

(1994) 09 GAU CK 0013
In the Gauhati High Court
Case No : C.R. No. 81 of 1993

Md. Isha Haque

APPELLANT

Vs

Asadur Rahman Hazarika and Others

RESPONDENT

Date of Decision : 30-09-1994

Acts Referred:

Assam Urban Areas Rent Control Act, 1972 — Section 6

Citation : (1994) 09 GAU CK 0013

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : N.M. Lahri, G.N. Sahewalla, A.K. Goswami and B. Sarma, for the Appellant; N.N. Saikia, D.N. Choudhury, O.P. Bhati, J. Chutia and G. Deka, for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—This is a revision against the judgment and order dated 15.2.1993 of the Assistant District Judge No. 1, Guwahati, dismissing the Misc. Appeal No. 1/90 of the Petitioner against the order dated 6.12.1989 of the Sadar Muhsiff, Guwahati, in Misc.(J) Case No. 178/88.

2. Facts of the case are that the opposite party No. 1 filed Title Suit No. 116/88 in the Court of the Sadar Muhsiff Guwahati against the Petitioner, the Assam State Electricity Board (for short, "the ASEB"), opposite party No. 2 as well as the Sub Divisional Officer, SEB, Electric Sub Division, Paltan Bazar, Guwahati, opposite party No. 3. The case of the Plaintiff opposite party No. 1 in the said suit was that the Plaintiff was the owner in respect of a plot of land measuring 4 K 3 L bearing Municipal Holding No. 7-A in Ward No. 20 of the Gauhati Municipal Corporation and the Plaintiff owned an Assam Type House over the said land. For the said house supply of electricity was being made through the electric meter No. CL 10188520 in respect of which the Plaintiff was the consumer. Since power line to the said suit house became unsafe, the Plaintiff filed an application dated 10.12.1987 before the authorities of the ASEB for disconnecting the electric

supply to the aforesaid electric meter and the Sub Divisional Officer, ASEB, disconnected the power supply line on 7.5.1988. But the Petitioner-defendant No. 3 was trying for the line to be re-connected through the authorities of ASEB. It is on these facts, the Plaintiff filed the aforesaid suit for permanent injunction restraining the ASEB authorities from re-connecting the power line. Alongwith the said suit the Plaintiff also filed an application for temporary injunction. The learned Munsiff No. 1 Guwahati initially passed an order of status quo before notice and thereafter, allowed the prayer for temporary injunction by order dated 6.12.1989. Aggrieved by the said order of temporary injunction, the Petitioner-defendant No. 3 filed MiscAppeal NO.1/93 but by judgment and order dated 15.2.1993, the learned Assistant District Judge No. 1, Guwahati, dismissed the said appeal.

3. At the time of hearing this Civil Revision, Mr. G.N. Sahewalla, learned Counsel for the Petitioner, submitted that the main ground on which the learned Assistant District Judge dismissed the appeal of the Petitioner was that the Plaintiff-opposite party No. 1, was the owner of the electric meter No. CL-10188520. But what both the trial Court and appellate Court failed to appreciate is that according to Plaintiff's own case in another Title Suit No. 184/87 filed against the Petitioner for eviction, the Petitioner was a tenant under the Plaintiff in respect of the aforesaid Assam Type house and under law, the Plaintiff as a land-lord had a duty to maintain all essential services to his tenant including the electric supply and the said suit is still pending disposal. It was further argued by Mr. Sahewalla that documents before the Court below indicated that the electric meter did not stand in the name of the Plaintiff but in the name of one Sri S.K. Hazarika. Mr. Sahewalla also submitted that the trial Court as well as appellate Court have failed to appreciate that the balance of convenience was in favour of the Petitioner and against the Plaintiff inasmuch as by order of temporary injunction, the Petitioner was deprived of electricity supply in respect of the house.

