

Assam Schedule VII, Form No.132

HIGH COURT FORM NO.(J)2
HEADING OF JUDGMENT OF APPEAL/CASE

DISTRICT : TINSUKIA

IN THE COURT OF CIVIL JUDGE, TINSUKIA

Present: Sri Kiran Lal Baishnab, A.J.S.

Civil Judge, Tinsukia

Misc. Appeal No.1 of 2019

Friday, 8th day of February, 2019

Sri Reshma Begum.....Appellant

-Vs-

1) Md. Hafizur Rahman,

2) Assam Power Distribution Company Ltd.....Respondents

This suit/case coming on this day (or having been heard) on 06.02.2019 in presence of

Smt. U. Verma, Advocate for the Appellant;

Mr. B.K. Kejriwal, Advocate for the Respondent No.1

And

None appeared for the Respondent No.2

And having stood for consideration to this day, the Court delivered the following Judgment

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J U D G M E N T

1. The present appeal has been preferred by the appellant/petitioner on being dissatisfied with the Order dated 10.01.2019 passed by learned Munsiff, Margherita in Misc.(J) Case No.1 of 2019, whereby the learned Trial Court rejected the prayer for grant of ex parte ad-interim injunction against the respondents/OPs.
2. Upon admission of the appeal for hearing, notice was issued to the respondent and the original case record of Misc.(J) Case No.1 of 2019 and Title Suit No.2 of 2019 was called for. The respondent No.1 contested the appeal and the respondent No.2 failed to appear inspite of receipt of Notice. The appeal was heard in absence of the record of the Trial Court on submission of the parties that the same is not required, as the certified copies of the relevant portion of the record is filed with the appeal memo.
3. In order to decide the appeal, let me narrate in brief the facts leading to this appeal.

The facts as stated in the petition in brief is that the appellant/petitioner had entered into an oral agreement for sale of the suit property with the respondent No.1 in the year 2004 and since then, she has been in possession of the same being assured by the defendant No.1 to execute a registered Sale Deed in her favour in respect of the suit property. It is further averred that the petitioner has paid the full sale consideration of Rs.1,30,000/- to the respondent No.1 but he failed to fulfil his part of the contract. Rather, the respondent No.1 tried to evict her and in view of his attempt to evict the appellant, the respondent No.1 got the electricity connection of the suit premises disconnected through the respondent No.2. It is now averred by the appellant/petitioner that ultimately, the respondent No.1 filed suit for her eviction against her husband before this Court being Title Suit No.75 of 2018 and thereby found her right over the suit property being clouded and as such filed the Title Suit No.2 of 2019 before the Court of learned Munsiff, Margherita for specific performance of the agreement for sale and along with the said Title Suit filed a petition for injunction under Order XXXIX Rule 1 and 2 r/w Section 151 of the CPC which was registered as Misc.(J) case No.1 of 2019 by the said

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Court and after hearing the petitioner, the learned Trial Court rejected her prayer for grant of ex parte ad interim injunction vide the impugned order dated 10.01.2019. Being aggrieved by the said order, the appellant/petitioner came up with the present appeal against the impugned Order dated 10.01.2019.

4. After hearing the petitioner/appellant, learned Munsiff, Margherita by the Order dated 10.01.2019 was pleased to reject the prayer for grant of ex parte ad interim injunction. On being aggrieved and dissatisfied with the impugned order, the Appellant/petitioner assailed the order on the following grounds :-

(i) For that the impugned order dated 10.01.2019 passed by the learned Munsiff, Margherita in Misc.(J) Case No.1 of 2019 is bad in law and as such, liable to be set aside.

And

(ii) For that the Trial Court failed to appreciate the documents filed along with the petition and the submission made by the appellant, whereby it is crystal clear that the petitioner has been residing in the suit premises since 2004 enjoying electricity connection therein and electricity being an essential commodity for a house, the Trial Court has denied justice to the appellant by not granting mandatory injunction for restoration of the electricity connection in the suit premises.

5. After hearing the learned Advocates for the appellant and the respondent No.1 and upon going through the case record including the memorandum of appeal, I am of the considered opinion that following are the points for determination in the present appeal.

6. **Points for Determination:-**

(i) Whether the learned Trial Court erred by not granting ex parte ad-interim injunction to the petitioner and thereby denied justice to her?

