

(2011) 04 DEL CK 0161

In the Delhi High Court

Case No : Regular Second Appeal No. 48 of 2011

Smt. Santosh Kumari

APPELLANT

Vs

Bses Yamuna Power Ltd.

RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Citation : (2011) 04 DEL CK 0161

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : R.L. Sharma and D.D. Sharma, for the Appellant; Manish Srivastva, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This appeal has impugned the judgment and decree dated 10.01.2011 which had endorsed the finding of the trial judge dated 28.10.2010 whereby the suit filed by the Plaintiff Santosh Kumari seeking recovery of Rs. 2,30,966/- had been dismissed.

2. This is a second appeal. It is yet at the admission. The substantial question of law have been formulated on page 8 of the body of the appeal.

3. The case of the Plaintiff is that she was running a factory at property bearing No. C-449/1, Chhajpur, Sahdara, Delhi. Two electricity connections of 10 HP Industrial Power had been installed in the aforementioned premises. Plaintiff who was the owner of this property had sold it to Smt. Saroj Aggarwal and Smt. Kanchan Aggarwal but she nevertheless continued to run the factory from the said premises; she was retaining these premises as a tenant. On 04.3.2000 a raid was conducted by the DVB officials illegally and bills were raised upon her. Plaintiff had filed a suit for declaration and permanent injunction against the DVB restraining them from taking payment of the aforementioned bills; the said suit was dismissed; appeal was also dismissed; Plaintiff was forced to deposit a sum of Rs. 1,09,126/-. On 19.6.2008 the Plaintiff learnt that the mater installed in her

premises had been removed without her knowledge and a new meter had been installed in the name of Sohan Lal Aggarwal. Legal notice was issued by the Plaintiff to the BSES. The Defendant had illegally removed this meter even after the penalty amount has been deposited by the Plaintiff; this is a breach of trust; Plaintiff has suffered mental agony and harassment; claim of Rs. 2,30,966/- was founded on these averments. The details of her claims have been contained in the prayer clause of the plaint. The same have been perused.

4. The Defendant had not filed any written statement; his opportunity to file the written statement was closed.

5. In support of her case, Plaintiff has examined one witness. PW-1 Devi Dayal Sharma had tendered his examination in chief by way of affidavit Ex.PW-1/1; he was deposing on behalf of his wife. He had proved on record the electricity bills which have been issued in the name of Sohan Lal Aggarwal as also the legal notice sent by him. Thereafter prosecution evidence was closed. The claim of the Plaintiff was rejected on the ground that the Plaintiff has failed to prove her case. The Plaintiff who has come to the court must stand on its own legs; it has to prove its case. The amount claimed by her was not in any manner substantiated. This has been endorsed in the impugned judgment.

6. The amount claimed in terms of the prayer clause read as under:

(a) Refund of the amount deposited for penalty bills details in para No. 8 of suit Rs. 1,09,126/-

(b) Loss and damage for Defendant, mental agony harassment and expenditure incurred on facing the civil suit and appeal for 7 years. Rs. 1,00,000/-

(c) Court fee paid in civil suit No. 216/2000 and appeal No. RCA/3/2005 (3420+3420=6840) Rs. 6,840/-

(d) Expenditure incurred on typing and conveyance regarding civil suit, appeal and present suit -Rs.5,000/-

(e) Development charges and meter security etc. deposited at the time of installment of meters.

Rs. 10,000/-

Total amount of recovery

Rs. 2,30,966/-

7. Before this Court it has been submitted that other amounts are not being pressed except the amount of Rs. 1,00,000/- which has been claimed on the account of mental agony and harassment of the Plaintiff. The other amount as detailed in Clause (a) was admittedly the amount which have deposited by the Plaintiff under the orders of the court which orders have since attained a finality. The suit had been dismissed; the appeal filed against the said order has also been dismissed, pursuant thereto Plaintiff had deposited Rs. 1,09.126/-. Learned

Counsel for the Appellant states that this amount as also amounts (c) to (e) are not being pressed.

8. Affidavit by way of evidence of the Plaintiff has been perused. Except a one line bald statement that the Plaintiff had suffered mental agony and harassment there is no other detail of the said mental agony and harassment. Even otherwise this deposition has been made by the husband of the Plaintiff who has come into witness box as PW-1. Plaintiff herself has not come into witness box. The mental agony and harassment by a party would be known by only the party concerned; it would be in the special knowledge and domain of the person himself/herself. Both the courts below had rightly noted that there is no evidence before the court to substantiate the claim which was made by the Plaintiff. The impugned judgment does not in any manner call for any interference. No substantial question of law has arisen. Appeal is dismissed.