

IN THE SUPREME COURT OF INDIA

CIVIL APPELATE JURISDICTION

CIVIL APPEAL No. 8207 of 2012
Arising out of SLP (C) No.33409 of 2009)

Shree Om Enterprises Pvt. Ltd. ... Appellant

Versus

BSES Rajdhani Power Ltd. ... Respondent

J U D G M E N T

RANJAN GOGOI, J

1. Leave granted.
2. The appellant is aggrieved by the dismissal of its suit by the learned trial court which decree has been affirmed in First appeal as well as by the High Court in Second Appeal.
3. The plaintiff is a Private Limited Company engaged in the business of printing of calendars,

diaries, stationery items, packing materials since the year 1983 in premises located in A-98/3, Okhla Industrial Area, Phase II, New Delhi. The plaintiff claims to be registered as a small scale industrial unit under the Directorate of Industries, Delhi Administration. According to the plaintiff it is also holding/held a license from the Municipal Corporation of Delhi for running the unit of printing press and has been registered under the Press and Registration of Books Act, 1867 and with the Registrar of Newspapers for India. The plaintiff also claims to have been allotted a code No. by the Reserve Bank of India for the purposes of import and export of calendars, diaries, booklets, wedding and greeting cards, printing books, posters and other material etc. printed in its unit at the premises described above.

4. According to the plaintiff it had been issued two separate electrical connections bearing No.K 011 1304067 and K 011 1304075 for running the

printing press. The plaintiff received a letter dated 06.11.1991 (Ex.P-14) from the Assistant Engineer, Delhi Electric Supply Undertaking (DESU) stating that an inspection was conducted in the premises of the plaintiff on 14.06.1991 in respect of electric connection No. K 011 1304067 in the course of which the connected load was found to be beyond the maximum permissible sanctioned load of 100 KW for Small Industrial Power Consumers (SIP). The same had the effect of placing the plaintiff in the category of large Industrial Power Consumers (LIP). Accordingly, in the letter dated 06.11.1991 the plaintiff was given an option to remove the excess load and it was further informed that till then the plaintiff would be billed at the higher tariff applicable to LIP consumers along with surcharge, as applicable, under the terms and conditions of supply. By the letter dated 06.11.1991 the plaintiff was also informed that in the inspection carried out on 14.06.1991, the power factor was found to be below the prescribed limit

as the shunt capacitor had not been installed or maintained properly. Accordingly, the plaintiff was also informed that it was liable to pay surcharge at the prevailing rate on the total amount of bill.

5. In the plaint filed it was further stated that the plaintiff, who had no knowledge of the aforesaid inspection, received another letter dated 03.12.1991 enclosing a copy of an Inspection Report dated 14.06.1991 (Ex.P.10). In the said inspection report details of the machinery found installed in the premises of the plaintiff for manufacture of PVC conduit pipes were mentioned. According to the plaintiff, on 06.01.1992, a common reply to the letters/notices dated 06.11.1991 and 03.12.1991 was sent claiming that the business of the plaintiff was printing of calendars, diaries, stationery items and packing materials; that there was no manufacture of PVC conduit pipes in its premises and further that there was no misuse of electricity and excess of load beyond the sanctioned load or

installation of inadequate and improper capacitor as alleged in the notices under reply. However, according to the plaintiff, despite its reply dated 06.01.1992 (Ex.P-11) a bill for Rs.3,38,378.02 was received by it for the period 06.06.1991 to February, 1992 threatening disconnection on failure to make payment of the said bill on or before 06.04.1992. It is in these circumstances that the plaintiff had filed the suit in question on 06.04.1992 seeking a decree of perpetual injunction restraining the defendants from enforcing the disconnection notice and from disconnecting power supply against Meter No. K-011 1304067 installed in the premises of the plaintiff at A-98/3, Okhla Industrial Area, Phase II, New Delhi.

