

**IN THE COURT OF DR. SHAHABUDDIN : ADDITIONAL
SESSIONS JUDGE, SPECIAL ELECTRICITY COURT, EAST
DISTT., KARKARDOOMA COURTS, DELHI**

PETITION NO. 135/12

CASE I.D. NO. 02402R0330082012

NOOR JAHAN

W/O SH. SALAUDDIN,

R/O K-357, SUNDER NAGRI,

DELHI.PLAINTIFF

VS.

1) B.S.E.S. YPL

THROUGH CHIEF EXECUTIVE OFFICER,

SHAKTI KIRAN BUILDING,

KARKARDOOMA, DELHI

ORDER (22.08.2013)

By ther order, I have to decide pending application of plaintiff filed u/o 39 rules 1 & 2 CPC read with Section 151 CPC which was filed along with main suit for declaration and permanent injunction. The main facts pertaining to this application are to the effect that plaintiff is the owner of property no. K-357, Sunder Nagri, Delhi (in short called as suit property); that an electricity connection was installed in the suit property in the name of Ms. Sakina Begum, who was the previous owner of the said property, vide CRN No. 1260001295; that on 17.09.2004, officials of defendant no. 1 had given an undertaking to install new electricity meter before Consumer Disputes Redressal Forum, North East District, Nand Nagri Delhi but despite that a false and fabricated theft bill in sum of Rs.87,976/- (rupees eighty seven thousand, nine hundred and seventy six only), with due date of payment as 27.10.2004, had been raised against the

plaintiff without any justified reasons and the defendant no. 1 was not entitled to recover the same; that on 29.03.2012, the electricity meter at the suit property had burnt due to sudden sparks and plaintiff made complaint to this effect to the defendant no. 1; that plaintiff gave application for changing the burnt meter but she was asked to pay total amount of Rs.87,976/- (rupees eighty seven thousand, nine hundred and seventy six on alongwith late payment surcharge of Rs.1,17,448/- (rupees one lakh, seventeen thousand, four hundred and forty eight only) before seeking change of such meter failing which plaintiff was threatened of disconnection of electricity at the suit property; that ultimately an outstanding theft bill in sum of Rs. 2,14,662/- (rupees two lakhs, fourteen thousand, six hundred and sixty two) was raised against the plaintiff by the defendant no. 1 without any justified reasons; that due to repeated requests of the plaintiff, the defendants have installed new electricity meter no. 14289632 at the suit property on 29.08.2012 and the plaintiff has been making regular payments of the average bills raised thereafter but despite that constant threats are extended from the defendants for disconnection of electricity if outstanding electricity dues are not paid by the plaintiff to defendant no. 1; that plaintiff was not liable to make payment of the said theft bill to the defendant no. 1; that a prima facie case lies in favour of the plaintiff; that she would suffer great inconvenience if electricity connection is disconnected at the suit property before the final disposal of this case on merits; that balance of convenience also lies in favour of the plaintiff. In the end, a prayer has been made for directing the defendant company and its officials not to disconnect the electricity connection at the suit property till final disposal of this case on merits. Contentions of this application have been strongly opposed by the defendants in the joint reply filed to it on behalf of the defendants alongwith a joint written statement (in short W.S.) filed on record on behalf of both the defendants. The main submissions on behalf of both the defendants

in rebuttal to this application of plaintiff are to the effect, interalia, that the present suit of the plaintiff was liable to be dismissed for not showing any cause of action; that plaintiff has not approached this court with clean hands; that the inspection was carried out at the suit property as per rules on due date and time by the inspecting team of the defendant no. 1 and a direct theft of electricity was detected at the suit property; that on the basis of inspection, the impugned theft bill in sum of Rs. 2,14,662/- (rupees two lakhs, fourteen thousand, six hundred and sixty two), including late payment surcharge on actual theft bill in sum of Rs. 87,976/- (rupees eighty seven thousand, nine hundred and seventy six only), as per record, has been rightly raised against the plaintiff and she is liable to make payment of the same; that no prime facie case lies in her favour; that no inconvenience would be suffered by the plaintiff for non payment of the impugned bill; that no balance of convenience lies in favour of the plaintiff; that plaintiff is not entitled for any relief in the given facts and circumstances of her case. Lastly, a prayer was made to dismiss the application of the plaintiff. I heard both sides on this application and perused the case file minutely. Before proceeding further, I refer to the provisions of Order 39 rules 1 & 2 CPC read with Section 151 CPC which are to the following effect:“ORDER XXXIX

