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Court : Gujarat

Decided On : Jan-19-2001

Reported in : (2001)4GLR3187

Judge : P.B. Majmudar, J.

Acts : Code of Civil Procedure (CPC) - Sections 115 - Order 39 - Order 43

Appeal No. : Civil Revision Application No. 1841 of 1996

Appellant : Krystal Polyfab Ltd.

Respondent : Geb

Advocate for Def. : M.D. Pandya, Adv. for Respondent Nos. 1 and 2

Advocate for Pet/Ap. : K.J. Brahmbhatt, Adv. for Petitioner

Disposition : Revision application dismissed

Judgement :

P.B. Majmudar, J.

1. The petitioner herein is the original plaintiff, who has filed a suit, being Regular Civil Suit No.69 of 1995, in the Court of Civil Judge (Junior Division), Mangrol. It is the case of the plaintiff that the plaintiff is a Registered Company, having its factory situated at : Block No.112, Plot No.15-18, Mota Borsara, Taluka : Mangrol,

District : Surat. The plaintiff is the consumer of the electric power obtained from the defendant Gujarat Electricity Board, bearing Consumer No.6448/39486. It is the case of the plaintiff that it is paying electricity consumption bills regularly and in spite of that, the Officers of the defendant visited the factory of the plaintiff on 26.4.1995 and checked the meter wire and found that the seal of the meter body was intact and that the meter is running slowly and after preparing Memorandum, they instructed the plaintiff that they would send a supplementary bill, for which the plaintiff objected. In spite of that, supplementary bill was issued without referring the dispute to the Electric Inspector under the provisions of Section 26(6) of the Indian Electricity Act. It is the say of the plaintiff that there was no defect in the meter and, therefore, the Board had no right to send supplementary bill and had no right to disconnect the electricity power of the plaintiff. It is stated that if there is any dispute about the correctness of the meter, the procedure is required to be followed for checking the meter through the Electric Inspector. Therefore, on the aforesaid averments, the said suit has been filed for a declaration that the Officers of the defendant have no right or authority to issue the supplementary bill and have no right to discontinue electricity power of the plaintiff on the basis of such supplementary bill.

2. In the aforesaid suit, permanent injunction has also been prayed for against disconnection of electricity supply or implementing the supplementary bill. Along with the suit, the plaintiff gave application Exhibit 5 for interim injunction, which was originally granted by the trial court, directing both the sides to maintain status quo and on Exhibit 5, the trial court issued show cause notice to the defendant as to why the said order should not be confirmed.

3. The defendants appeared in the suit in response to the said show cause notice and filed their Written Statement Exhibit 13. It was contended on behalf of the defendants that the suit is not filed on proper court fees. It is also stated that the trial court has no pecuniary jurisdiction to decide the suit. It is averred in the Written Statement that on 26.4.1995, the Officers of the Vigilance have checked the meter and it was found that the wiring in the C.T.P.T. were burnt and the flow of electric power were not passing through the meter and, thereby, the meter was recording the electric supply less than the ordinary consumption and it was also

found that the meter was slow to the extent of 61.88% and after checking the actual consumption and previous consumption by the plaintiff, it was found that the meter was not recording the correct consumption and there was no defect in the meter, but the flow of power was not passing through the meter and, thereby, though the plaintiff was consuming more power supply, less power supply was being recorded in the meter and, accordingly, the checking sheet was prepared and the Officers of the Board have calculated the consumption of electricity and it was found that a sum of Rs.8,00,000/-odd was found to be payable by the plaintiff towards the unrecorded consumption of electricity for the period from November, 1994 to April, 1995. The said report was prepared in the presence of the technical staff of the plaintiff and they have signed this report. The objection in this respect is taken after about 2 months. According to the defendant, if the plaintiff was really aggrieved by the same, he should have applied to the Electric Inspector for checking the meter. It is also the case of the Board that the meter was not found to be faulty and, therefore, Section 26(6) would not be made applicable in the present case. On these and such other grounds the suit as well as Exhibit 5 was resisted by the defendants.

4. The trial court, after hearing both sides and after considering the documentary evidence on record, came to the conclusion that the plaintiff has failed to make any prima facie case for interim injunction and accordingly, order of status quo was vacated by dismissing Exhibit 5.

