

(2013) 09 RAJ CK 0112

In the Rajasthan High Court

Case No : SB Civil Miscellaneous Appeal No. 1215/09

Asstt. Engineer, JVVNL and Another

APPELLANT

Vs

M/s. Vishwakarma Industries

RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1(r)

Electricity Act, 2003 — Section 145

Citation : (2013) 09 RAJ CK 0112

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Advocate : Bipin Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

Bela M. Trivedi, J.—The present appeal has been filed by the appellants-defendants under Order XLIII Rule 1(r) of CPC challenging the order dated 14.11.08 passed by the Addl. District & Sessions Judge, Ramganj Mandi, District Kota (hereinafter referred to as "the trial court") in Civil Misc. Case No. 35/08, whereby the trial court has partly allowed the application of the respondent-plaintiff filed under Order XXXIX Rule 1 and 2 of CPC. It appears that the respondent-plaintiff has filed the suit seeking permanent injunction against the appellants-defendants alleging inter alia that the respondent had one electric connection of 150 HP which was released on 8.11.07 and that prior to the said connection, his connection was of 60 HP. It was further contended that when the connection was of 60 HP, the CT, PT which was installed with the connection was of 7.5/5 Amp. and accordingly multiple of 1.5 was used and bills were being issued accordingly. It was also contended that however a notice was issued by the appellants-defendants on 11.9.08 to the effect that the CT, PT was not of 7.5/5 but was of 75/5 amp and, therefore, the multiple of 1.5 was wrongly applied in place of multiple of 15. The appellants-defendants, therefore, had issued notice for the recovery of Rs. 6,78,027. The respondent-plaintiff,

therefore, filed the suit challenging the said action of the appellants-defendants. The appellants-defendants resisted the said suit and the application for temporary injunction by filing the reply contending inter alia that the CT, PT which was installed at the premises of the respondent-plaintiff was of 75/5 amp., giving multiple of 15 and that the CT, PT of 7.5/5 amp. giving multiple of 1.5 was incorrectly applied and, therefore, the respondent-plaintiff was liable to pay the difference of the said amount. It was also contended that the suit was not maintainable as being barred u/s 145 of the Indian Electricity Act, 2003. The trial court after considering the prima facie case and balance of convenience, vide order dated 14.11.08 allowed the application of the respondent-plaintiff by directing the appellants-defendants to reconnect the electric connection in the premises of the respondent-plaintiff, on his depositing Rs. 2,02,968/- pursuant to the notice dated 11.9.08 under protest. Being aggrieved by the said order, the present appeal has been filed.

2. It has been submitted by the learned counsel Mr. Bipin Gupta for the appellants that the trial court has committed an error by not directing the respondent-plaintiff to deposit the entire amount of notice. According to him the under-calculation was made by mistake by applying the multiple of 1.5 instead of 15, as the connection was of 150 HP. He submitted that the disposal of suit is likely to take long time and, therefore, the respondents could not be permitted to enjoy the interim order without making payment of the amount mentioned in the notice.

3. At the outset it is required to be mentioned that nobody appears for the respondent though duly served. It is also pertinent to note that though the order under challenge is of 14.11.08, the appeal has remained pending at the admission stage for about 5 years without any substantive progress. Be that as it may, the court finds some substance in the submission made by the learned counsel Mr. Bipin Gupta for the appellants that the trial court should not have stayed the payment of notice amount, when the erroneous calculation was made by the appellants. Nonetheless, the impugned order passed by the trial court being discretionary in nature, and since about five years have already elapsed to the said order, the court is not inclined to interfere with the said order at this stage. However considering the facts and circumstances of the case, the trial of the suit is required to be directed to be expedited. In that view of the matter, the appeal is dismissed, however the trial court is directed to conclude the suit as expeditiously as possible and preferably within one year from today.