

(2018) 11 DEL CK 0132

In the Delhi High Court

Case No : Regular First Appeal No. 661 Of 2006

Maharashtra Hybrid Seeds Company

APPELLANT

Vs

Seeta Badrinath

RESPONDENT

Date of Decision : 16-11-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 96

Citation : (2018) 11 DEL CK 0132

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Ankit Swarup, Suraj R. Keshewani, Abinash Kumar Mishra

Final Decision : Dismissed

Judgement

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the Judgment

of the trial court dated 20.07.2006 by which the trial court has decreed the suit of the respondent/plaintiff for recovery of Rs.3,45,597/- alongwith

interest at 9% per annum simple from 08.06.2001 till the date of payment. The suit amount is the amount which are the electricity dues which were

payable for the period for which the appellant/defendant was a tenant in the tenanted/subject premises belonging to the mother of the

respondent/plaintiff, and after the death of the mother of the respondent/plaintiff, the respondent/plaintiff has inherited the property. The property is 25

bighas (25,000 sq.yards) of land alongwith a farm house in village Satbari, Mehrauli, Tehsil Hauz Khas, New Delhi.

2. The facts of the case are that respondent/plaintiff pleaded that the appellant/defendant was inducted as a tenant in the subject farm house in terms

of the Lease Deed dated 01.12.1990 for a period of 10 years w.e.f. 01.06.1990 at rent of Rs.4,000/- per acre for the first three years and thereafter a

10% increase for three years and a further increase of 10% for the balance period. It was further pleaded by the respondent/plaintiff that in June,

1997, i.e. during the period of tenancy, an electricity bill was received for a sum of Rs.76,921/- and the respondent/plaintiff asked the

appellant/defendant to correspond with the local electricity authority as to the amount of the bill. On the expiry of the lease, the appellant/defendant

handed over possession on 03.07.2000 and at the time of handing over possession a document was executed by the appellant/defendant, i.e. a

possession letter, which stated that all the dues which stood relating to the subject premises have been cleared by the appellant/defendant. The

respondent/plaintiff however pleaded that subsequently on 29.05.2001 she was informed by the local electricity authority/Delhi Vidyut Board (DVB)

that there was a bill due for Rs.2,21,152.53/- for a period comprised in the tenancy of the appellant/defendant, and this bill the respondent/plaintiff paid

because the respondent/plaintiff had in the meanwhile agreed to sell her property to a buyer Sh. Ashok Shroff and this bill was to be paid so that there

is no dispute with the proposed buyer Sh. Ashok Shroff. One more electricity bill was issued by DVB for a sum of Rs.1,68,405.96/- and which was

also paid by the respondent/plaintiff on 08.06.2001 and which was also towards electricity charges for a period within the tenancy period of the

appellant/defendant. Thus two bills totaling to Rs.3,89,558.49/- were paid by the respondent/plaintiff and which covered period from 25.02.1992 to

01.06.2001 i.e. essentially within the lease period of 1990 to 2000. Since the suit premises were vacated in 03.07.2000, hence the respondent/plaintiff

did not claim the entire amount of Rs. 3,98,069/- from the appellant/defendant but only claimed a sum of Rs.3,45,597/- alongwith interest. On account

of non-payment by the appellant/defendant of the amount due towards electricity dues, the respondent/plaintiff ultimately issued a Legal Notice dated

17.08.2002, and which was replied to by the vague and evasive denial by the appellant/defendant by its Reply dated 04.09.2002, and to which the

respondent/plaintiff gave a Rejoinder Notice dated 14.10.2002. Thereafter the subject suit was filed for recovery of Rs.3,45,597/- with interest.

3. The appellant/defendant contested the suit by filing it's written statement. It was pleaded by the appellant/defendant that no doubt the

appellant/defendant was liable to pay charges for the electricity consumption but they had regularly paid all bills towards electricity connections in the suit property. The electricity connection was for agricultural power. It was also pleaded by the appellant/defendant that the parents and relatives of the respondent/plaintiff in fact used to regularly visit the farm house. It was also pleaded by the appellant/defendant that the respondent/plaintiff at the time of taking possession on 03.07.2000 had signed the document that no dues were pending of the appellant/defendant. Appellant/defendant pleaded that the respondent/plaintiff instead of verifying the exact liability, paid the electricity bills, and therefore, the appellant/defendant is not liable to reimburse the respondent/plaintiff.