5. The aforesaid order is challenged by the plaintiff by way of Appeal, being Miscellaneous Civil Appeal No.156 of 1996, resorting to Order 43 of CPC. The said appeal was heard by the Extra Assistant Judge, Surat, who, by his order dated 28th October, 1996, dismissed the said appeal with costs. The plaintiff has challenged the aforesaid decision of the appellate court by filing this Revision Application under Section 115 of CPC.

6. At the time of admitting the Revision Application, this Court has also granted interim relief in favour of the present petitioner. By virtue of the same, the plaintiff has not paid the amount of supplementary bill and its electricity connection is also not disconnected.

7. At the time of hearing of this Revision Application, Ms. Brahmbhatt for the petitioner strongly argued that the appellate court committed an error of facts as well as of law in dismissing the appeal of the plaintiff. She has argued that this was not a case of any theft on the part of the plaintiff and it was a case of slowness of the meter and before the defect is adjudicated by the Electric Inspector, the Board has no authority to issue supplementary bill.

8. On the other hand, Mr.M.D. Pandya, appearing for the G.E.B., argued that the supplementary bill was issued as it was found by the Board at the time of checking that since a particular device was inserted, the meter in question was running slow and the intention of the plaintiff was to see that the actual consumption is not recorded in the meter. Since it was found that the proper consumption is not recorded in the electric meter, considering the average consumption of the plaintiff, ultimately, the said supplementary bill was issued. He further submitted that, in the present case, the provisions of Section 26(6) of the Act would not be applicable.

9. I have heard Advocates of both the sides at length. Firstly, it is required to be noted that the powers of this Court under Section 115 is very limited. As laid down by the Honourable Supreme Court in Hindustan Aeronautics v. Ajit Prasad, AIR 1973 SC 76, unless there is an error of jurisdiction which can be said to have been committed by the lower appellate court, it is not open for this Court to revise an order of the appellate court. In the instant case, considering the facts and circumstances of the case, both the courts below found that there was no prima facie case in favour of the present plaintiff. By virtue of the aforesaid ad interim injunction, which was initially granted, the plaintiff has not paid the amount of supplementary bill in question. The lower appellate court has relied upon the judgment in Kiran Industries v. G.E.B., 36 GLR 1158, wherein a Division Bench of this Court has stated as under :-

Jurisdiction of the Civil Court to examine the legality and validity of the bill for consumption including higher charges at the instance of the consumer without his first approaching the Appellate Authority under Condition No.34 is not either expressly or impliedly barred. However, the consumer should be held estopped

from questioning such bill for consumption including higher charges without his first approaching the Appellate Authority. In such a situation, the consumer's suit may be entertained by the Civil Court but no interim relief deserves to be granted to such consumer against disconnection of electric supply for non-payment of the bill under challenge in the suit.

So far as the suit involving the legality and validity of a bill for consumption in due course is concerned, the Court will have to exercise its discretion in the light of the facts and circumstances of each case. In such a fact-situation, the consumer will have no remedy of appeal under the Conditions. Ordinarily, the consumer should be required to deposit the amount of the bill in question with the Board on stipulation that the Board would treat it as a deposit earning interest at the commercial rate in case the consumer ultimately succeeds in his case. The deposit together with accumulated interest till the date of the decision would then be appropriated towards future bills in the aforesaid manner. In exceptional cases, after obtaining proper securities from the consumer, he may not be required to pay the amount of the bill in full on condition that he will have to pay the balance amount with interest at the commercial rate in case he ultimately loses his case.

Ms. Brahmbhatt, however, says that this is not a case of any electricity theft, but, here, the plaintiff has challenged the authority of the Board to issue such supplementary bill since according to the plaintiff, there is a defect in the C.T.P.T. Unit and, there is no provision in the Act to issue such supplementary bill on such facts.

10. She has also further argued that the provisions of Section 26(6) of the Act are also applicable in the present case. Unless the report of the Electrical Inspector was available, they could not have issued such bills. Ms. Brahmbhatt has further argued that the G.E.B. failed to maintain its own apparatus installed in the premises of the plaintiff though they had made periodical inspection and, therefore, they could not have, in fact, issued such supplementary bill.