6. The defendant, namely, General Manager, DESU filed a written statement in the case stating that on 14.06.1991 an inspection was carried out in the premises of the plaintiff which revealed that the total connected load in the premises was 190 KW

which is far in excess of the limit for SIP consumers, i.e., 100 KW. Accordingly, the notices dated 06.11.1991 and 03.12.1991 along with the inspection report dated 14.06.1991 were issued and on consideration of the reply dated 06.01.1992 submitted by the plaintiff, the bill for Rs.3,38,378.02 was served and disconnection of electric power to the plaintiff's premises was contemplated in the event the plaintiff failed to pay the bill on or before the due date. In the written statement filed by defendants it was categorically stated that machineries for manufacture of PVC conduit pipes were found installed in the premises of the plaintiff in the course of inspection held on 14.06.1991. It was further stated that such inspection was carried out in the presence of the representative of the plaintiff - Company.

7. The parties had gone to trial on the aforesaid pleadings on the basis of which several specific

issues were framed. The plaintiff's suit having been dismissed by all the courts, the present appeal has been filed contending that the dismissal of the suit, all along, is plainly opposed to the materials and evidence on record and that such dismissal, ex facie, discloses errors apparent on the face of the record.

8. We have heard Shri CS Vaidyanathan, learned senior counsel for the appellant and Shri K.Datta, learned counsel for the respondent.

9. Learned counsel for the appellant has elaborately taken us through the pleadings of the parties and the evidence of PW 1- Shri Gobind Ram Bafna and DW 1- Shri S.S. Gupta. Learned counsel has submitted that from the evidence of PW 1 it is clear that no inspection was carried out in the premises of the plaintiff on 14.06.1991 as claimed which fact finds support from the evidence of DW 1 who had admitted that he is not aware of the

identity and status of the person who was present on behalf of the plaintiff at the time of inspection. Learned counsel, by referring to the certificate issued by the Sales Tax Department (Exh.D-1), has submitted that in terms of the said certificate the plaintiff was entitled to purchase raw materials for the purpose of manufacture of, inter-alia, PVC pipes. The said certificate only entitled the plaintiff to claim exemption from sales tax on such purchases and by no means could be understood to be proof of the fact that the plaintiff was actually manufacturing PVC pipes in its premises. Learned counsel has also drawn the attention of the court to the Balance-sheet and Profit & Loss Account of the plaintiff - Company enclosed in the Income-tax Return for the year ending 31st March, 1992 to show that nowhere in the said documents there is any mention of PVC conduit pipes which fact would have, in the normal course, found a mention had the plaintiff Company been engaged in the business of manufacture of such PVC

pipes. Learned counsel has also drawn the attention of the court to the telegram dated 01.04.1992 (Ex.P-12) issued on its behalf whereby the findings recorded in the report of inspection dated 14.06.1991 with regard to manufacture of PVC pipes had been categorically denied.

10. Learned counsel for the respondent, on the other hand, has submitted that the response of the appellant to the letters/notices dated 6.11.1991 and 3.12.1991 issued by the competent authority of the DESU are absolutely vague and ambiguous. Apart from asserting that it was engaged in the business of manufacture of calendars, diaries, stationery items etc. and denying any misuse of electricity or exceeding the sanctioned load, the plaintiff in its reply dated 06.01.1992 had not taken any specific stand with regard to the findings of the inspection dated 14.06.1991. The said reply dated 06.01.1992 does not contain any specific reference to the findings of the inspection regarding

installation of machineries which are normally used for manufacture of PVC conduit pipes. The stand taken on behalf of the plaintiff in the telegram dated 01.04.1992 (Ex.P-12) was, therefore, an after thought. In so far as the oral evidence of PW 1 is concerned it is submitted that the said witness had been inconsistent inasmuch as while denying that any inspection was carried out on 14.06.1991 in his examination-in-chief, the said witness in cross-examination had admitted that such an inspection had taken place. In this regard learned counsel has pointed out that in the evidence of DW 1 there is a clear reference to the fact that the representative of the plaintiff, though present at the time of inspection, had refused to sign the inspection report. Merely because DW 1 was not aware of the status of the person representing the plaintiff Company at the time of inspection, will not cast any doubt with regard to the holding of the inspection itself. Lastly, it is submitted that the plaintiff having exceeded the maximum permissible

load for SIP consumers was liable for payment of surcharge and higher tariff in accordance with the terms and conditions of supply of electric power by the DESU. Similarly, the appellant having failed to install the requisite capacitor was also liable to pay surcharge as contemplated by the said terms and conditions of supply. It is on the aforesaid basis and in accordance with the terms and conditions of supply that the bill for Rs.3,38,378.02 for the period 06.06.1991 to February, 1992 was issued with the contemplation that if the same remained unpaid on or before 06.04.1992, electric supply to the premises of the plaintiff would be disconnected.

