

Karnataka High Court

The Executive Engineer, ... vs C.B. Appachu on 12 July, 2002

Equivalent citations: AIR 2003 Kant 61, ILR 2002 KAR 4257, 2002 (5) KarLJ 530

Author: D S Kumar

Bench: D S Kumar

ORDER D.V. Shylendra Kumar, J.

1. There is delay of 36 days in filing the revision. Notice had been issued to the respondents. Respondents entered their appearance. The matter had been heard earlier and delay has been condoned and adjourned for admission to this day.

2. This civil revision petition is directed against the order dated 18-7-2001 passed in M.A. No. 24 of 2000 on the file of the Civil Judge (Senior Division) and Chief Judicial Magistrate, Madikeri dismissing the appeal which in turn was against the order dated 8-9-2000 passed in LA. No. III in O.S. No. 92 of 2000, on the file of the Court of the Principal Civil Judge (Junior Division), Madikeri.

3. The defendants in the suit are the petitioners before this Court. The suit by the respondent-plaintiff, who is consumer of electrical energy supplied by the Karnataka Power Transmission Corporation Limited, was for an order of mandatory injunction to direct the defendant that the supply of electrical energy was maintained without interruption and by ensuring that such supply was provided through electric poles planted at the roadside instead of poles passing through the forest area.

4. The plaint averments indicate that the plaintiff had been supplied with power from the year 1988, but power supply had been disrupted from the month of April 2000 and it was more often not supplied rather than the supply being maintained. It appears in this regard there was considerable exchange of correspondence between the parties. On an earlier occasion, the plaintiff had also approached the Consumer Redressal Forum seeking certain relief in the context of repeated disruption of power supplied to him. The said proceedings had ended in favour of the plaintiff and the respondent-Corporation has been directed to compensate the plaintiff-consumer. The plaint averments further reveal that the officials of the respondent-Corporation having suffered an adverse order at the hands of the Consumer Redressal Forum, had resorted to vindictive action against the plaintiff and the power supply was cut off for months together.

5. In the suit, the plaintiff had also sought for an order of temporary injunction to direct the defendants to ensure uninterrupted power supply to the plaintiffs during the pendency of the suit.

6. The Trial Court had issued notice to the defendants. The defendants entered appearance through their Standing Counsel, and opposed the relief sought for in the application.

7. The Trial Court after hearing the learned Counsels for the parties directed the "petitioner 3 by an order of temporary injunction not to disturb the continuous electricity supply to the plaintiff and also directed to provide an uninterrupted electricity to the plaintiff excepting following cases:

- (a) If interruption is caused due to natural causes such as falling of trees or flood

- (b) If due to mechanical or technical errors beyond the human control;
- (c) If due to any other reasons beyond the control of defendants;
- (d) If plaintiff fails to pay the charges for use of electricity.

Even in above stated exceptions, defendant 3 shall provide electricity to the plaintiff

8. Being aggrieved by this order, the defendants approached the Court of Civil Judge (Senior Division), Madikeri by filing an appeal, M.A. No. 24 of 2000. The Appellate Court found that there is no scope for interference inasmuch as the Trial Court had taken sufficient care and caution while passing an interim order particularly by incorporating the exceptional situations during which the power supply may be disrupted, because of the reasons beyond the control of the defendants. The Appellate Court also found that an order of granting temporary injunction was justified in the circumstances and accordingly dismissed the appeal. As against these orders, the defendants in the suit have come up with this revision.

9. I have heard the learned Counsel for the petitioners and the learned Counsel for the respondent.

10. It is submitted by the learned Counsel for the petitioners that the application itself was not tenable as the defendant authority had not even disconnected the power supply.

11. Learned Counsel for the petitioners in this petition who are the defendant in the suit has made a passionate submission that an order of temporary injunction could never have been granted by the Trial Court inasmuch as the suit plaint did not make out a prima facie case. When there is no prima facie case in favour of the plaintiff in the suit, the learned Counsel submits that the prayer as sought for cannot be granted by the Trial Court inasmuch as the prayer is for ensuring power supply without disruption for all times to come. A prayer of this nature can never be granted and if that is so, in a suit of this nature no interim relief can also be granted. The learned Counsel submits that it is a well-settled principle of law while granting an order of temporary injunction, the Trial Court has to consider three essential aspects namely, prima facie case, balance of convenience and irreparable hardship and injury to the person seeking for an order.

12. Mr. Gupta, learned Counsel further submits that in the absence of prima facie case, the Trial Court could not have granted an order of temporary injunction and this is a fit case where this Court could exercise the revisional jurisdiction for setting aside the order which came to be confirmed in the appeal by the Appellate Court and now to vacate the order.