4. Mr. O.P. Bhati, learned Counsel for the Plaintiff-opposite party No. 1 on the other hand, submitted that in Civil Revision the High Court can only interfere with the findings of the appellate Court, if they are perverse and not otherwise. In the present case, the finding of the appellate Court is based upon the reasoning that the Petitioner Defendant No. 3 had not made any claim to the electric meter and in fact, the documents on record would show that the electric meter No. CL-10188520 did not stand in the name of the Petitioner Defendant No. 3. Mr. Bhati also submitted - that the Plaintiff opposite party No. 1 would have suffered irreparable injury had the temporary injunction not been granted by the trial Court inasmuch as the supply line to the house was totally unsafe,

5. Mr. J. Chutia, learned Standing Counsel for ASEB, brought to my notice the averments in the affidavit-in-opposition filed by the Assistant Executive Engineer, ASEB. In the said affidavit-in-opposition it has been clearly denied that the Sub Divisional Officer, ASEB, disconnected the electric meter on 7.5.1988. On the contrary, it has been stated that a complaint was received on 8.5.1988 that the

electricity service line to the aforesaid electric meter has remained disconnected from the night of 7.5.1988 and when the concerned officer of the ASEB deputed lineman to rectify the defect and/or restore the electric service connection, the same could not be done in view of the order of status quo passed by the learned Munsiff No. 1 in T.S. No. 116/88. It has also been stated in the said affidavit-in-opposition that the meter in question was in the name of Md. A.R. Hazarika and not in the name of Sri SK Hazarika.

6. Having heard the learned Counsel for the parties and on perusal of the order dated 6.12.1989 of the Sadar Munsiff, Guwahati, allowing the prayer for temporary injunction and the impugned judgment dated 15.2.1993 of the Assistant District Judge No. 1, Guwahati passed in Misc. Appeal No. 1/90.1 am of the view that the learned Sadar Munsiff and the learned Assistant District Judge No. 1, Guwahati while considering whether the Plaintiff had a prima facie case in the suit have totally ignored the fact that as per Plaintiff's own case in T.S. No. 184/87, the Plaintiff was the land-lord and the Petitioner-defendant No. 3 was the tenant in respect of the house in question, although this fact has been stated in paragraph 20 of the written statement of the Defendant No. 3 before the learned Munsiff and in ground No. 13 in the Memorandum of Appeal filed before the Assistant District Judge No. 1, Guwahati. Being a landlord in respect of the house in question, Plaintiff-opposite party No. 1 had a duty u/s 6, of the Assam urban Areas Kent Control Act, 1972, towards the Petitioner to maintain all existing services including supply of electricity in respect of the house. Thus, assuming that the Plaintiff was the owner of the electric meter in question, he is bound under the law to maintain supply electricity through his meter to the house which was occupied by the Petitioner. The findings of the trial Court and the appellate Court that the Plaintiff had a prima facie case are thus perverse.

7. Regarding balance of convenience, there can be no manner of doubt that an order of injunction restraining the authorities of ASEB to re-connect power supply through the electric meter in question to the house under the occupation of the Petitioner-Defendant No. 3 would cause serious inconvenience to the Petitioner-defendant No. 3 and if an order of temporary injunction was refused no inconvenience as such would have been caused to the Plaintiff-opposite party No. 1. Further, the Plaintiff's case is that his electric power supply line was unsafe and an injunction was necessary to prevent irreparable injury to him. If the aforesaid case of the Plaintiff is true, then orders could have been passed by the trial Court or the appellate Court directing the ASEB authorities to ensure that the supply line was made safe.

8. In the result, therefore, I am of the opinion that the findings of the trial Court as well as appellate Court on prima facie case and balance of convenience are totally perverse and accordingly I set aside the order dated 6.12.1989 of the Sadar Munsiff, Gauhati, in Misc.(J) Case No. 178/88 and the judgment dated 15.2.1993 of the learned Assistant District Judge No. 1, Gauhati, in Misc. Appeal No. 1/90. Consequently, the order of status quo dated 9.5.1988 of the learned

Munsiff No. 1, Guwahati, is also set aside. Since the ASEB has taken a stand that due to the aforesaid order of status quo dated 9.5.1988, the electric line to the meter could not be re-connected, I direct the opposite party No. 2 and 3 to forthwith restore power supply line through the electric meter No. CL-10188520 to the house under the occupation of the Petitioner within a period of one month from today after ensuring that the supply line is safe and all charges for such re-connection and supply of electricity shall be paid by the Petitioner to the ASEB.

9. The Civil revision is allowed, but there shall be no order as to costs.