(2002) 06 OHC CK 0050

In the Orissa High Court

Case No : Misc Appeal 879 of 2001

Jyosbanta Narayan Dixit APPELLANT

Vs

Executive Engineer Bhadrak RESPONDENT

Date of Decision : 26-06-2002

Acts Referred:

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

Citation : (2002) 06 OHC CK 0050

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : Karunakar Jena and A.K. Biswal, for the Appellant; B.K. Nayak, S.S. Patra and D.K. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

A.S. Naidu, J.—The Plaintiff-Appellant being aggrieved by the order dated October 17, 2001 refusing to grant ad interim injunction by the learned Civil Judge Senior Division. Bhadrak in Misc. Case No. 329 of 2001, has filed this Misc. Appeal under Order 43, Rule 1(r) of the Code of Civil Procedure.

2. Bereft of all unnecessary details, the short fact which are necessary for adjudication, are as follows:

The Appellant as Plaintiff filed Title Suit No. 404 of 2001-1, Inter alia, praying for a declaration that the Defendant is not entitled to claim towards Transformer loss and delayed payment surcharge as per the schedule given by in the plaint and for other ancillary reliefs. Admittedly, the Plaintiff is the proprietor of an Oil industry situated at Bhadrak and has entered into an agreement with the Defendant for supply of electricity to the industry. Along with the plaint, the Plaintiff filed a petition under Order 39, Rule 1 and 2, CPC to order temporary injunction restraining the Defendant from realising the arrear bill amount and from disconnecting the supply of electricity to the Industry premises of the Plaintiff-Petitioner till disposal of the Title Suit. In the petition for injunction, it has been averred that the Plaintiff is not liable to pay towards Transformer loss as well as delayed payment surcharge and that the Defendant is illegally charging the said amount and is threatening to disconnect electricity supply on failure to pay the aforesaid amount.

3. The Defendant (NEESCO) though appeared in the suit, has not filed its written statement as yet. However, an objection was filed to the injunction petition. It was averred that the Petitioner has suppressed the real truth and is not entitled to get any relief much less any equitable relief of interim injunction. It was also stated that the suit itself was not maintainable in view of the specific provisions in the Electricity Reforms Act. It was also contended that the interim injunction sought for is the same as the main relief prayed in the suit and as such, the petition for interim injunction is liable to be rejected in limine. In the alternative, it is submitted that according to the modified regulation, the Plaintiff is liable to pay for transformer loss as well as delayed payment surcharge and that in fact, the Plaintiff vide letter dated November 10, 1998 has informed the Defendant that he is willing to pay the supplementary bill which included charges for transformer loss and delayed payment surcharge. Along with objection a number of correspondences inter se between the parties were filed indicating the admission of the Plaintiff to pay the amount demanded by the Defendant.

4. The trial Court relying upon the letters said to have been issued by the Plaintiff on 10.11.98, 8.10.98 and 20.10.98 observed that the Plaintiff has agreed to pay the amount claimed. The trial Court also took exception to the fact that nether in the plaint nor in the petition for injunction, there is any averment regarding the aforesaid correspondences and the same amounts to suppression of vital facts and that the Plaintiff has not come to the Court with dean hands and is therefore, not entitled to any equitable relief. It was also field that the balance of convenience does not lean in favour of the Plaintiff-Petitioner, in View of his admission to pay the amounts to the opp. Party and that there will be no irreparable injury if the electricity supply is disconnected inasmuch as the Petitioner can be compensated with costs if he succeeds in the suit.

5. Mr. Jena learned Counsel for the Appellant forcefully submitted that the Plaintiff-Unit is not liable to pay for the Transformer loss as well as delayed payment. Surcharge and in fact, for some time said amounts were not charged. Subsequently however, for the reasons best known additional bills were submitted claiming the amount which are not payable by the Plaintiff. Thus there is prima facie case in its favour. It is also averred that the balance of convenience tilts more in favour of the Plaintiff inasmuch as if the electricity is disconnected, the Oil Industry will be closed thereby causing heavy financial loss.

At the other band, Mr. Nayak learned Counsel for the Respondent submitted that the suit itself is not maintainable and that no relief as bought can be granted in favour of the Plaintiff. Mr. Nayak relying upon the letters as well as the modified Regulation forcefully submitted that the Plaintiff is liable to pay the amount cleared and that petition was rightly dismissed by the Court below.

6. Law is no more res integra that while granting injunction the Court is to be satisfied about the existence of prima facie case balance of convenience and irreparable loss. All the three ingredients must be satisfied in order that the injunction should de granted. The object of the interlocutory injunction is to protect the Plaintiff from injury that is likely to be caused if an order is not granted and the existence of a prima facie case and as to whether the balance of convenience tilts in favour of the party which seeks an order are the pre-requisite conditions. (See 88 (1999) CLT 340, Sri Nabeen Chandra Sahu Vs. Sri Debasis Sahu, and Graftek Pvt. Ltd. and Others Vs. Shri Lord Lingaraj Mahaprabhu, .)

7. What need to be determined in the suit is the liability of the Plaintiff to pay for the Transformer loss and the delayed payment surcharge and the Court aster persuing the written statement and other papers, has to arrive at a decision either allowing or rejecting the relief sought for. Thus, there may be a prima facie case in support of the Plaintiff. But then as it appears from the observation made by the Court with clean hands inasmuch as a number of letters in which the Plaintiff said to have admitted to pay the amount demanded have neither been reflected in the pleading nor copies of those letters were filed in the Court. Thus, it prima facie appears that the Plaintiff has tried to Suppress that facts and thus may not be entitled to any discretionary relif. So far as balance of convenience and irreparable loss are concerned. I feel the Plaintiff will not be prejudicially needs electricity. In case the Plaintiff succeeds in the suit and it is found that it is not entitled to pay any amount towards Transformer loss or delayed payment surcharge the excess amount paid can be adjusted towards future bills. Therefore, no irreparable loss would be caused to the Plaintiff.

8. Taking into consideration the entire facts and circumstances of the case as well as the balance of convenience of both the parties, I feel ends of justice and equity would be better served if the Defendant-Respondent is directed not to disconnect the electricity supply subject to the condition that, the Plaintiff-Appellant deposits 50% of the arrear dues within a period of three weeks from to-day and further continues to pay the current monthly bill including the amount charged for Transformer less and delayed payment, surcharge regularly. The payment shall be made of course'' without prejudice to the Plaintiff''s right. This arrangement will help the Industry to '' survive and also to pay the arrear dues, if ultimately found payable in the suit to me Opp. party (NEESCO). Accordingly, I direct that if the Plaintiff-Appellant deposits 50% of the arrear dues within a period of one month from the date of the order a part form the amount already deposited and continues to pay the electricity charges as per bills including charges towards Transformer loss and delayed payment surcharge as per the arrangement month after month, the Defendant-Respondent shall not disconnect electricity supply. It is made clear that if the Plaintiff-Appellant fails to pay the monthly bills for two consecutive months and/or infringes any condition mentioned in the agreement, it would be open to the Respondent (NEESCO) to disconnect the electricity supply and/or take such other actions legally

permissible. It is made clear that I have not expressed any opinion regarding merit of the case as the same would amount to prejudging the issues at this stage. It is open to the trial Court to deal with each issue on its own merit.

With the observations and directions aforesaid, the Misc. Appeal is allowed to the extent indicated above. No costs.

