reference in the order to the question of balance of convenience. Same is the case with the order of the Extra Assistant Judge dated 13-11-1981. The learned Distant Judge in his order has not raised any points for determination. The learned Assistant Judge also has devoted his order to the discussion of the question whether the plaintiffs had made out a prima facie case which he finds in the affirmative. However in his said order expecting a bald statement at the end of the order viz. Hardly there can be any balance of convenience in favour of the board and that too wrongly as the balance of convenience that was required to be considered was that in favour of the plaintiffs, one does not find any discussion consideration of that question. Further in both the said orders there is a total absence of consideration of the Question whether the plaintiffs were likely to suffer irreparable injury if no injunction was granted.

14. Even if the said orders of the lower Court i.e. orders dated 30-9-1981 of the Civil Judge and order dated 13-11-1981 of the Assistant Judge were to be tacked on to their earlier order of injunction in favour of plaintiffs Nos. 1 and 2 as was the case before permission was granted to convert the suit into a representative suit, still the situation is not different. In the said earlier orders of the Civil Judge dated 5-9-1979 and of the Assistant Judge dated 23-4-1980 also the discussion was only as regards prima facie case with total absence of consideration or discussion as regards irreparable injury or balance of convenience.

15. On these considerations, the impugned order of the lower Court cannot be sustained.

16. The learned Counsel for the appellant Board has further contended that even the finding of the lower courts as to the plaintiffs having made out a prima facie case was not correct.

17. The contention of the plaintiffs was that by reason of the provisions of section 24(1) of the Electricity Act it was necessary to give a separate notice of disconnection of electricity on default being committed and therefore, such a notice contained in the electricity bill itself issued by the Board, was invalid and disconnection in pursuance of such notice was also invalid.

18. On the other hand the learned Counsel for applicant Board has contended that on a proper reading of the said section 24(1) with rules made under the Act, such a notice of disconnection in the bills for electricity was permissible.

19. The said section 24(1) of the Electricity Act provides as follows :---

"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 recovery such charge or other sum by suit, cut off the supply and for the purpose cut or disconnect any electric supply-line or other words 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 re-connecting the supply, are paid but no longer."

20. On the reading of the provisions, it was not possible to hold at the interim stage that plaintiff's contention was so absurd that even on prima facie view of the matter it could be discarded even at this stage. The said finding of the lower Court about the plaintiffs having made out a prima facie case for the purpose of injunction cannot be said to be wrong. The said contention of the learned Counsel for the Board, therefore, cannot not accepted.

21. Even if the plaintiffs can be said to have made out a prima facie case as regards their said contention in the suit, the question still was whether plaintiffs could be

said to have shown that if no injunction was granted, they would suffer irreparable loss or injury and that balance of convenience was in their favour for granting such an injunction. As it is I have pointed out above that neither the plaintiffs in their application for injunction have pleaded such an irreparable injury and balance of convenience nor have the lower courts in their order considered any of the said two factors.

22. However even otherwise in the circumstances in this case there could not be any question of the plaintiffs or the consumers of electricity in that area suffering or being likely to suffer irreparable injury if the injunction were not granted and the Board were allowed to continue issuing of the bills containing such notices of disconnection of electricity.

23. It cannot be disputed that disconnection of the electricity could take place only on default being committed in payment of the bills within a particular time. The consumer of electricity committing default would be too well aware that if default was committed the electricity connection was likely to be cut off within a certain period after default. It is also not disputed that on payment of bill for which default was committed on the payment disconnection charges the Board was bound to restore the electricity. Therefore, under the circumstances though giving of a separate notices of disconnection after actual default may be prima facie considered to be the right of the plaintiffs and other consumers under the provisions of section 24(1) of the Electricity Act, still not granting of an injunction against the board at this stage and allowing it to continue issuing of the bills containing also the notice of disconnection, which admittedly all the offices of the board throughout Maharashtra and B.E.S.T. in Bombay have been doing for past many years since coming into force of this said Act, would not in any manner cause any irreparable injury or loss to the plaintiffs or other consumers. Nor can it be said that under the circumstances mentioned above the balance of convenience was in favour of the plaintiffs in granting injunction. In that view of the matter, the plaintiffs would not be entitled to an injunction asked for.

24. In passing, I may also point out that even on the frame of the suit, the plaintiffs would not have been entitled to any injunction. The plaintiffs have filed this suit against the following defendants viz. (1) The Chairman, Maharashtra State Electricity Board; (2) The Superintending Engineer, M.S.E.B. Nanded Circle; and (3) the Assistant Engineer, M.S.E.B. Urban sub-division No. 2. None of the said officers is corporation sole and, therefore, suit filed against them only by their designation cannot be sustained. That apart if the bill are issued by the board it is difficult to see how the said officers could be held individually liable. However, as discussed above, the said application of the plaintiffs for injunction deserves to be rejected not merely on that limited ground but on merit itself.

25. The result, therefore, is that the rule in this revision application is made absolute. The orders of the trial Court dated 30-9-81 granting injunction and the

order of the Assistant Judge dated 13-12-1981 confirming the same are set aside. The plaintiff's application for injunction would stand dismissed. Under the circumstances of the case, there would be no orders as to costs.

Order of lower courts set aside.