

Moody Properties Limited and Anr. Vs. Cesc Limited and Ors.

Moody Properties Limited and Anr. Vs. Cesc Limited and Ors.

SooperKanoon Citation : sooperkanoon.com/77443

Court : Kolkata

Decided On : Nov-24-2016

Judge : I. P. Mukerji

Appellant : Moody Properties Limited and Anr.

Respondent : Cesc Limited and Ors.

Judgement :

IN THE HIGH COURT AT CALCUTTA Constitutional Writ Jurisdiction Original Side W.P.No.1227 of 2015 Moody Properties Limited & Anr.

versus CESC Limited & ORS. For the petitioner:- Mr.Sabyasachi Choudhury Mr.Rajarshi Dutta Mr.Sayantan Bose Ms.Sreemoyee Purokayastha Advocates For the CESC:- Mr.Subir Sanyal Ms.Sumouli Sarkar Advocates For the Private Respondents:- Mr.Reetabrata Mitra Mr.P.Sarawagi Advocates Judgement On: - 24th November, 2016 I.P.MUKERJI, J.

This is a very interesting electricity matter.

There is a public company, limited by shares by the name of Moody Properties Limited.

It appears to be a family company of the Modis.

This company owns the property numbered as premises No.8A, Middleton Street, Kolkata-700 071.

This is a four storeyed building.

A private limited company Garutman (Literary Agent) PVT.LTD.is a tenant in respect of the ground floor, at least a part of if not the whole and a part of the fiRs.floor of the property.

According to the admission made in the affidavit of the sixth and seventh respondents at least a part of the ground floor is in possession of one Rekha Mody the widow of Padampat Mody, representing one branch of the Modi family.

Gita Devi Mody is the widow of Bhagwati Prasad Mody.

She has two sons Pravin Kumar Mody and Pawan Kumar Mody representing another branch of the Mody family.

The mother and sons are the fifth, sixth and seventh respondents and are admittedly in occupation of 550 sq.ft.

on the fiRs.floor.

Pawan applied to CESC Limited for electricity connection to the fiRs.floor of the said premises.

Pravin applied for connection to the ground floor.

The application forms are annexures to affidavit-in-opposition filed by CESC Limited (see pages 16 and 18A).The applications were made on 8th May, 2015.

Pravin declared himself to be the owner of the premises and granted wayleave permission to CESC Limited to install the meters (see pages 19 and 20 of the said affidavit).The fifth, sixth and seventh respondents say that these two additional meters were taken to supply electricity to the fiRs.floor servants quarteRs.pump room and out house (see paragraphs 4(i).of their affidavit.

The writ petitioners say that the respondent licensee ought not to have granted electricity connection to these respondents.

The premises belong to Moody Properties Limited a public company limited by shares.

These two meters were being granted to Pawan and Pravin personally without the consent of the company.

They were installed and made operational without even making an inspection.

The application form was full of mis-representation.

Pawan held himself out to be in occupation of the first floor of the said premises, whereas Pravin held himself out to be in occupation of the ground floor in their respective application forms and claimed electricity to these portions.

In the other document for wayleave permission Pravin held himself to be the owner of the premises.

Although in her affidavit-in-opposition Gita Devi Mody described herself as a tenant this position was denied by the writ petitioners. However her occupation of 550 sq.ft.

on the first floor was admitted by them.

It is said in the said affidavit that one Rekha Mody was in occupation of the ground floor.

Therefore, Pravin could not claim himself to be in occupation of that floor and apply for a meter.

The first floor had sufficient lighting and there was no need for two meters or either of them, to light the servants quarters, pump room and out house etc. Therefore, according to the petitioners neither Pawan nor Pravin is the owner of any part of the property.

They or their mother are in occupation of a part of the first floor only.

They were not in occupation of the ground floor.

Electricity was not required for the ground floor as it was already electrified.

Therefore, the two meters were wrongfully granted to them.

The sixth and seventh respondents in their affidavit-in-opposition tried to say that this property was bought by their ancestor.

The Mody family now has two branches having shares in Moody Properties Limited.

The private respondents belong to the branch of Bhagwati Prasad Mody.

They claim to hold 44% of the shares in the company.

Such claim is denied by the other branch of Padampat Mody.

Therefore, each branch has roughly a 50% share in the property, it was said.

The meters were required to service the servants quarters, pump room, out house etc. on the first floor.

The fifth respondent claims to be a tenant of a portion of the first floor.

The affidavit-in-opposition of CESC Limited is interesting.

They say in paragraph 6 (a) that there was no objection at the time of installation of these two meters in the common board position on 13th May, 2015.

The first floor objections were raised on 24th June, 2015 and 25th August, 2015.

The sixth and seventh respondents were found to be in physical possession of the ground and first floor. The application and wayleave permissions were found by them to be in order.

CONCLUSION Now, what is to be done with these two meters?

There is no doubt that the application forms contained mis-representations.

FiRs.of all, Pravin could not reside on the ground floor as it was let out to a company Garutman and also occupied by Rekha Mody, according to the admission of the private respondents.

There was mis-representation in the wayleave permission in as much as in the wayleave Pravin described himself as the owner of the premises.

Whether there was any need for additional meters to light up areas in the building had to be properly investigated before granting connection to the petitioner.

Meters have been installed in May 2005.

This writ was filed on 8th October, 2015, some 5 months later.

There was significant delay in my opinion.

CESC Limited says in their affidavit that at the time of the installation of the meters there was no objection from any quarter.

They have also said in paragraph 6 (a) of their affidavit that the premises is a big bungalow known as Mody House.

The security guard and the care taker of the building told the CESC officials that the sixth and seventh respondents belonged to the Mody family.

CESC also found them to reside in this house on the ground and fiRs.flo ORS.In such a situation, I do not think that wayleave permission assumes any specific importance because members of the same family were found be CESC to occupy the property which seemed like a family property, and nobody came forward to object to the grant of electricity connection.

In those circumstances, in my opinion, CESC Limited cannot be said to be in breach of their statutory duty.

Furthermore, the fiRs.petitioner is a family company and the private respondents are members of that family.

It is very usual for family companies in India to hold its assets as in a partnership business.

The courts have also consistently recognised that the principles of partnership may be applied to this kind of a family corporation.

Not surprisingly the private respondents have asserted that they have almost a 50% stake in the company and thus a 50% share in the property.

They feel they had rightly applied for electricity connection and obtained meters to service certain parts of the joint property.

In my opinion, in this kind of a situation when electricity connection has already been given the court should not interfere with it in its writ jurisdiction.

It is much better if such a dispute is resolved in a civil forum like a Court, arbitration of the Company Law Board.

In those circumstances this writ application is dismissed.

I, however, make it clear that the private respondents shall not be able to claim any rights whatsoever in the said property by virtue of installation of the two meters. Certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(I.P.MUKERJI, J.)

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com