(2016) 03 CAL CK 0162

In the Calcutta High Court

Case No : C.O. No. 3202 of 2015

C.E.S.C. Ltd. APPELLANT

Vs

Shri Santan Prasad Singh RESPONDENT

Date of Decision : 04-03-2016

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32

Citation : (2016) 3 CalHCN 370

Hon'ble Judges : Ashoke Kumar Dasadhikari, J.

Bench : Single Bench

Advocate : S.P. Mukherjee and D. Mukherjee, Advocates, for the Petitioner; M.P. Gupta, Advocate, for the Opposite Party

Final Decision : Disposed Off

Judgement

Ashoke Kumar Dasadhikari, J. - Order impugned dated 28th April, 2015 rejecting the prayer for recalling the order passed on 14th May, 2012 by the learned XIth Bench of the City Civil Court at Calcutta in Title Execution No. 57 of 1990 is under challenge in this revisional application.

2. Mr. Mukherjee, learned Counsel appearing for the petitioner, submits that the opposite party being the plaintiff filed the original suit being T.S. 2077 of 1980 disputing the bills raised by the CESC/defendant/ petitioner for the period starting from 3rd August, 1979 to 4th May, 1080. The suit was originally decreed by the learned Trial Court on contest and the learned Trial Court directed the CESC/defendant/petitioner to submit revised and corrected bill for the aforementioned period and the CESC was permanently injuncted from disconnecting the supply of the electric connection of the plaintiff/opposite party.

3. He submits that the CESC authorities raised a bill of Rs.1,53,000/- covering the period from June, 1982 to June, 1990 for consumption of electricity. Since the payment was not made by the decree holder/opposite party, CESC authorities disconnected the supply. However, the opposite party/decree holder

started one execution case being T.Ex. 57 of 1990. In that two applications were filed, one was filed by the decree holder/opposite party under Order 21, Rule 32 of the CPC and the other one moved by the CESC authorities under Section 151 of the CPC.

4. In the application under Section 151 CPC the CESC authorities prayed for a direction upon the decree holder to make payment of Rs. 50,000/- initially out of total dues of Rs. 1,53,371.24/- together with fresh security deposit for restoration of supply. In the application under Order 21, Rule 32 of the CPC, the decree holder/opposite party stated that the CESC authorities illegally disconnected the supply of electricity without submitting revised bills or corrected bills on 19th June, 1990. By a subsequent letter, the decree holder requested CESC authorities to submit revised/corrected bills to enable the decree holder/ opposite party to pay the same and to restore the supply of electricity.

5. It was also contended by the decree-holder that although request was made for removal of defective/dead meter but no replacement was made. It was further contended that without giving any intimation the disconnection was made.

6. The learned Court below heard both the applications.

7. Both the applications were decided with an order that the judgment debtor to produce revised or corrected bills in terms of the order so that the decree holder liable to pay for the consumption of electric charges from the period 3rd August 1979 to 4th May, 1980. It was held that for such non-payment of electric charges electricity could not be disconnected. However, the learned Court below did not allow the prayer for attachment of Victoria House at Calcutta for disconnection of electric supply. The learned Court below found it difficult to ascertain the total outstanding dues to be paid to the judgment debtor and directed the judgment debtor to furnish electric bills or any other bill showing the consumption of electricity by the decree holder after the disputed date.

8. It was ordered that upon furnishing the bills and/or proof of recording the consumption of electricity by the judgment debtor, the decree holder must pay the outstanding dues by five monthly instalments commencing from 7th November, 2010. The CESC must furnish the copy of electric bills or any extract as directed by the Court below on 5th October, 2010 and that is how both the applications were disposed of.

9. Thereafter, CESC authorities filed application under Section 151 of the CPC. In the meantime, one civil revisional application being C.O. 1569 of 2011 was moved before this Court and this Hon''ble Court was pleased to direct to dispose of the Title Execution Case being 57 of 1990 within six months from the date of receipt of the copy of the order. However, prayers made in the 151 application was for making payment of Rs.1,53,372.24/- excluding the amount for the disputed period from 3rd August, 1979 to 4th May, 1980. The application was heard on contest.

10. Learned Court below upon consideration of the application recorded that the CESC authorities disconnected the electric connection of the decree holder/ opposite party on 19th June, 1990. The decree holder consumed electricity from June, 1982 to 19th June, 1990. Accordingly, both the decree holder and the judgment debtor/CESC were directed to furnish documents to prove their steps that they have taken to justify their respective actions. The petitioner/judgment debtor was directed to comply with the order dated 17th September, 2010. The judgment debtor was directed to submit electric bills from June, 1982 to 19th June, 1990.

11. After the order was passed on 14th May, 2012, the judgment debtor once again moved an application under Section 151 of the CPC and submitted that such bills were of thirty years back. The original bills which were raised by the CESC authorities had been sent to the consumer and the CESC authorities do not keep any duplicate bill. Therefore, they made a prayer for recalling of the order passed on 14th May, 2012.