And

(ii) Whether the impugned order dated 10.01.2019 passed by learned Munsiff, Margherita in Misc.(J) Case No.1 of 2019 is not maintainable in law and as such liable to be set aside?

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7. Decision & reasons therefor :

7.1 Point No.(i):

Whether the learned Trial Court erred by not granting ex parte ad-interim injunction to the petitioner and thereby denied justice to her?

7.1.1 The Appellant contended that the learned Trial Court failed to appreciate the materials on record in proper perspective and thus, erred in rejecting the prayer for grant of ex parte ad-interim injunction.

7.1.2 The learned Advocate for the petitioner/Appellant pointed out the fact that the learned Trial Court neither had considered the urgency nor did it look for the necessary ingredients for grant of injunction. Rather, the Learned Trial Court simply held that as it appears from the pleadings of the plaintiff that Opposite Party No.1 already filed a Title Suit Vide No. TS 75/2018 before this Court and hence, found it fit to hear the other side before passing any restraining order and as such, committed grave error in rejecting grant of ex parte ad-interim injunction.

7.1.3 The learned Advocate for the appellant argued that possession of the petitioner/appellant is admitted by the respondent No.1 and as such, even if she is considered to be a trespasser as pleaded by the respondent No.1, his possession cannot be interfered except in due process of law and hence, argued that the interim ex parte mandatory injunction granted by this Court may be made absolute and further be pleased to grant the prohibitory injunction as prayed by the petitioner in the injunction petition.

7.1.4 The learned Advocate for the appellant also argued that the respondent No.1 though claim, that there was no agreement for sale of the suit properties by and between the appellant and the respondent No.1, it is to be decided in the suit and the same cannot be considered while deciding existence of Prima Facie Case in this appeal.

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7.1.5 The learned Advocate for the appellant also submitted that the respondent No.1 though pleaded that the plaintiff is not entitled to occupation of the suit premises, it is an admitted fact that the plaintiff was permitted to reside in the suit premises by the respondent No.1 and hence, now the possession of the plaintiff/petitioner cannot be interfered except in due process of law and accordingly, she submitted that the appellant has a strong prima-facie case in her favour.

7.1.6 The learned Advocate for the respondent No.1 on the other hand came up with two petitions to vacate the order of ex parte mandatory injunction granted by this Court in the present appeal and argued that the learned Trial Court rightly rejected the prayer for grant of ex parte ad-interim injunction as there is no Prima facie case in favour of the Petitioner and as such, the injunction petition as a whole being devoid of merit, the Appeal deserves to be dismissed.

7.1.7 The learned Advocate for the respondent No.1 submitted that the prayer for injunction made by the appellant deserves to be rejected only on the ground that the petitioner does not have any Prima Facie Case in her favour and ex parte order already granted also deserves to be vacated due to non-compliance of provision under Order XXXIX Rule 3 of the Civil Procedure Code.

7.1.8 The learned Advocate for the respondent No.1 submitted that Order XXXIX Rule 3 of the Civil Procedure Code provides that injunction should not be granted without hearing the opposite party and the Proviso attached to the said Rule gives an exception in case when the Court finds that by notifying the opposite party, the object of granting the injunction would be defeated by delay and in such case of grant of ex parte injunction, the petitioner is legally bound to deliver to the opposite party a copy of the petition, a copy of the plaint and the copies of documents on which the petitioner relies and

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also to file an affidavit before the Court stating that the said copies had been delivered and in the instant case, the petitioner failed to comply with the said conditions and hence, the ex parte order deserves to be vacated.

7.1.9 In this respect, the learned Advocate of the respondent No.1 placed reliance upon the Judgment of Hon'ble Bombay High Court in the case of **Rajendraprasad R. Singh –Vs- The Municipal Corporation of Gr. Bombay reported in AIR 2003 Bom 392**, whereby it is held that "*a further safeguard is introduced requiring the person claiming ex parte injunction to send to the opposite party by registered post immediately after the order of injunction, a copy of the injunction application together with the affidavit in support of the injunction application, copy of the plaint and copies of documents on which he relies.*"

7.1.10 The learned Advocate for the appellant submitted that she had served the Notice along with the required documents and the same is implied from the fact that the learned Advocate for the respondent had read out the plaint of Title Suit No.2 of 2019 thereby showing that the same was served upon him and it also implies that the other enclosed documents were also delivered to him.

