

Raksha Arora Vs. S.D. Technical Services(P) Ltd. and ors.

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Court : Delhi

Decided On : Sep-01-1994

Reported in : 1994(30)DRJ650

Judge : R.C. Lahoti, J.

Appeal No. : Suit No. 3726 of 1990

Appellant : Raksha Arora

Respondent : S.D. Technical Services(P) Ltd. and ors.

Advocate for Def. : Mr. Marwaha

Advocate for Pet/Ap. : J.P. Gupta,; S.N. Marwah,; S.N. Gupta,;

Judgement :

R.C. Lahoti, J.

(1) This order disposes of I.A. Nos.1160/90, 2057/92 and 7672/94. Though the applications are three, in substance, the subject-matter of controversy is supply of electricity to a singular connection installed in the premises. The principal parties, though related closely with each other, are fighting with each other in different legal proceedings before different fora. One suit is before this court. Due reference shall be made to the different proceedings at appropriate places.

(2) Let a few facts be summarised in so far as relevant for the purpose of disposal of these applications. They appear to be not in much controversy. Ms. Raksha Arora, the plaintiff and Smt. Sneha Prabha Abalash are real sisters. Kamal Kishore Arora, the defendant no.2, is their real brother. Smt. Phool Wati alias Janak Dulari, the defendant no.4 is their mother. S.D. Technical Services Private Limited, the Defendant No.1 is not related with any of the parties.

(3) Late Ram Parkash Arora owned a residential house no.BF-27, Tagore Garden, New Delhi. He was also running a partnership firm in the name and style of M/s. Ram Parkash Kamal Kishore and M/s. Parkash Steel Industries in a building bearing no.B-87, Maya Puri Industrial Area, New Delhi. A part of that property was and is in possession of M/s. S.D. Technical Works, the defendant no.1 occupying the property as licensee. By a will executed in the month of February, 1990, late Ram Parkash Arora made the following arrangements (to quote from the will) : -

'THE portion in which M/s. Ram Parkash Kamal Kishore and M/s. Parkash Steel Industries are presently run shall stand absolutely bequeathed in favor of my daughter Raksha while the other portion presently in use of M/s. S.D. Technical Works shall stand bequeathed to my son Kamal Kishore and my daughter Sneha Prabha in equal shares. All my investment in the partnership concern, M/s. Ram Parkash Kamal Kishore and Parkash Steel Industries shall stand bequeathed to Smt. Raksha who shall become the sole owner of this business and the premises with all quota rights, raw materials, finished and semi- finished products and all other assets of the firm to the total exclusion of Shri Kamal Kishore and Smt. Sneha Prabha.'

(4) It appears that there is a single connection for the supply of electricity secured from Desu, the defendant no.8. The connection is installed in the premises which have fallen to the share of the plaintiff Ms. Raksha as per the Will of her father. M/s. S.D. Technical Services, the defendant No. 1, has been using electricity supply from the same connection. A single consolidated bill is issued by Desu and that is to be paid. It also appears that there is some allegation of misuse of electricity by the licensee, the defendant no.1. There arose disputes as to the correctness of the demand raised by the Desu as also on the question of

apportionment between the plaintiff and the defendants. Who is liable for the escalated demand by Desu, also generated a dispute. Several interlocutory applications were filed in the suit. Four orders are relevant. They are respectively dated 14.2.91, 22.4.91, 10.10.91 and 3.12.91. They will be noticed in the succeeding paragraphs.

(5) On 14.2.91, this court recorded in its order, inter alia, :-

'THEN there is a serious contest if the portion of the factory premises in occupation of defendant no. 1 was bequeathed to the plaintiff or to the defendants 2 and 3. Sub-para (B) of para 5 of the Will relates to this controversy. Mr. Bawa says there is contradiction in the first portion of this para and the last portion and that last portion will prevail that whole of the factory premises shall stand bequeathed to the plaintiff. This does not appear to be so prima facie to me to be the correct submission. As I read this Will, it does appear in me that what has been bequeathed to the plaintiff is the portion in which the business of Ram Prakash Kanwal Kishore and Prakash Steel Industries was being carried on by Ram Prakash Arora and not other portion where the business of defendant No.1 was being carried on. However, this point can be examined in depth at a later stage. The question, however, that remains for consideration is the payment of electricity charges for the electricity consumed by defendant no.1. Mr. Bawa says that electricity by defendant No. 1 is being drawn from the meter installed in factory premises in the name of late Ram Prakash Arora and defendant No. 1 must pay for electricity and water charges. Mr. Marwaha states that he has received the amount towards electricity and water charges from defendant No. 1 upto date. This is denied by Mr. Bawa. Let Mr. Marwaha file a complete statement as to how and in what manner he has charged electricity and water charges from defendant No.1. Mr. Bawa will also bring on record the original bills showing the arrears of electricity and water charges within one week.'