TEMPORARY INJUNCTIONS

1. Cases in which temporary injunction may be granted.- Where in any suit it is proved by affidavit or otherwise-(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or (b) that the defendant threatens, or intends, to remove or dispose of her property with a view to (defrauding) her creditors, (c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose

of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property (or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit) as the Court thinks fit, until the disposal of the suit or until further orders.

2. Injunction to restrain repetition or continuance of breach. - (1) In any suit for restraining the defendant from committing a breach of otherwise, as the Court thinks fit.”

“S.151:- Saving of inherent powers of Court.- Nothing in ther Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court.” In my considered opinion, while deciding such application, the three main factors to be taken into consideration are as to whether there is a prima facie case in favour of the plaintiff; as to whether the balance of convenience lies in favour of the plaintiff and as to whether the plaintiff would suffer an irreparable loss if temporary injunction is not granted in favour of plaintiff till final disposal of the case on merits. Now coming to the case under discussion, I am of the considered view that electricity is the basic need of every human being in the present day circumstances and hence a prima-facie case is made out in favour of the plaintiff for having the facility of electricity at the suit property till final disposal of this case on merits. The plaintiff is likely to suffer great hardships, if electricity is disconnected at the suit property and in that way, the balance of convenience also lies in favour of the plaintiff. The plaintiff is likely to suffer irreparable losses, if electricity is disconnected at the su contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or

injury of a like kind arising out of the same contract or relating to the same property or right. (2)

The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or property at this stage. However, the contentions of defendants also can not be completely ignored even at this stage. The defendant no. 1 has reportedly raised a theft bill of substantial amount against the plaintiff and the plaintiff has reportedly not made payment of the same to the defendant no. 1 so far. In view of the above mentioned facts and circumstances of the case and also in view of the above mentioned discussion, I allow the application of plaintiff U/o 39 rules 1 & 2 CPC read with Section 151 CPC and restrain the defendant no. 1 alongwith its officials from disconnecting the supply of electricity at the suit property of the plaintiff passing through new electricity meter no. 14289632 installed at the suit property till the final disposal of this case on merits but with a condition that plaintiff shall deposit 70% (sixty five per cent) of the impugned bill, which is reportedly to the extent of Rs. 2,14,662/- (rupees two lakhs, fourteen thousand, six hundred and sixty two), including late payment surcharge on actual theft bill in sum of Rs. 87,976/- (rupees eighty seven thousand, nine hundred and seventy six only), as per record, to the defendant no. 1 within 30 (thirty) days from today and show the receipt of the payment of the same to this court on the next date of hearing. Such payment to be made by the plaintiff to the defendant no. 1 without any prejudice to the rights and contentions of both the sides to be decided later on by this court after inviting evidence from both the sides. It is further made clear that plaintiff shall complete necessary commercial formalities at her own cost and responsibility in order to have the interim protection in her favour to the above effect, if need be. If the plaintiff fails to make such payment within 30 days from today, then the interim protection given in her favour by this order shall stand automatically cancelled by virtue of this order. Nothing written/said in this order shall be

deemed to be an expression of opinion on the merits of this case. Hence, the application of the plaintiff under discussion stands decided in view of the above order. ANNOUNCED IN THE OPEN COURT TODAY ON 22nd AUGUST, 2013

(DR. SHAHABUDDIN)

ASJ/ SPECIAL ELECTRICITY COURT

EAST DISTT./ KKD COURTS/DELHI

C.C. NO. 135/12, NOOR JAHAN VS. BSES (YPL)