7.1.11 As to non-filing of the affidavit as agitated by the learned Advocate for the respondent No.1, I am of the considered opinion that it is a direction to the Court to require the petitioner to file an affidavit but the ex parte order passed in this case does not contain any such direction and hence, this agitation is not acceptable.

7.1.12 The respondent No.1 also prayed for vacating the ex parte order on the ground that there is no prima-facie case and also because there is no urgency and in this respect, the learned Advocate for the respondent No.1 submitted in length challenging the injunction petition as a whole.

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7.1.13 The learned Advocate for the respondent No.1 submitted that the electricity was admittedly disconnected in the month of March, 2018 and the present suit being filed in January, 2019, there is apparently acquiescence from the side of the petitioner to the said disconnection and hence, there is no necessity or urgency for grant of ex parte mandatory injunction.

7.1.14 In this respect, the learned Advocate for the appellant/petitioner submitted that the delay has been duly explained by the petitioner in her plaint as well as in the injunction petition and hence, the acquiescence as pleaded by the opposite party is not acceptable.

7.1.15 The learned Advocate for the appellant submitted that the ex parte order of mandatory injunction is against the respondent No.2 who did not object to the direction rather, they complied with the direction by restoring the electricity connection immediately and as such, the present respondent has no right to pray for vacating the ex parte mandatory injunction which is not against him and in this respect, she placed reliance upon the Judgment of Hon'ble Punjab and Haryana High Court rendered in the case of **Harbans Singh – Vs- Jaswinder Singh and Others reported in 2013 SCC OnLine P & H 26742**, wherein it is held that *"As far as the landlord is concerned, he has no interest in restoration of the electricity supply to the demised premises, the payment of which is to be made by the tenant as the electricity connection installed in the premises is meant for the tenant. But inspite of that, the landlord has filed the instant revision petition for setting aside the aforesaid interim order which has been passed against the electricity department and not against the landlord. In my opinion, in view of Section 10 of the East Punjab Urban Rent Restriction Act, 1949, the tenant can not be denied the basic amenity of electricity and the Appellate Court has rightly directed the Electricity Department to restore the electricity*

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connection on payment of all the charges by the plaintiff-tenant. In these facts, I do not find any ground to interfere in the impugned order passed by the Appellate Court."

7.1.16 The learned Advocate for the respondent No.1 argued that the learned Trial Court has rightly rejected the prayer for grant of ex parte injunction as because it is settled law that mandatory injunction can not be granted without hearing the other side and in this respect, he relied upon the Judgment of Hon'ble Madras High Court delivered in the case of **Palaniyammal and Others –Vs- Sellappan and Another reported in 2004 SCC OnLine Mad 487**, wherein it is held that "*it is well settled law that mandatory injunction can be granted only after full trial test it would amount deciding the very suit in the petition.*"

7.1.17 I have perused the Judgment which relates to a case of mandatory injunction directing the defendant to remove blockade which is the main relief sought in the original suit also, which is not the case here. Moreover, removal of blockade and restoration of electricity can not be compared and hence, I do not find the said Judgment applicable to the case at hand.

7.1.18 The learned Advocate of the respondent No.1 also placed reliance upon the Judgment of Hon'ble Bombay High Court in the case of **Rajendraprasad R. Singh –Vs- The Municipal Corporation of Gr. Bombay reported in AIR 2003 Bom 392** challenging the maintainability of the present appeal on the ground that no appeal shall lie against any order passed by any Court or any authority against an order declining to grant ad-interim injunction.

7.1.19 As the present appeal is against an order of rejection of grant of ex parte ad-interim injunction, let us mention here the law with regard to the power and role of the Appellate Court in dealing with an order of injunction.

7.1.20 In a reported case, **Radhabari Tea Co.(P) Ltd. –Vs- Mridul Kumar Bhattacharjee & Others reported in**

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(2010) 2 GLR 231, Hon'ble Gauhati High Court observed-
 ".....while the Appellate Court will not, ordinarily substitute its own discretion in place of that of the Trial Court, yet where discretion is shown to have been exercised arbitrarily, capriciously or by ignoring settled principles of law regulating grant or refusal of interlocutory application, the Appellate Court is bound to interfere for non-interference with such exercise of powers by the trial Court which, if allowed to remain on record, cause serious miscarriage of justice."