4. After completion of pleadings, trial court framed the following issues:-

1. Whether the Plaintiff is entitled to a decree claimed. If so, to what amount? OPP.

2. Whether the DVB is a necessary party to the suit? OPD.

3. Whether the Defendants are not liable towards the bills in view of the annexure P-6 and the interest accruing thereon? If so, to what amount?

4. Relief.

5. The evidence which was led by the parties is that as partially elaborated by the trial court in paras 19 to 22 of the impugned judgment, and these

paras read as under:-

ISSUE NO.1

19. In her testimony as PW-1, Plaintiff deposed on oath the above mentioned facts of her plaint and proved on record the relevant documents as

Ex.PW1/1 to Ex.PW1/25-B. She categorically deposed that the farm had been leased out by her mother in favour of the Defendant in the year 1990

for a period of 10 years and the Defendant vacated the farm on 3.7.2000. As per clause 2(c) of the lease deed, charges of the electricity and water

consumption in and around the farm were to be paid by the Defendant. PW-1 categorically deposed that the farm house remained vacant during the

entire period since her parents were residing in Vasant Vihar. As such, the only electricity consumption on the farm was in the form of agricultural

power by way of A.P. line. She also deposed that the Defendants kept her in dark about the outstanding electricity dues at the time of execution of

document of handing over possession. Subsequently, as per WP-1 she received the two unpaid bills of agricultural power which she had to pay under

pressure of litigation pending in the High Court and in view of assurance given by the Defendant. That they would reimburse the same. She also

proved on record the entire correspondence that took place between her and the Defendants pertaining to the reimbursement of the said two bills.

Although PW-1 was cross examined at length, her testimony as regards the issue under consideration remains unshaken.

20. PW-2 is an assistant finance officer of BSES, who proved the three unpaid bills (two for A.P. connection and one for DL connection) and a

detailed calculation sheet of dues furnished by the DVB to the Plaintiff. PW-2 stated that the bills had been raised on the basis of load and not as per

actual meter reading since the meter was defective. He stated that being new to the seat, he could not explain the basis of calculation made in the

calculation sheet by the DVB. PW-2 volunteered that the bills had been prepared on the basis of sanctioned load with minimum billing.

21. PW-3 is an assistant in BSES, who had prepared the calculation sheet of DVB Ex.PW1/22. He deposed that the calculation sheet had been

prepared by him on the advise of assistant finance officer Mehrauli because since 25.2.1992 there was no consumption pattern available due to the

defective meters he proved on record as Ex.PW3/1 the site report dated 1.6.2001. He stated that the payments had been made by the plaintiff as per

records available in their office. In his cross examination, he placed on record as Ex.PW3/X1, copy of his instructions to depose in this case.

22. Shri Sanjay Deshpandey, Manager of the Defendant company appeared as DW-1 in the witness box and in his testimony admitted that the farm

had been given on lease to the defendant for a period of 10 years from 1.6.1990 and the defendant company thereafter handed over possession of the

farm to the plaintiff after executing the document Ex.PW1/6. He stated that at the time of taking back possession of the farm, plaintiff had specifically

agreed having settled all the dues. DW-1 stated that o dues of electricity charges were pending against the defendant company, which had paid all the

bills directly to the authorities. As per DW-1, the electricity department issued also bills against the plaintiff which were paid by her under coercion

and defendant is not liable to reimburse the same. In his cross examination, DW-1 admitted that the calculation sheet Ex.PW1/22 of the DVB

correctly reflects the details of the agricultural power connection being used by the defendant at the relevant time. He admitted that at the time of

handing over possession of the farm, the defendant handed over only one electricity bill to the plaintiff, which was the last bill. He also admitted that

the plaintiff paid the electricity bills twice after intimating the defendant. DW-1 also stated that the defendant had taken up the dispute of defective

billing with the DVB but were told that the bills were correct and had to be paid.