11. We have considered the submissions advanced before us. We have also perused the pleadings of the parties and the evidence of PW 1 and also DW 1 as well as the several documents brought on record including the notices dated 06.11.1991 and 03.12.1991 and the inspection report dated 14.6.1991 sent by the defendant to the plaintiff as

well as the reply of the plaintiff dated 06.12.91 and the telegram dated 01.04.1992 in this regard.

On such consideration what we find is that the present appeal raises what is pre-eminently a question of fact, namely, whether the Plaintiff had exceeded the sanctioned load as permissible for SIP consumers and whether the Plaintiff was responsible for low load factor as it had not installed the requisite capacitor. In a situation where three Courts have already dealt with the aforesaid question and have recorded concurrent opinions on the issue, it would be wholly inappropriate for this Court to go into the same unless an apparent perversity can be, ex-facie, found in the conclusions reached. It is from the aforesaid limited perspective that we had persuaded ourselves to go into the matter. On such consideration we find that the plaintiff in its reply dated 6.1.1992 submitted in response to the notices issued by the Defendant on 6.11.1991 and 3.12.1991 had only

asserted that it is engaged in the manufacture and printing of calendars etc. and that it had not exceeded the sanctioned load. There is no positive stand taken with regard to the findings of the inspection as mentioned in the report dated 14.06.1991. Neither any evidence had been led by the plaintiff to establish that the machinery mentioned in the inspection note to have been found installed in its premises were not so installed or that such machinery was not used or utilized by the plaintiff for manufacture of PVC conduit pipes. It was incumbent on the part of the plaintiff, who had claimed in the suit that the report of inspection was incorrect, to prove the said facts by means of legally acceptable evidence. No such evidence was forthcoming, perhaps, because the plaintiff had taken the stand that no inspection at all was carried out. Though the plaintiff tried to prove the said fact i.e. that no inspection took place through PW 1, the evidence of the said witness on the aforesaid score is wholly inconsistent. The

reliance placed on the evidence of DW 1 in this regard is also somewhat misplaced in as much as DW 1 had clearly stated that he was a member of the joint inspection team which had carried out the inspection on 14.6.1991 and that the report of inspection prepared was refused to be signed by the plaintiff's representative though he was present at the time of inspection. The mere inability of the DW 1 to specify the status of the plaintiff's representative present at the site would not, in any way, affect the credibility of the fact that an inspection was, infact, carried out. It has also to be noticed that the specific denial with regard to the business of manufacture of PVC conduit pipes in the premises of the plaintiff had come only in the telegram dated 01.04.1992 sent by the advocate representing the plaintiff. In the absence of any clear stand to the above effect in the reply of the plaintiff dated 6.12.1991, the subsequent plea put forth in the telegram dated 01.04.1992 must be understood to be an after thought on the part of

the plaintiff and the result of an attempt to improve its case through its counsel.

12. To make the discussions complete we would also like to observe in the present case that plaintiff was given an option to remove the excess load failing which it was made clear it will be charged at the higher rate of tariff. We have also found that the bill for Rs.3,38,378.02 for the period 06.06.1991 to February 1992 was prepared and submitted for payment by the plaintiff in accordance with the terms and conditions of supply in force in the DESU and that the said bill was prepared after consideration of the stand taken by the plaintiff in its reply dated 06.01.1992. No infirmity or illegality is disclosed in any of the actions of the defendant infringing any known right of the plaintiff so as to entitle it to a decree of perpetual injunction as prayed for.

13. For all the aforesaid reasons we find no merit whatsoever in this appeal. It is accordingly dismissed and the judgment and order dated 18.08.2009 of the High Court of Delhi is affirmed.

.....J.
[P.SATHASIVAM]

.....J.
[RANJAN GOGOI]

New Delhi,
November 22, 2012



JUDGMENT