(1992) 03 DEL CK 0031

In the Delhi High Court

Case No : I.A. 473/92 in Suit No. 74 of 1992

M/s. Anant Raj Agencies P. Ltd. APPELLANT

Vs

Delhi Electric Supply Undertaking and others RESPONDENT

Date of Decision : 05-03-1992

Acts Referred:

Citation : AIR 1992 Delhi 225 : (1992) 47 DLT 468 : (1992) 22 DRJ 522

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : Mr. Harish Malhotra, for the Appellant; Mr. Ajay Kumar Jha, for the Respondent

Judgement

1. M/ s. Anant Raj Agencies Pvt. Ltd. had purchased property bearing No. E-2, Jhandewalan Extension, New Delhi from the erstwhile owners, Shri Balraj Virmani, Managing Director of Virmani Refrigeration and Cold Storage Pvt. Ltd. This property was purchased by virtue of a compromise arrived at between the plaintiff and the erstwhile owner after the plaintiff paid a sum of Rs. 45 lakhs. The said compromise was recorded in S. 601/84. Thereafter, a decree in terms of the compromise was passed vide judgment. dated 22nd July, 1988 in S. 601/84. After the purchase of the said property, the plaintiff had entered into an agreement with the President of India on 27th August, 1991 to let out the entire ground floor portion and second floor of E-2, Jhandewalan Extension, to the Government of India, Central Board of Direct Taxes, Ministry of Finance for the use of its Income Tax department. The said Income Tax department according to the plaintiff applied for the grant of electric connection on 9th September, 1991 for 32 KW each for the ground floor and the second floor. This request was not conceded to, Therefore, the plaintiff filed a suit bearing No. 1830/91 before Sub-Judge, Delhi. In the written statement filed before the Sub-Judge, the plea taken by the defendant was that unless the outstanding dues are cleared, the connection could not be given. Moreover, the building is booked under DECO being unauthorised. The objection was also taken that the plaintiff has no locus

standi to file the suit because it was the Income Tax department which applied for the connection.

2. That in order to avoid technical objection, the plaintiff itself applied for two connections of 32 KW on 3-12-91 each for the ground floor and second floor of E-2, Jhan- Ext. New Delhi for the benefit of Government of India and for running its Income Tax department/ public utility office. These two connections were sought in addition to the two connections sought by the Income Tax department. This request of the plaintiff was rejected and refused by the defendant on 12th December, 1991, on the ground that unless the outstanding dues are cleared, the connection could not be given and further that the building is booked under DECO and, Therefore, unless the clearance is obtained from its Corporation, the connection could not be granted.

3. It is in this background when the request of the plaintiff was rejected on 12th December, 1991 that the suit has been filed. Vide the present application plaintiff has sought direction against defendant to sanction two new electric connections of 32 KW each for the ground floor and second floor as applied on 3rd December, 1991. It is also contended that on ground floor there used to be electric connection available, Therefore, no question of unauthorised construction nor DECO will apply. As regard the demand of outstanding amount it is against a person and not a charge on the premises. Even otherwise electricity is an essential amenity of life and without electricity the Income Tax or any, other public utility office cannot function. That the rejection of the application of the plaintiff is arbitrary and, Therefore, the interim, relief sought for should be granted.

4. Notice of this application was issued to the defendant and on behalf of defendant No. 1, Delhi Electric Supply Undertaking (hereinafter referred to as ''DESU''). The reply has been filed inter alias pleading that the suit is barred because of pendency of the previous suit between the same parties and on the same cause of action bearing No. 1083/91 and which was filed prior in point of time. In that suit, the application of the plaintiff under Order 39, Rules 1 and 2 has already been rejected on 17th February, 1992. That once the premises are unauthorised, no connection can be granted unless ''No objection certificate'' or ''Completion Certificate'' from the MCD is produced. Moreover, apart from the fact that building is booked under DECO, an amount of Rs. 4,26,937.30 p. plus late payment and surcharge is also due against the plaintiff. Unless that is paid, the suit is not maintainable nor any relief can be granted.

5. 1 have heard Mr. Harish Malhotra, for the plaintiff and Mr. Ajay Jha for the defendant and perused the record and the document placed on record. As regard Mr. Jha''s objection on the maintainability of the suit on the ground that between the same parties, a suit had been filed prior in point of time on the same cause of action, Therefore, the present suit is not maintainable to my mind has no force. I have perused the plaint in Suit No. 1083 / 91 and have also perused the order passed by Mr. Rakesh Kapoor, Sub-Judge, 1st Class dated 17th February,

1992. In that suit, the plaintiff sought the relief for and on behalf of the Income Tax Department which had applied for two connections of 32 KW each on the ground floor and second floor. plaintiff had challenged the action of the defendant on behalf of Income Tax Department. It was in this background that the Court came to the conclusion that the plaintiff had no locus standi to ask DESU to give the electricity. If at all, anybody was aggrieved, it was the Income Tax department, Government of India. The consumer who could enter the contract with DESU was Incometax Department. Income Tax Department had applied for the connection, Therefore, it was held that the plaintiff being a stranger to the said intended contract could not file the suit. But in the present case, it is the plaintiff who had applied for the electric connections of 32 KW each for the ground floor and the second floor as consumer on 3-12-91 which request has been rejected by the DESU defendant No. I on two grounds firstly for the outstanding dues and secondly the building being booked under DECO. Hence it is the plaintiff who has been aggrieved because it is his request which has been rejected on 12th December, 1991. Therefore, the cause of action in this suit and in the suit No. 1830/91 pending before the lower Court is totally different. A fresh cause of action has arisen in favor of the plaintiff when he applied separately for two connections and which have been rejected by defendant No. 1. Therefore, cause of action having been different in both the cases the provision of Section 10 of CPC will not apply nor it can be said that the rejection of the application under Order 39, Rules I and 2 in S. 1830/91 will operate as res judicata.

