

PETITIONER:
W.B.S.E.B.

Vs.

RESPONDENT:
FAKIR CHAND RICE MILLS & ORS.

DATE OF JUDGMENT: 27/02/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
AHMAD SAGHIR S. (J)
G.B. PATTANAIK (J)

CITATION:
JT 1996 (2) 569 1996 SCALE (3)67

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Mr. A.D. Sikri, learned counsel] accepts notice on behalf of the respondents. We have heard the counsel for the parties.

Leave granted.

As rightly pointed out by the counsel for the respondents, it is a discretionary order. The discretion would also be properly exercised by the courts below when dealing with the points in controversy. A demand of Rs.28,68,264.06 was made on the allegation that there were pilferages in the meter reading of the electrical energy supplied to the respondents. In a suit by the respondents for supply of energy to the respondents, the trial Court directed payment of Rs.2,60,000/- and odd. On appeal, it was confirmed. When it was carried in revision, the High Court in C.O. No.2714 of 1995 modified the order and directed the respondents to deposit a sum of Rs.5,50,000/-. Thus this appeal by special leave.

A demand notice for Rs.28 lakhs and odd having been issued, the question is: whether the Court was right in directing ultimately payment of Rs.5,60,000/-? The High Court does not appear to have addressed itself to the questions. It simply repeated that it was a discretionary order passed by the courts below directing payment of Rs.2.60 lakhs and at the same time directed the respondents to deposit Rs.5,60,000/- without adjudicating the matter. Normally, in matters of money claim, at least half of the amount would be directed to be deposited. In the situation obtaining in this case, when the appellant is obligated to supply electrical energy to the respondents, an equal obligation has to be cast on the respondents to pay the amount subject to determination of controversy in the suit. Under these circumstances, the respondents are directed to deposit a sum of Rs.12 lakhs within a period of two months from today. If the amount of Rs.5,60,000/- has already been

deposited, the same may be given credit for the payment and the balance be paid within the aforesaid period.

The appeal is accordingly disposed of. No costs.

JUDIS