13. Sri Ponnappa, learned Counsel for the respondent in this petition and the plaintiff in the suit submits that the suit is very well-maintainable and the relief sought for in the suit, is one which is

capable of being granted by the Civil Court. That the plaintiff was compelled to approach the Civil Court inasmuch as the defendant had resorted to take vindictive disruption of power supply particularly in the background of earlier litigation between the consumer and the supplier before the District Consumer Forum. The defendants were also taking excuse of power supply being disrupted repeatedly because of falling of trees in the forest area which in turn had snapped the power lines and such natural inevitable calamities were causing disruption of power supply and further delay on the premise that the same could not be identified immediately.

14. The learned Counsel for the respondent submits that even on occasions when this has not happened, the defendants had deliberately disrupted the power supply by taking this ostensible excuse and the suit was filed to ensure that this may be avoided in future by compelling the defendant-Corporation to supply power through the poles erected on the roadside. This could avoid the falling of trees as also would ensure timely detection, even if there was any disruption due to such falling of trees.

15. The Trial Court as well as the lower Appellate Court found that the plaintiff had triable case and on such premise the order of temporary injunction has been granted, that would protect the interest of the plaintiff during the pendency of the suit, whereas if this order of temporary injunction was not granted, such an order would definitely prejudice the interest of the plaintiff and he would be put to hardship and injury.

16. It is worthy to note that the order of temporary injunction has been operating on the defendants for the past more than two years as of now. The defendants have not come up with the plea that the order has affected them in any manner or had they found it not possible of compliance. The defendant-Corporation is a public sector service organisation and it is an authority providing essential service to the citizens. The very purpose for which the Corporation is established is to supply power to the consumer on payment of price. When a consumer pays the price of the power supplied to him, the defendant cannot put forth any plea or grievance that it cannot supply power to any particular consumer.

17. On a perusal of the written statement filed on behalf of the petitioner in the suit, it reveals that the defence is that it is not incumbent upon the defendants to supply power as desired by the plaintiff by erecting poles on the roadside and this was not the agreement. It is also pleaded that the defendants being technically qualified authority to determine as to in what manner the power has to be supplied, the Court cannot sit in judgment and give any directions to the defendants authority to supply power in a particular manner. The written statement also states that the plaintiff is not entitled to seek for a prayer of this nature nor to compel the defendant to supply power in a particular manner by erecting poles as indicated by the plaintiff. On such premise, the defendants have prayed for dismissal of the suit placing reliance on paragraphs 12 to 14 of the written statement, which read as under.--

"12. The defendant is technically qualified to conclude in which manner, in which way the supply of energy has to be done. Technically, it is not possible to erect the poles, wire beside the road. The method followed by the defendants to supply energy to the plaintiff is proper and in accordance with

law.

13. The defendant never agreed to erect poles beside the road, There is no agreement to this effect. While availing the supply the plaintiff has not asked for the same. Erection of poles, wire beside the road for supply of energy is unsustainable and technically not feasible. Department cannot transfer, change the supply route and hence the plaintiff is not entitled for the same.

14. The claim of the plaintiff is barred by time of limitation. The plaintiff is not entitled for specific performance. The plaintiff is not entitled for declaration. The plaintiff is not entitled for any reliefs from this Hon'ble Court. There is no question of any specific performance involved".

18. Sri Krishnananda Gupta, learned Counsel for the petitioners placing reliance on such pleas in the written statement submits that there is no prima facie case in the suit and hence a fit case for this Court to interfere with the order of interim injunction that has been granted by the Trial Court and confirmed by the lower Appellate Court.

19. Even on a critical examination of the plaint averments, it is obvious that these are all matters which require to be decided by the Trial Court on framing proper issues on such pleas and on the parties going to trial. It is not as though it is impossible for the Trial Court to grant relief as sought for by the plaintiff in the suit. In what manner such relief can be granted and what directions can be issued, are all matters to be considered and decided by the Trial Court on the material placed by the parties before the Court. In these circumstances, I cannot accept the plea put forth on behalf of the petitioner that there is no prima facie case at all in the suit. Basically, the Civil Courts are empowered with jurisdiction to try a suit of this nature. It is not the plea of the defendant-petitioner that there is exclusion of jurisdiction of the Civil Court. The only plea is that the suit of the present nature is not tenable or maintainable. This matter is essentially to be looked into and decided by the Trial Court on framing proper issues and on parties going to trial.

20. In the facts and circumstances of the case, I am satisfied that the Trial Court as well as the lower Appellate Court are actually justified in entertaining the application for temporary injunction in the suit and passing appropriate orders on such applications. Therefore, I do not find any circumstance to interfere with an order of this nature in exercise of the revisional jurisdiction of this Court under Section 115 of the Code of Civil Procedure.

21. Accordingly, the civil revision petition is dismissed imposing cost of Rs. 2,000/- on the petitioner.