12. Upon consideration of that application, the learned Court below rejected the application for recalling filed by the CESC authorities on the ground that no reason for recalling the order dated 14th May, 2012 was furnished by the judgment debtor/petitioners and the learned Court below recorded that exercise of its inherent jurisdiction of 151 CPC applying judicial mind only available in an appropriate situation. According to the learned Court below the order dated 14th May, 2012 does not warrant any interference and, therefore, the application for recalling of the order dated 14th May, 2012 was rejected.

13. Mr. Mukherjee, learned Counsel for the CESC submits that the bills which were raised against consumption of electricity by the opposite party/decree holder was covering for the period starting from June, 1980 till 19th June, 1990.

14. However, for coming to an amicable settlement, the CESC authorities agreeable to reduce Rs. 50,000/- from the total dues and they asked the decree holder to make payment of balance amount out of the total dues. He submitted that the opposite party/decree holder was not agreeable to pay the adjusted amount. He also submitted that the opposite party did not make any payment for the consumption of electricity from June, 1980 to 19th June, 1990. CESC authorities duly raised bills.

15. It is not the case of the decree holder that they did not consume the electricity. However, they took a plea that the revised bills were not submitted by the CESC authorities.

16. Mr. Mukherjee submitted that the period which is covered in the Title Suit No. 2077 of 1980 was for about nine months starting from 3rd August, 1979 to 4th May, 1980 for which a decree was obtained but the scope of the decree cannot be enlarged covering subsequent period. He submitted that for consumption subsequent to the decreetal period, admittedly no payment was made. The learned Court below was asking to produce the bills, which were raised thirty

years back. He submitted that this was next to impossible to trace out those bills.

17. It is not disputed that the decree holder has consumed the electricity but he has not paid. He was satisfied with the decree passed by the Court. Mr. Mukherjee submitted that the learned Court below erred in law asking the CESC authorities to produce the bills, which were raised and claimed for the period not covered in the suit. He submitted that the order impugned should be set aside and the direction to produce bills of thirty years old should be set aside. He further submits that the authorities be permitted to recover the amount for the supply consumed by the decree holder starting from June, 1980 to 19th June, 1990. He submitted that the learned Court below have held that it is very difficult to ascertain the total consumed electricity and its charges for the subsequent period, therefore, the learned Court below asked to produce the bills.

18. It was Mr. Mukherjee''s emphatical submission that period was not at all covered. However, CESC authorities can disconnect the supply in case there is non-payment of future bills. According to him, the order impugned is not sustainable.

19. Mr. Gupta, learned Counsel appearing for the opposite party/decree holder on the other hand submitted that this 151 application made by the judgment debtor is not at all maintainable. He has submitted that the order passed on 14th May, 1012 has reached its finality. He submitted that Section 151 application for exercising inherent power of Court is called for when there is no other remedy available under the Code. He submitted that the order itself is revisable or a review application could be entertained against that order but those procedures were not followed in stead of an application under Section 151 was filed to recall or modify the order.

20. He submitted that the learned Court below ought not to have exercised the power under Section 151 of the CPC. He submitted that under no circumstances order passed on 14th May, 2012 could be interfered with. He further submitted that the authorities failed to supply the revised bills, therefore, they themselves are responsible and they cannot claim the amount for which they have raised the demand. He submitted that the order of 14th May, 2012 was passed on contested hearing which was never questioned. According to him, the order passed on 14th May, 2012 could not be interfered with. He, therefore, cited two decisions in support of his submissions, one is reported in (2009)14 SCC 663 and the other one is reported in (2014)5 SCC page 75.

21. Considered the submissions made by the learned Counsel appearing for the parties.

22. It appears that the learned Court below failed to appreciate that the executing Court cannot go beyond the decree passed. The period for which the suit was filed is restricted to the bills raised for consumption of electricity from 3rd August, 1979 to 4th May, 1980. Therefore, whatever dispute and difference and/or confusion are there be restricted to that period only. The learned Trial

Court cannot pass any order for the subsequent period which is not covered by the decreed. The learned Executing Court have no jurisdiction to ask the CESC to produce the bills for the period not involved in the suit or beyond the period covered in the suit or in dispute.

23. In my view, the learned Court below is totally wrong in asking the CESC authorities to produce the bills in the Title Execution case for the period starting from June, 1980 to 19th June, 1990.

24. Therefore, the order impugned is without jurisdiction and the learned Court below should restrict itself with the decree passed in the title suit and not beyond that. Learned Court below has no jurisdiction to go beyond the period starting from 3rd August, 1979 to 4th May, 1980.

25. The order impugned is set aside. The revisional application is, thus, allowed.

26. Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.