6. Now coming to the objections raised by DESU, for non-supply of the electricity i.e. on account of outstanding dues, Mr. Malhotra contended that without prejudice to the contentions, he was prepared to deposit with the Department a sum of Rs. 4,26,937.13 P. that was the outstanding amount due when the electricity was disconnected on 4th January, 1982. -It is, an admitted case on record that the Virmani Refrigeration and Cold Storage Pvt. Ltd., the erstwhile owner had electric connection on the ground floor which was disconnected, on account of the non-payment of charges, on 4th January, 1982 and the bill raised on them was of this much amount. Mr. Jha contended that be amount, the plaintiff has also to pay the surcharge for late payment. He has placed reliance on the office order issued by defendant No. I dated 29th August, 1977 which is reproduced as under:

"DELHI ELECTRIC SUPPLY UNDERTAKING (MUNICIPAL CORPORATION OF DELHI)

OFFICE - ORDER

Sub: Policy regarding granting of new connection to beneficiaries/ non-beneficiaries in a premises where disconnected connections exist non-payment of dues.

With immediate effect, the following policy is circulated for compliance of all concerned:

(a) The definition of a premises should be taken as a building or a portion of a building for which electric connection was asked for and granted as details given in the Agreement. For instance in a building having one municipal No. there may be 4 portions in the building, each having separate electric connections against the specific requests. Those portions may be residential, commercial or individual and are to be treated as a premises for a particular K.No.

(b) In case an electric connection is requested for a ''premises'' as defined above where the connection is, already lying disconnected due to non-payment of dues, a new connection is not to be allowed. Only the restoration of the existing disconnected connections meant for the premises in question is to be allowed after recovery of the outstanding dues. However, Installments for recovery be agreed to, provided at least 50% of the outstanding dues are paid prior to restoration of the connection and the balance may be accepted in Installments, as decided by the authority competent to do so along with the regular consumption bills."

7. As pointed out above, there was a connection on the ground floor of this very premises which was disconnected on 4th January, 1982 on account of non-payment of the electricity bill. The outstanding amount of the bill was to the tune of Rs. 4,26,937.13 P. Whether this outstanding amount will include the surcharge for late payment or not is not clear from this office order. Mr. Jha has not been able to place on record any other office order which could indicate that the outstanding amount will include the surcharge for late payment. In the absence of any other office order, instructions or rule in this regard, I think it will be prima facie in the interest of justice, if the connection is ordered to be restored on the ground floor of this premises on plaintiff depositing with defendant No. I a sum of Rs. 4,26,937.13 p. which was the outstanding amount as on 4-1-1982. The question whether the surcharge amounts to outstanding due or not will be decided on merits but at this stage, prima facie it can be said that when electricity was disconnected the outstanding due was Rs. 4,26,937.13 P. and whether surcharge amounts to outstanding due will be considered on merits. Moreover plaintiff can be put to terms that in case finally this Court comes to the conclusion that surcharge is to be paid by him; he will do so. Security and undertaking for the balance amount should be furnished by the plaintiff.

8. So far as the question of booking this premises under DECO is concerned, it is the case of the MCD-defendant No. 2 as well as of defendant No. I that the 3rd 4th and 5th floors constructed on this premises are un- In this regard, the plaintiff has placed reliance on a letter No. 412/ ZE(B)/ SPZ/91 issued by the MCD dated 4th September, 1991, in which the Zonal Engineer (Bld.), Sadar Paharganj Zone, had written to Shri S. S. Mago, Ex. Engineer (D) SRD, Delhi Electricity Supply Undertaking, District Shanker Road, Delhi as under:

"With reference to your office letter No.X/D/SRD/ 132A/2978, dated 20th August, 1991 in this connection, it is clarified that only unauthorised construction at third floor and some unauthorised construction at fourth floor and fifth floor in the shape of stair case etc. has been carried in Plot No. E-2, Jhandewalan Extension, Delhi and as per the record the same has been booked by Building, Department, Sadar Pharganj Zone."

9. The perusal of the same shows that it is the third, fourth and fifth floors which are only unauthorised construction. So far as second floor is concerned, it apparently appears not to have been booked for DECO. Moreover, it is a new connection which the plaintiff is seeking and the defendant No. I will be within its right to ask the plaintiff to furnish the no objection/ completion certificate from the MCD and can ask him to complete all the formalities which are required at the time of granting the new connection and if the plaintiff is in a position to prove that the second floor is not unauthorised, I see no reason prima facie why the defendant No. I should not grant the connection sought for by the plaintiff on the second floor. The plaintiff of course will have to fulfill all the requirements laid down by the defendants in this regard. I, Therefore, direct the defendants to consider the application of the plaintiff dated 3-12-91 afresh with regard to the second floor and with regard to the ground floor, on deposit of Rs. 4,26,937.13 P. and on furnishing security for the balance amount and undertaking as pointed out above, the connection on the ground floor be restored. With these observations, the application stands disposed of.

10. Order accordingly.