7.1.21 So, I find the present appeal maintainable though the jurisdiction of the Appellate Court in interfering with the exercise of discretion by the learned Trial Court in matter of injunction is limited.

7.1.22 Arguing in support of the grant of ex parte mandatory injunction, the learned Advocate for the appellant submitted that electricity being an essential part of life restoration of the same is wholly justified and as such, it was wrong on the part of the Trial Court to deny the said relief to the appellant.

7.1.23 In support of her submission, the learned Advocate for the appellant placed reliance upon the Judgment of Hon'ble Chattisgarh High Court in the case of **N.R. Sharma –Vs- Chattisgarh Power Distribution Company Ltd. reported in 2018 SCC OnLine Chh 74**, whereby the Hon'ble High Court held that *"Access to electricity should be construed as a human right, of course, to the requirements to be satisfied under the electricity laws. Denial of the same, even upon satisfying the requirements would amount to violation of human rights."*

7.1.24 In the aforesaid Judgment, the Hon'ble Chattisgarh High Court had relied upon the Judgment of Hon'ble Supreme Court of India rendered in the case of **Chameli Singh and Others –Vs- State of U.P. and Another reported in (1996) 2 SCC 549**, where the Hon'ble Supreme Court of India discussed the components of right to

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live and specifically observed that the right to life includes the right to live with human dignity and further observed that right to live guaranteed in any civilised society implies the right to shelter and while discussing the right to shelter, it has been held that right to shelter includes electricity which is undisputedly an essential service to the shelter for human being. It also noted that the Madras High Court, District, Tiruvannamalai, had held that access to electricity supply should also be considered as right to life in terms of Article 21 of the Constitution.

7.1.25 The learned Advocate for the appellant also placed reliance upon the Judgment of Hon'ble Himachal Pradesh High Court rendered in the case of **Madan Lal –Vs- State of Himachal Pradesh reported in 2018 SCC OnLine HP 1495**, whereby the Hon'ble High Court stated that the basic amenities of water and electricity are *an integral of Right to Life within the meaning of Article 21 of the Constitution of India and hence, it calls for immediate action. Thus, till the title dispute remains pending for that considerable period the petitioner shall be granted the same on subject to their payment of requisite charges and shall remain purely an interim and ad hoc measure till the title dispute was decided.*

7.1.26 In view of the submissions made by both the sides and the Ruling cited, I have meticulously scrutinized the case record and found as follows :-

7.1.27 The present appeal is not against the final order of injunction but only challenging the rejection of grant of ex parte injunction and hence, I am of the considered opinion that the scope for discussion on the merit of the case is very limited in the present facts and circumstances.

7.1.28 The case record as well as the pleading of the appellant shows that there are two parts of the prayer, firstly a prohibitory injunction restraining the respondent No.1 from

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disturbing the peaceful possession of the suit premises by the appellant and secondly, a mandatory injunction directing the respondent No.2 to restore electricity connection in the suit premises.

7.1.29 The first prayer does not have any urgency in my considered opinion and as such, I am of the considered opinion that the learned Trial Court has rightly rejected grant of ex parte injunction in that respect but in respect of the second part of the prayer, there is not only urgency but even violation of constitutional right and hence, the second part deserves to be discussed in view of the circumstances and the precedents cited by either of the parties.

7.1.30 Firstly, let's consider the objection raised by the respondent No.1 as to the lack of prima facie case of the appellant.

7.1.31 It is the case of the appellant that she had an Agreement for Sale of the suit premises in her favour with the respondent No.1 and had been in possession of the suit premises since the year 2004 which is confronted by the respondent No.1 through its pleadings of Title Suit No.75 of 2018, whereby he pleads that the appellant being a permissive occupant under him since the year 2016, wrongfully refused to vacate the same.

7.1.32 In support of her claim, that there exist a prima facie case in favour of the appellant, the learned Advocate for the appellant place reliance upon the Judgment of Hon'ble Supreme Court of India rendered in the case of **Rame Gowda (Dead) by LRs. –Vs- M. Varadappa Naidu (Dead) by LRs. reported in (2004) 1 SCC 769**, whereby the Hon'ble Apex Court held that it is not necessary for the person claiming injunction to prove his title to the suit land. It would suffice if he proves that he was the lawful possession of the same and that his possession was invaded or threatened to be invaded by a person who has no title thereof.

