

GAHC010047562024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : FAO/20/2024

SREE CHAITANYA GAUDIYA MATH
A REGISTERED SOCIETY UNDER THE WEST BENGAL SOCIETIES
REGISTRATION ACT 1961 HAVING ITS REGISTERED OFFICE AT 35, SATISH
MUKHERJEE ROAD, KALIGHAT, KOLKATA 700026, AND ZONAL OFFICE AT
SREE CHAITANYA GAUDIYA MATH, AT MD. SHAH ROAD, PALTAN BAZAR,
PO GUWAHATI ASSAM 781008, DIST KAMRUP M ASSAM REPRESENTED BY
ITS ATTORNEY HOLDER SRI PHALGUNI SAKHA DAS, AGED ABOUT 62
YEARS SON OF SWAMI B.B TIRTHA GOSWAMI

VERSUS

THE ASSAM POWER DISTRIBUTION COMOANY LTD AND 3 ORS
A PUBLIC LIMITED COMPANY REGISTERED UNDER THE PROVISION
CONTAINED IN THE COMPANIES ACT, 1956 HAVING ITS REGISTERED
OFFICE AT BIJULI BHAWAN, PALTAN BAZAR, PO GUWAHATI 781008, DIST
KAMRUP M ASSAM

2:THE SUB DIVISIONAL OFFICER

APDCL
BIJULI BHAWAN
PALTAN BAZAR
PO GUWAHATI 781008 KAMRUP M ASSAM

3:SRI RATISH KUMAR DEY
S/O LATE RABINDRA KUMAR DEY
RESIDENT OF HOUSE NO. 21
H. S ROAD
PROFESSOR COLONY
CHATRIBARI PS PALTAN BAZAR
PO GUWAHATI

4:SMTI UJJWALA DEY
W/O SRI RATISH KUMAR DEY
RESIDENT OF HOUSE NO. 21
H. S ROAD
PROFESSOR COLONY
CHATRIBARI PS PALTAN BAZAR
PO GUWAHAT

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocate for the petitioner : Shri O.P. Bhati, Advocate

Advocates for the respondents : Shri R. Bora, SC, APDCL,
Shri S.P. Choudhury, Advocate.

Date of hearing : 26.06.2024

Date of judgment : 26.06.2024

Heard Shri O.P. Bhati, learned counsel for the appellant. Also heard Shri R. Bora, learned Standing Counsel, APDCL for the respondent nos. 1 & 2 and Shri S.P. Choudhury, learned counsel for the respondent nos. 3 & 4.

2. Considering the subject matter involved in this appeal, the appeal is taken up for disposal at the admission stage itself.

3. The appeal has been preferred under Order XLIII Rule 1 (r) of the CPC

against an order dated 06.02.2024 passed by the learned Civil Judge, Senior Division No. 2, Kamrup (M) in Misc. (J.) Case No. 233/2023 arising out of T.S. No. 134/2023.

4. The projected case of the appellant which is a registered Society is that the appellant as plaintiff had instituted a suit for a declaration that the grant of electricity connection to the respondent nos. 3 & 4 by the respondent nos. 1 & 2 is illegal. It is submitted that the suit land in question had devolved upon the appellant- plaintiff by following the due process of law in terms of a Will which was duly probated. However, only on the basis of an agreement to sale, the respondent nos. 3 & 4 have taken forceful possession over the suit land. The learned counsel for the appellant had also referred to the provisions of Section 54 of the Transfer of Property Act, 1882 and has contended that a contract for sale by itself would not create any interest or charge on the concerned property. It is submitted that other than the agreement to sale, there is no other basis on the part of the respondent nos. 3 & 4 to claim ownership.

5. Shri S.P. Choudhury, the learned counsel for the respondent nos. 3 & 4 has however submitted that the contentions advanced by the appellant are touching upon the merits of the case whereas the instant appeal is against an order by which injunction has been refused. It is submitted that the injunction sought for was for disconnection of electricity, the connection of which was duly taken by his clients from the APDCL. It is submitted that even before the contentious issues are decided by the learned Court in the suit, the injunction has been sought for which would amount to grant of final relief which is against the principles governing injunction.

6. The learned counsel for the respondents has also submitted that consideration of a matter of injunction involves discretion and in the present

case such discretion has been exercised with due care and attention whereby the three golden principles have been taken into consideration and vide the impugned order dated 06.02.2024, the injunction has been refused. He has highlighted the aspect of a limited role to be played by the Appellate Court in matters of granting or non-granting of injunction.

7. Shri Bora, the learned counsel for the respondent nos. 1 & 2, the APDCL has submitted that he would not have too much of a role in the suit. However on a specific query made by this Court, he has replied that *prima facie* it appears that the electricity connection was taken by following the prescribed process.

8. The rival submissions have been duly considered.

9. Vide the impugned order dated 06.02.2024, the prayer for injunction has been rejected. As noted above, the injunction was for disconnection of the electricity to the premises of the respondent nos. 3 & 4. Though the learned counsel for the appellant has raised serious contentions with regard to the right, if any, of the respondent nos. 3 & 4 over the suit land, the nature of the injunction is with regard to the electricity connection. The discussions made by the learned Court while refusing to grant the injunction is on the aspect of suffering of hardships as electricity is one of the essential amenity. The aforesaid aspect, in the considered opinion of this Court is a relevant aspect germane to the issue and therefore, this Court is of the opinion that such a view taken by the learned Court is a reasonable view based on cogent materials and grounds.

10. The Hon'ble Supreme Court in the case of ***Wander Ltd. v. Antox India (P) Ltd.***, reported in ***1990 Supp SCC 727***, has laid down as follows:

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court’s exercise of discretion. ...”

11. The aforesaid principles have been reiterated and in the case of **Ramdev Food Products (P) Ltd. Vs Arvindbhai Rambhai Patel** reported in **(2006) 8 SCC 726**, the following has been laid down.

“125. We are not oblivious that normally the appellate court would be slow to interfere with the discretionary jurisdiction of the trial court.

126. The grant of an interlocutory injunction is in exercise of discretionary power and hence, the appellate courts will usually not interfere with it. However, the appellate courts will substitute their discretion if they find that discretion has been exercised arbitrarily, capriciously, perversely, or where the court has ignored the settled principles of law regulating the grant or refusal of interlocutory injunctions. This principle has been stated by this Court time and time again.

127. The appellate court may not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the

exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion.”

12. The power and jurisdiction of an Appellate Court in matters of injunction is limited. As laid down by the Hon’ble Supreme Court, the Appellate Court should go slow in matters of granting or not granting of injunction and only if a case of perversity or gross illegality is made out, an Appellate Court may, in an appropriate case interfere. However, such interference should be done sparingly.

13. The Hon’ble Supreme Court in the case of ***Dilip (Dead) Through Lrs. Vs. Satish and Others*** reported in ***2022 SCC OnLine SC 810*** has reiterated that electricity is a basic amenity of which a person cannot be deprived.

14. In the instant case, as noted above, the order dated 06.02.2024 by which the injunction has been rejected pertaining to a prayer for disconnection of electricity appears to be in order which does not require any interference.

15. The appeal is accordingly dismissed.

JUDGE

Comparing Assistant