

Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17

No. F. 11(643)/DERC/2010-11/6097

Petition No. 34/2010

In the matter of: Petition under Section 142 of the Electricity Act, 2003

In the matter of:

Vijay Kumar
S/o Late Shri Tek Chand Kumar
5131, Harpool Singh Building
Delhi-110007

...Petitioner

Versus

M/s Tata Power Delhi Distribution Ltd.
Through its : CEO
Grid Sub-Station Building
Hudson Lines, Kingsway Camp,
Delhi-110009

...Respondent

Coram:

**Sh. P. D. Sudhakar, Chairman, Sh. Shyam Wadhera, Member &
Sh. J. P. Singh, Member.**

Appearance:

1. Shri B P Agarwal, Counsel for the Petitioner.
2. Sh. Manish Srivastav, Counsel for the Respondent (TPDDL)
3. Sh. O P Singh, Sr. Manager, TPDDL
4. Sh. Shailender, Sr. Manager, TPDDL

INTERIM ORDER

(Date of Hearing: 07.02.2013)

(Date of Order: 19.02.2013)

1. The above matter was listed for hearing on 07.02.2013 in the Commission for deciding the issue of applicability of principle of *res sub judice* (Section 10 of Code of Civil Procedure, 1908. In brief the facts of the case is as under:
 - (i) The above-named complainant has filed the instant petition on 21.10.2010 under Section 142 of the Electricity Act, 2003 for violation of Regulation 2 (f) and Regulation 26 (ii) of the Delhi Electricity Regulatory Commission (Performance Standards-Metering Billing) Regulations 2002 against the Respondent-Tata Power Delhi Distribution Limited (erstwhile known as North Delhi Power Limited).

- (ii) Notice of the petition was issued to the respondent on 25.10.2010.
- (iii) In response to the notice dated 25.10.2010, the Respondent filed its reply on 08.12.2010 wherein the Respondent has stated that the present petition is liable to be dismissed on the sole ground that it is barred by Section 10 of CPC since the above matter is sub-judice before Hon'ble Court of Ms Neha Paliwal, Civil Judge, Delhi (Civil Suit No.774 of 2006) which is still pending for adjudication. The Respondent has further submitted that the complainant is a habitual litigant and this very fact is established from his own statement that he has also filed a case arising from the above inspection in the Civil Court.
- (iv) It has further been stated that the complainant is resorting to Forum Shopping Tactics and hence no relief should be granted in his favour.
- (v) It has further been stated that the Commission has no jurisdiction to entertain the present complaint as the Commission is not possessed of absolute powers of a civil court to entertain any suit of civil nature.
- (vi) It has also been stated that the present complaint is liable to be dismissed on the ground that this Commission has no jurisdiction to entertain the present complaint relating to theft of electricity and for that purpose Special Electricity Courts have been set up under the Electricity Act, 2003.
- (vii) In relation to the above contention, the Respondent has relied upon the following judgments for concluding the case in their favour.
 - (a) Maharashtra Electricity Regulatory Commission vs. Reliance Energy Ltd. (2007 (8) SCC 381) passed by the Hon'ble Supreme Court.
 - (b) BSES Rajdhani Power Ltd. vs. Delhi Electricity Regulatory Commission, Appeal No.181 of 2008 passed by the Hon'ble Appellate Tribunal for Electricity.
 - (c) B L Kantroo vs. BSES Rajdhani Power Ltd. (154(2008) DLT 56 (DB)

2. The above view of the Respondent was objected by the opposite counsel of the petitioner with the plea that the Section 10 CPC is not at all applicable in this case. He invited attention of the bench on the provisions Section 10 of CPC which is reproduced as below:

The relevant Section is reproduced as under.

Section 10 CPC-Stay of suit

“No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in (India) having jurisdiction to grant the relief claimed, or in any Court beyond the limits of (India) established or continued by (the Central Govt.) and having like jurisdiction, or before (the Supreme Court)”

A plain reading and language of the above provision clearly suggest that:

- (i) It refers to a suit instituted in the civil court and it cannot apply to proceeding of other nature instituted under any other statute. National Institute of Mental Health and Neuro-Sciences V. C. Parmeshwara, AIR 2005 SC 242.
 - (ii) There shall be two suits between the same parties involving the same subject matter and same questions.
 - (iii) The courts where similar suits are pending shall have power to give relief.
3. None of the ingredients/conditions laid down in the above provision have been met with in the present case. The Commission is neither dealing with the present complaint in the manner of a trial nor the same is a suit. He further submitted that since the instant case has been filed by the petitioner under Section 142 of the Electricity Act, 2003 for imposition of penalty on the erring Respondent, the power to adjudicate which solely lies with the Commission and no other court. It is also further argued that no other court has power to give relief as prayed in the instant petition, therefore, the provisions of Section 10 CPC are not at all applicable in the instant case.
4. In this context, the Counsel for the Petitioner has relied upon the following judgments.