(Underlining added)

6. On going through the two subject bills Ex.PW1/7 and Ex.PW1/12, it is seen that these bills are claims of electricity bills as on account of non-

payment for the billing month upto and of February 1997 and dues from February 1992 . The bills are identical in nature except that the second bill

Ex.PW1/12 corrects the typed portion of the bill Ex.PW1/7 stating the liability to be only Rs.1,68,405/-. A reference to the cross-examination Â of the

Â two employees of the electricity department who deposed as PW-2 and PW-3, namely Ms. Saroj Badhan the Assistant Finance Officer and Mr.

K.S.Chauhan the Assistant to PW-2, shows that the bills in question were not issued on actual meter reading but because the meters were defective

hence the bills were issued on load basis. I may note that it is in terms of the rules of the local electricity authority where the meters are found

defective, it is not as if the consumer is not liable to pay the charges, and that in such a case the consumer is liable to pay charges as per the load for

which the meter has been sanctioned. Also it is not the case of the appellant/defendant that the meters were not defective and the appellant/defendant

took steps to get defective meters replaced. The meters were defective for many years of tenancy and remained so without replacement.

7. Though learned counsel for the appellant/defendant argued that the Assistant Finance Officer/PW-2 deposed that she was new to the seat and she

did not know the basis of calculation made in Ex.PW1/22 showing the due amount from 25.02.1992 to 01.06.2001 as Rs.3,87,069/-, however in my

opinion this statement of PW-2 cannot help the appellant/defendant in view of the proved position on record that the meters were defective and since

no meter reading was recorded the bills issued were provisional bills, and were issued on load basis. In fact, there is no reason to believe the

appellant/defendant of there not being a liability towards the two bills Ex.PW1/7

and Ex.PW1/12, and the detailed calculations which are proved as Ex.PW1/22, showing an amount due of Rs.3,87,069/-, inasmuch as if the case of the appellant/defendant was that the appellant/defendant had paid all electricity bills i.e. bills for the period of tenancy from the year 1992 to 2000, then what was the difficulty for the appellant/defendant in proving from its own record for the payments made to the DVB for the tenancy period or in summoning records of the DVB to show payments of bills during the tenancy period. In fact, in the cross-examination of the witness of the appellant/defendant namely Sh. Sanjay Deshpandey/ DW-1, and who was the Manager of the appellant/defendant, he admitted in his cross-examination on 16.02.2006 that he did not know if the bill for agricultural power connection was paid by the appellant/defendant. Mr. Sanjay Deshpandey/ DW-1 admitted that they had been receiving the bills from DESU, however it is not deposed by DW-1 that appellant/defendant had made all payments of the electricity bills for the period of the tenancy, and that if bills were paid then what was the documentary proof of payment of the bills be it from the accounts of the appellant/defendant or by filing the paid bills. DW-1 has also admitted in Cross-examination on 16.02.2006 that through the subject agricultural power connection they were consuming electricity as a tenant in the subject property.

8(i) Learned counsel for the appellant/defendant argued that the subject bills have been received after handing over possession in 03.07.2000, and since the bills have been paid by the respondent/plaintiff only in the year 2001 i.e after handing over of possession, there cannot be any liability of the appellant/defendant towards the bills raised after the possession of the tenanted premises was handed over.

(ii) I however cannot agree with this argument urged on behalf of the appellant/defendant inasmuch as it is not unknown that there can be lethargy in issuing of the electricity bills but the mere fact that there is lethargy of issuing of electricity bills for a period cannot in any manner mean that a tenant who stays in the property is not liable to pay the electricity bills for the period for which the tenancy continued. In this regard there is no doubt of the liability of appellant/defendant because Clauses 2(b) and (c) of the admitted Lease Deed dated 01.02.1990 entered into between the parties specifically provides that the appellant/defendant shall be liable to pay all electricity

and water charges consumed with respect to the subject property taken on lease.