(6) Before 22.4.91, it appears that supply of electricity by the plaintiff to the defendant no.1 had been discontinued and the defendant no.1 had prayed for a temporary/mandatory injunction' for restoration of the electricity. The Court directed the electricity supply to be restored by the plaintiff to the defendant no.1,

without prejudice to the rights and contentions of the parties. The Court had proceeded to record:

'BAWAShiv Charan Singh has handed over electricity bills received by him from the Desu for the period ending 5.11.90 till 6.3.91, to Mr. Marwaha, learned counsel for defendants No.2 & 3. Mr. Marwaha says that payment to the extent of 50% shall be deposited in Court for being disbursed to the plaintiff. Parties say that they have no objection if the defendant No.1 instals his sub-meter for consumption of the electricity. Defendant No.1 will take appropriate steps. List the matter on 9th May, 1991.'

(7) On 10.10.91, the dispute before the Court consisted of allegations and counter allegations in the matter of misuse of electricity. The Desu had alleged that more load than what was sanctioned was being used. The defendant No.1 had disputed his using more loading than what was sanctioned while the plaintiff had laid blame on defendant No.1. The Court had directed Desu to be noticed. At the end of the year, the Court recorded undertaking of defendant No.1 through counsel that in case it was found that defendant No.1 had been misusing the electricity supply, then it will be the liability of defendant No. 1 to pay the penalty amount to DESU.

(8) On 3.12.91, the Court had observed that it will be open to defendant no. 1 to instal his own meter and to that installation of his separate meter by defendant no. 1, the plaintiff and defendant no.2 and 3 would have no objection.

(9) The defendant no.1 has not installed any meter so far. It .is pointed out at the Bar that the Desu Is not prepared to instal the meter unless and until the arrears of the bills already accrued are cleared.

(10) It also appears that the defendant no.1 has filed awrit petition before a Division Bench of this Court disputing his liability to be charged at the Lip tariff and submitting that he was liable to be charged on the basis of SIP. On 22.5.92, the Division Bench has directed the Desu to restore supply of electricity on the condition that the defendant No.1 would go on depositing the charges on the basis of Sip and would go on furnishing security for the difference between the Sip and Lip bill charges. The Court proceedings before the Division Bench show that the

security offered by defendant no.1 (petitioner before the Division Bench) was found to be inadequate and so the electricity supplied could not be restored. The defendant No.1 had sought for modification of order of the Division Bench which was not allowed.

(11) It is submitted now by the learned counsel for the plaintiff that the defendant No.1 has specifically undertaken to pay the arrears or to clear the payment by furnishing security and he should be held bound by his undertaking but in any case, the supply of electricity ought to be restored in absence whereof the petitioner is suffering irreparably.

(12) During the course of hearing, the learned counsel for Desu submitted that the Desu had no objection to a sub-meter being installed to the defendant no.1 so as to regulate and record the electricity consumed by defendant, No.1 out of the electricity supplied to the plaintiff and it had also no objection to provide independent electricity connection to defendant no.1 but in any case, subject to the clearance of the arrears. In the opinion of this Court, looking to the serious disputes between the parties, the nature of allegations and counter-allegations made, it will not serve any purpose to keep the defendant no.1 tagged with the electricity connection available to the plaintiff. They must have separate connections. In view of the undertakings given by defendant no.1 before this Court and before the Division Bench as also in view of the several orders made by the Division Bench, the defendant No.1 should be held bound to clear the arrears of electricity before securing fresh supply through independent connection.

(13) The pending applications are disposed of in accordance with the following arrangement :- (i) Supply of electricity by Desu to the plaintiff shall be restored at the earliest by energying the connection installed in the name of M/s. Ram Prakash Kamal Kishore. (ii) The plaintiff shall not be bound to supply electricity to the defendant no.1. The defendant no. 1 may secure an independent electric connection on an application being made and subject to fulfilling the usual formalities, the Desu shall provide the defendant No. 1 with independent electric supply. Before the defendant no. 1 be entitled to secure independent connection, he shall furnish security for payment of amount of difference in demand calculated

on Sip and Lip basis for future. In respect of the arrears already accrued, charges calculated on Sip basis shall be deposited by defendant no. 1 with DESU. (iii) Though the charges will be paid and security furnished by defendant no. 1 now, he shall be entitled to reimbursement with interest calculated at the rate of 18 per cent per annum from any one from whom the defendant no. 1 is held entitled to reimbursement ultimately, in accordance with the orders either of the Division Bench hearing the writ petition or by this Court. The applications stand disposed of, accordingly.

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