- a) AIR 1972 ANDHRA PRADESH 136 PARA 3** (Respondent filed rent control petitions against the petitioner for their eviction on the ground that the respondents bona fide required the building for carrying on their existing and expanding business).
- b) AIR 1974 DELHI 95 PARA 12** (This argument can be disposed of on the short ground that Section 10 of the Code of Civil Procedure applies only to suits and cannot apply where one of the two proceedings is not a suit).
- c) AIR 1978 DELHI 221 PARA 10** (The previously instituted suit should be pending in the same Court in which the subsequent suit is brought or in another court in India having jurisdiction to grant the relief claimed; and)
- d) AIR 1995 GUJARAT 220 PARA 7** (Language of Section 10 itself suggests that it is referable to a suit instituted in Civil Court and it cannot apply to proceedings of other nature instituted under the statute, more particularly, when by, ouster clause enacted in special statute, the jurisdiction of the Civil Court is specifically ousted. Section 10 of CPC can never have any application so as to stay the proceedings under the special status before the special forum on the ground that one of the parties has already approached the Civil Court despite ouster clause ousting the jurisdiction of the civil Court).
- e) AIR 1998 SC 1952 PARA 10** (Considering the objects of both the provisions i.e. Section 10 and Order 37 wider interpretation of the word "trial" is not called for. We are of the opinion that the word "trial" in Section 10 in the context of a summary suit, cannot be interpreted to mean the entire proceedings starting, with institution of the suit by lodging a plaint. In a summary suit the "trial" really begins after the Court or the Judge grants leave to the defendant to contest the suit. Therefore, the Court or the judge dealing with the summary suit can proceed up to the stage of hearing the summons for judgment and passing the judgment in favour of the plaintiff if (a) the defendant has not applied for leave to defend or if such application has been made

and refused or if the defendant who is permitted to defend fails to comply with the conditions on which leave to defend is granted).

- f) AIR 1973 RAJASTHAN 306** (Index Note: (A) Civil P.C. (1908), Section 10- Stay of suit – Subsequent suit cannot be stayed when court in which previous suit is pending is incompetent to grant relief claimed in subsequent suit. ILR (1970) Cut 337, Distinguished).
- g) AIR 1982 BOMBAY 151 PARA 10** (It should also be noted that one of the principles laid down requires that the two Courts should have parallel jurisdiction and in the present case the two Courts do not have parallel jurisdiction but exclusive jurisdiction. In my view, therefore, this decision does not contain anything contrary to what I have held).
- h) AIR 1982 CALCUTTA 41 PARA 21** (to my mind, S. 10 dealing with Court's jurisdiction to proceed to determine a suit is required to be strictly construed and I see no reason for construing the provisions thereof in the manner as suggested by the Counsel for the applicants. I am fortified in my view not only by the decisions cited as also by the observation of the learned author Mulla. No decision has been cited or referred to which is contrary to the views express. I am, therefore, of the view that S. 10 of the Code has received authoritative interpretation by judicial decision and/or long way of practice and see no reason to depart there from and as such must hold that the meaning "having jurisdiction to grant the relief claimed" occurring in S. 10 of the CPC contemplates the competency of the first court to grant the reliefs claimed in the second suit).
- i) (1982) DELHI LAW TIMES 356 PARA 3** (No provision of law has been brought to my notice that the Controller has no jurisdiction to try and decide the eviction application under Section 14(1)(e) of the Act during the pendency of the said suit in civil court. It is not denied that the civil court under Section 14 of the Act has no jurisdiction to pass an order of eviction against a tenant. The provisions of Section 10 of the Code of Civil Procedure are not applicable and therefore the eviction proceedings cannot be stayed on account of the pendency of the

title suit in the court. It is therefore held that in spite of pendency of the title suit in the civil court, the Controller has jurisdiction to try and decide the eviction application under Section 14 of the Act).