9. The trial court has rightly concluded that the appellant/defendant was liable to pay electricity bills by observing as under:-

24. Learned counsel for plaintiff took me through the entire documentary evidence. Ex.PW1/1 is the original lease deed executed between the

defendant and mother of the plaintiff. Ex.PW/13 is the domestic line electricity bill of Rs.76,921/-. Ex.PW1/4 and 5A & B are the correspondence

done by the defendant company pertaining to the bill Ex.PW1/3. Ex.PW1/6 is the document of handing over possession. Ex.PW1/7 copy is the

A.P.connection bill of Rs.2,21,152.53 ps and copies of cheque and receipt pertaining to payment thereof. Ex.PW1/12 is the A.P.connection bill for

Rs.1,68,405.96 ps and Ex.PW1/12A & B are copies of cheque and receipt pertaining to the payment thereof. Ex.PW1/22 is the calculation sheet

issued by the DVB pertaining to the agricultural power connection on the farm. Learned counsel also took me through the remaining exhibits which

are the correspondence exchange between the parties.

25. As reflected from the documentary evidence available on record, bills Ex.PW1/7 for Rs.2,21,152.53 ps and Ex.PW1/12 for Rs.1,68,405.96 ps

were paid by plaintiff only. Both the bills pertained to the period when the farm was under the tenancy with the defendant. Ex.PW1/22 is the

calculation sheet issued by DVB pertaining to the agricultural power connection on the farm for the period between 25.2.1992 and 1.6.2001. As per

the same, the total electricity dues came to the tune of Rs.3,87,069.74ps till 1.6.2001 at a rate of Rs.3,455.97ps per month. Despite an elaborate cross

examination of all the witnesses, the correctness of calculation Ex.PW1/22 could not be unsettled by the learned counsel for defendant. Since the farm

was vacated by the defendant on 3.7.2000 and Ex.PW1/22 reflects dues till 1.6.2001, the plaintiff has on her own restricted her claim to Rs.3,45,597/-

26. During final arguments, learned counsel for defendants argued that the bill Ex.PW1/3 had been paid by the defendant only. But admittedly

defendant did not bring any evidence as regards the same. Similarly, there is no evidence in support of argument of learned counsel for defendant that

plaintiff had been taking money from the defendant towards electricity charges. Rather, the correspondence exchanged between the parties shows

otherwise, I fail to agree with the learned counsel for defendant that since

plaintiff paid the said bills under duress, she is not entitled to reimbursement.

It cannot be denied that the defendant utilized the agricultural power, for which they were under duty to pay in terms with the lease deed Ex.PW1/1.

Argument of the defendant that the bills were disputed also fails to convince. For, there is no evidence to show any effort done by the Defendant to

get the bills rectified during the entire decade long tenancy. Defendant kept enjoying the electricity for 10 years, that too the agricultural power and

now seeks to wriggle out, which cannot be permitted.

27. Plaintiff has also claimed interest on the outstanding bill amount at a rate of 18 per cent per annum with effect from 8.6.2001 when she paid the

same. Rate of interest claimed is on higher side. In the overall circumstances of this case, interest at a rate of 9 per cent per annum would be

reasonable and sufficient to meet the ends of justice.

28. In view of above discussion, issue no.1 is decided in favour of the plaintiff and I hold it proved that plaintiff is entitled to recover a sum of

Rs.3,45,597/- with interest thereon at a rate of 9 per cent per annum from 8.6.2001 onwards.â??

10. It is therefore seen that the appellant/defendant company, which is financially a huge company having turnover of crores and crores of rupees, is

harassing a legal heir of a landlady by not paying the electricity bills which were issued for the period for which appellant/defendant was a tenant. As

already stated, no evidence has been led by the appellant/defendant that if all the bills for the tenancy period were paid by the appellant/defendant, and

thus showing that except taking false excuses the appellant/defendant has failed to show that the necessary charges towards electricity dues stood

paid, with the fact that the appellant/defendant would have known that since the meters were defective and regular bills were not being issued, a

provisional bill would ultimately be raised, and that the appellant/defendant took no steps to get the meter corrected by getting installed a new meter or

getting the regular bills issued.

11. In view of the aforesaid discussion, there is no merit in the appeal. The appeal is dismissed with costs. Respondent will file certificate of costs

within a period of four weeks from today, and such costs will be the costs in favour of the respondent and against the appellant/defendant with respect

to this appeal.

12. Amount deposited in this court by the appellant/defendant be released to the respondent/plaintiff, alongwith interest accrued thereon, in appropriate satisfaction of the judgment and decree.