11. After hearing both the sides, however, I am of the opinion that this Court is not exercising its appellate power while deciding revision under Section 115 of the CPC. While granting interim injunction, the Court is required to consider both the

principles enunciated under Order 39 of CPC, viz., that there should be a prima facie case in favour of the plaintiff as well as the question of balance of convenience is also required to be considered. By the present suit, the plaintiff wants the defendants to be restrained by an injunction from recovering any amount by way of supplementary bill. Now, whether this supplementary bill was issued validly or not or in accordance with law or not, is the question which is required to be adjudicated after full-fledged trial in the suit itself. At this stage, it cannot be said that the Board had no authority to issue such supplementary bill, as, ultimately, the plaintiff is required to prove his claim by leading proper evidence on this aspect. The question whether the matter was required to be referred to the Electric Inspector or not, cannot be decided at this stage while deciding Application Exhibit 5. Even so far as the question of balance of convenience is concerned, the same lies in favour of the defendants because in case the plaintiff succeeds in the suit, naturally, he will be entitled to recover the amount from the G.E.B., which is a Public Body or even the said amount can be adjusted from future consumption of electricity energy. The plaintiff can even be compensated by payment of appropriate interest in case ultimately the case is adjudicated in its favour. As against that, if the plaintiff fails in the suit, then, it will be difficult for the defendants to recover the balance amount, as, many a time, the plaintiff may not be in a position to repay the said amount and the Board will be unnecessarily compelled to take appropriate proceedings for recovery of that amount. In the instant case, for example, Ms. Brahmbhatt has said that the petitioner Company is sick and they have gone to the B.I.F.R. In such cases, therefore, not only prima facie case, but the Court is supposed to consider both the questions, i.e.. prima facie case as well as balance of convenience and unless both exist, simply because there may be prima facie case in favour of the plaintiff, the same may not be a ground for granting injunction. In such cases, the question of balance of convenience is also required to be weighed by considering in its true perspective the nature of the litigation, the party appearing before the Court and their status, and the Court has to consider who will suffer more in case interim relief is granted or is refused, in case, ultimately, the proceedings are decided against such party or in favour of such party. In the instant case, both the Courts have given detailed reasons for refusing the interim injunction in favour of the plaintiff. Therefore, it can

never be said that the Courts below have committed either error of law or of jurisdiction while passing the impugned order. I, therefore, do not find any merits in this revision application and the same is required to be dismissed and is accordingly dismissed. Rule is discharged with no order as to costs.

12. At this stage, Ms.Brahmbhatt states that the financial condition of the plaintiff is not very sound and, therefore, they may be given some instalments for payment of the amount in question. In the facts and circumstances of the case, the plaintiff is given six months' time for payment of the amount in question on the basis of which the bill is issued by the G.E.B. and for that purpose, time to deposit the said amount is granted upto 31st July, 2001. The plaintiff will start payment at the rate of Rs.1,00,000/- every month and will clear the deficit of such payment in the last instalment, which is to be paid by 31st July, 2001. The defendant, therefore, may not effect disconnection till the aforesaid period, provided the plaintiff makes regular payments, as stated earlier. It is, however, clarified that if there is any default on the part of the plaintiff to comply with this schedule of payment, then, it will be open for the Board to discontinue the supply forthwith for such non-payment. The plaintiff is also directed to file necessary undertaking before this Court to the effect that they will pay Rs.1,00,000/- every month regularly and will clear the balance of outstanding amount by 31st July, 2001. Undertaking to be filed on or before 14th February, 2001 in this Court. If undertaking is not filed, then also the relief against disconnection will not be available to the present petitioner. It is also clarified that in case the suit of the plaintiff is ultimately decreed, then, the GEB will repay the aforesaid amount to the plaintiff or may adjust the same in future consumption and for that purpose, the learned trial Judge will have to pass an appropriate order at the time of disposing of the suit. It will be open for the plaintiff to ask for interest in case the suit is decreed. The question whether any interest is required to be paid in case the suit of the plaintiff is decreed, is also required to be decided by the trial court at the time of disposing of the suit. However, I am not expressing any opinion whether provisions of Section 26(6) of the Act are applicable in this case or not.

13. Since the suit in question is an old one, it is directed that the same should be disposed of on or before 31st December, 2001. However, before taking the suit for

hearing on merits, the trial court will ensure that the deficit amount in question is paid by the plaintiff to the defendants.

14. Subject to the aforesaid directions, as aforesaid, the Revision Applicaiton is dismissed. Rule is discharged. Interim relief is vacated. No costs.

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