5. While dealing with an application for stay of suit (under Section 10 of Code of Civil Procedure, 1908), it is very necessary to proceed with utmost caution as to whether the ingredients contained under the said section are met or not to decide the issue i.e the whole of the subject matter in both the proceedings is identical, not one of the many issues. The object of this provision is to prevent Courts of concurrent jurisdiction from trying two parallel suits in respect of the same matter in issue. The following conditions are required to be satisfied:-

- a) Matter in issue should be substantially the same in two suits.
- b) Previously instituted suit should be pending in the same Court in which the subsequent suit is brought or in another Court, in India having jurisdiction to grant relief claimed.
- c) Two suits should be between same parties or their representatives and these parties should be litigating in two suits under the same title.

“Directly and substantially in issue” is used in contradiction to “incidentally or collaterally in issue.” Requirement therefore is whole of the subject matter in both the proceedings is identical not one of the many issues.

6. Further also in the case of **National Institute of Mental Health and Neuro Sciences Vs. C. Parameshwara** in Civil Appeal No. 8038 of 2004 (Arising out of SLP (C) No. 228 of 2004), the Supreme Court has held that The cause of action of the two proceedings is distinct and different. The cause of action in filing the said suit is the loss suffered by the appellant on account of the shortage of drugs. On the other hand, in the said writ petition No. 24348/02, the management has challenged the award of the Labour Court granting reinstatement of the respondent. The relevant paragraph of the judgment is reproduced as under:

“In the present case, the appellant had initiated the disciplinary proceedings against the respondent herein on charges of misappropriation of drugs. In the said disciplinary proceedings, the

respondent was found guilty of alleged misappropriation of drugs. On the basis of the findings arrived at in the disciplinary enquiry, the respondent herein was removed. The extent of the loss suffered by the appellant, as found in the disciplinary enquiry, was Rs. 1,79,668.46. Being aggrieved by the order of dismissal, the respondent moved the Labour Court. On 29.10.2001, the Labour Court passed an award setting aside the order of removal dated 12.4.1993. Being aggrieved, the appellant instituted writ petition No. 24348/02. The appellant has also instituted civil suit No. 1732/95 for recovery of the loss suffered by it to the tune of Rs. 1,79,668.46 with interest. Thus, as can be seen from the above facts, both the proceedings operated in different spheres. The subject matter of the two proceedings is entirely distinct and different. The cause of action of the two proceedings is distinct and different. The cause of action in filing the said suit is the loss suffered by the appellant on account of the shortage of drugs. On the other hand, in the said writ petition No. 24348/02, the management has challenged the award of the Labour Court granting reinstatement of the respondent".

7. In view of the above narrations and grounds taken by the Respondent on the applicability of principle of *res sub judice* under Section 10 CPC the Commission observed that since the language used under Section 10 CPC deals with the two suits between the same parties which are pending and involve the same subject matter and same questions, the subsequent suit should be stayed but the same is not satisfied in the instant petition as the Commission is not adjudicating any suit.
8. It is further observed that the Commission is not a trial court whereas it adjudicates the matters filed with it in a summary way.
9. It is further observed that no other forum or court has power to grant relief which the petitioner is claiming from the Commission in the instant petition filed under Section 142 of the Electricity Act, 2003 as also the Commission has no power or jurisdiction to grant any relief claimed by the petitioner in the other civil suit filed with the Civil Court.
10. It is also observed that Section 10 applies only in cases where the whole of the subject matter in both the suits is identical. The key words in Section 10 are "the matter in issue is directly and substantially in issue" in the previous instituted suit. The words "directly and substantially in issue" are used in contra-distinction to the words "incidentally or collaterally in issue". Therefore, Section 10 would apply only if there is identity of the matter in

issue in both the suits, meaning thereby, that the whole of the subject matter in both the proceedings is identical.

11. In regard to the judgments relied upon by the Respondent, it is observed that the same have been passed by the Apex Court/Forum in respect of the adjudicatory functions of the State Commission; not on the point of Section 10 of Code of Civil Procedure, 1908 (Stay of suit). Hence, the same are not applicable in the instant matter.

12. In view of the above, the provisions of Section 10 of CPC cannot be invoked in the present case and no stay can be granted. The Commission has power and jurisdiction to entertain complaints filed under Section 142 of the Electricity Act, 2003 and the same cannot be treated as a subsequent suit in terms of Section 10 CPC.

13. Ordered accordingly.

Sd/-
(J. P. Singh)
Member

Sd/-
(Shyam Wadhera)
Member

Sd/-
(P. D. Sudhakar)
Chairman