

(2004) 03 DEL CK 0082

In the Delhi High Court

Case No : C.R. No. 1186 of 1997 with Civil Reference No's. 1, 2, 3, 4, 5, and 6 of 1998

Sarjiwan Singh

APPELLANT

Vs

Delhi Vidyut Board

RESPONDENT

Date of Decision : 16-03-2004

Acts Referred:

Citation : (2004) 110 DLT 633 : (2004) 75 DRJ 400 : (2004) 3 RCR(Civil) 352

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Sunil Aggarwal, for the Appellant; Karan Kaushik Yambem and Avinish Ahlawat, for the Respondent

Judgement

Vikramajit Sen, J.—The common question of fact and law which arises in these Petitions is whether the plaintiff is entitled to file a Plaint in which only an Injunction implicate has been prayed for in the wake of receiving electricity bills for sundry amounts. In Suit No. 791/1997 the learned Civil Judge has held, after considering a catena of precedents, that it was essential for the plaintiff to pray for the passing of a declaration holding the electricity bill to be invalid before it could be entitled to pray for the consequential relief of an injunction against the Defendant from taking any steps for the recovery of the amounts claimed in the impugned Bill, On the same conspectus of facts, and appreciation of the law, several References had also been made which will be answered by this judgment.

2. The provisions of law which are attracted are found in Section 7(iv) of the Court Fees Act. So far as the Suit Valuation Act is concerned, what is basically enunciated therein is that the relief for the purposes of the valuation of the Suit must also correspond to the valuation for the purposes of the jurisdiction. So far as Section 7 of the Court Fees Act is concerned, if it is necessary to seek a declaration before being entitled to consequential reliefs, (in the present case that of an injunction), the valuation would be different to those cases where an injunction implicate is prayed for. It is essential in the latter case that no legal

obstacle has to be overcome before the injunction is claimed.

3. Various cases have been cited by learned Counsel. Reference need not go beyond the judgment of the Full Bench of this Court in *Purshottam Dass and Others Vs. Har Narain and Another*, . Echoing the words employed by the Hon"ble Supreme Court in *Shamsher Singh Vs. Rajinder Prashad and Others*, the Full Bench has opined that the question whether the relief of injunction prayed for by the plaintiff should be considered as a consequential to the main relief or not has to be decided on the basis of the allegations and the prayers contained in the plaint. Mere astuteness in drafting the plaint will not be allowed to impede the Court from looking at the substance of the relief asked for. No purpose will be served in multiplying citations.

4. *Time Properties and Promoters Vs. Delhi Development Authority*, has been relied upon by the plaintiff. In that case a learned Single Judge of this Court was concerned with a factual matrix in which an injunction had been prayed for against the threat of re-auctioning of the plots and the forfeiture of a sum of Rs. 6.5 lacs calculated by the DDA as earnest money. The Court took into consideration the uncontrovertible position that a primary school was avowedly functioning on the plot in question. It was in those circumstances that the learned Single Judge opined that it was unnecessary to seek a declaration in respect of the legal impropriety of the threatened re-auctioning of the plot and the forfeiture of the earnest money.

5. It cannot be gainsaid that the primary document to be looked at is the plaint, and if no controversy is created from an intelligent reading thereof, one need not go any further. Let us take the case of a Suit for partition where indubitably the plaintiff has been ousted from possession of any joint family properties but this fact has been glossed over or incorrectly stated in the plaint. From the Written Statement, or documents placed before the Court by the Defendant, if it is manifestly evident that the plaintiff has made a narration which is not factually correct, it would be open to the Court to arrive at a conclusion adverse to the plaintiff.

6. In the present cases the Defendant has raised electricity bills. There may be instances where on a bare perusal of the facts before the Court, either contained in the plaint or in the Written Statement, and the documents placed by the parties, the preponderant position is what is stated in the plaint. It is not expected of the Court to proceed on any other avenues. Let us assume that a bill is raised in respect of consumption for a particular period for which payment has already been made. Would it still be necessary for the plaintiff to seek a declaration? The answer must be in the negative. Where, however, the plaint does not disclose facts which, *prima facie*, show the illegality of the demand, the mere filing of a Suit for injunction implicate cannot be used as a device to defeat or delay the liability thereby created. A similar situation had arisen before a learned Single Judge of this Court in *Rampur Distillery and Chemicals Co. Ltd. Vs. Union of India*, . Hon"ble Mr. Justice R.C. Lahoti, as His Lordship then was,

has observed that--

"The facts stated in the plaint show the plaintiff having entered into a contract with the Union of India for supplying certain commodity. The contract has failed. The defendant has exercised its right under the risk purchase clause, consequent to which a recovery in an amount of Rs. 5,24,790/- is outstanding against the plaintiff. By filing of the suit the plaintiff seeks to get rid of the contract and also avoid payment of Rs. 5,24,790/- to the defendant. Ad valorem Court fee has not been paid by the plaintiff."

His Lordship went on to hold that the plaintiff is liable to pay ad valorem Court fee. While doing so, reference was made to the effect that in such circumstances there is no difficulty in making a definite valuation so far as the Suit is concerned. A similar approach has also been followed specifically in an electricity matter in Assam State Electricity Board Guwahati and Others Vs. Borjalinga Tea Company and Another, .

7. In these circumstances the Order dated 25.9.1997 in Suit No. 791 /1997 does not disclose any error in the exercise of jurisdiction; CRNo. 1186/1997 is accordingly dismissed. Reference Nos. 1/1998, 2/1998, 3/1998, 4/1998,5/1998 and 6/1998 are disposed of by holding that where a bill has been raised by the Electricity Department, which is prima facie legal, a declaration must be prayed for to the effect that the bill is incorrect or illegal before the plaintiff can legally pray for an injunction against the recoveries made on the basis of such bills.

8. On the first date of hearing of CR No. 1186/1997 this Court had directed the payment of ad valorem Court Fee which has been so done. In Reference Nos. 1/1998, 2/1998, 3/1998, 4/1998, 5/1998 and 6/1998 the plaintiff is directed to pay ad valorem Court fee on the quantum of the bills raised by the Defendant, within six weeks from today.

9. References are answered accordingly.