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7.1.33 In the above backdrop of the matter even if we consider that the respondent No.1 is a permissive occupant, she is entitled to use and enjoyment of electricity in the suit premises which she had been using since long. Thus, in respect of restoration of electricity connection, there is a prima facie case in favour of the petitioner/appellant.

7.1.34 Further, as the appeal relates to injunction, I am of the considered opinion that the balance of convenience and irreparable loss needs to be considered and both these points are also found in favour of the appellant in respect of restoration of electricity connection as because if electricity is not restored, the day to day life of the appellant will be full of difficulties whereas if electricity is restored, the respondent No.1 would not have any problem, more so, when the appellant agrees to pay the charges herself.

1.1.1 In respect of grant of mandatory injunction for restoration of electricity connection, I find it pertinent to mention below two Judgments of the Hon'ble Gauhati High Court given in respect of restoration of electricity connection through injunction for better understanding of the right involved and the necessity to pass direction without any delay.

7.1.35 In the case of **Md. Hasan Imam Abbhasi –Vs- Sri Padmadhar Deka and Others reported in 1988 SCC OnLine Gau 46**, the Hon'ble Gauhati High Court held that *"on perusal of the impugned judgment, it appears that the appellate Court failed to appreciate that the electricity was essential service for the tenant and the landlord had no objection for having that facility by the tenant at his own arrangement and costs. The S.D.O., Electricity Board ought to have given a hearing or notice on the petition before disconnecting the electric line. The petitioner was the actual tenant/occupier of the house where disconnection occurred. So, he had cause of action for the suit.*

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Considering the service to be essential, learned Munsiff exercised discretion reasonably to grant ad-interim mandatory injunction which in his opinion was proper under the circumstances."

7.1.36 Similarly, in the case of **Ramjilal Sharma And Another –Vs- Purushottam Lal Sharma (Huf)** reported in **AIR 1993 Gau 63**, the Hon'ble Gauhati High Court held as follows :-

"This Court held that electricity is an essential item. While approving the decisions of the Courts below this Court held that when the need was urgent, the process of the Court should respond quickly to ensure justice. This Court also held that disconnection of a tenant's electric energy was not merely a wrong but a wrong of grievous nature and in such cases the Court should issue injunction.

*Similarly, in **Ram Chandra Bhagwan Das represented by Shri Bhagwan Das Agarwala v. Pawan Kumar Agarwalla, (1983) 1 GLR 443** this Court held that there is no bar under Section 39 of the Specific Relief Act for granting mandatory injunction. On the other hand, it provides, to prevent breach of obligation and also to compel performance of a requisite act, the Court in its discretion may grant injunction. It was also held that in a case of this nature a mandatory temporary injunction can be granted to restore the supply of essential services like water supply and electricity."*

7.1.37 Thus, in view of the facts and circumstances of the present case and the precedents discussed above, I am of the considered opinion that the electricity being one of the essential services of day to day life of human being in the present day context, the petitioner is entitled to grant of ex parte mandatory injunction for restoration of electricity and hence, I am of the considered opinion that the learned Trial Court erred by not

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granting ex parte ad-interim injunction to the petitioner and thereby denied justice to her only in respect of restoration of electricity connection but did not commit any error by rejecting grant of ex parte prohibitory injunction as prayed by the petitioner.

7.1.38 Accordingly, the present point for determination is decided partially in affirmative.

7.2 Point No.(ii) :

Whether the impugned order dated 10.01.2019 passed by learned Munsiff, Margherita in Misc.(J) Case No.1 of 2019 is not maintainable in law and as such liable to be set aside?

7.2.1 The learned Advocate for the appellant argued vehemently that the impugned order passed by the learned Trial Court without proper discussion and consideration of all the materials on record is not maintainable in law and as such, liable to be set aside whereas the learned Advocate appearing for the respondent No.1 argued that the learned Trial Court rightly rejected the prayer for grant of ex parte injunction and as such, the impugned order does not deserve any interference from this Court.

7.2.2 Considering the facts as discussed in the foregoing point for determination, I find that the appellant successfully proved the urgency involved in the matter and also the fact that the right to restoration of electricity in the suit premises admittedly, occupied by her is one of the ingredient of right to life guaranteed by the Constitution of India and as such, she successfully proved that it is a fit case to grant ex parte ad-interim mandatory injunction in favour of the appellant directing the respondent No.2 to restore the electricity connection in the suit premises but failed to prove any such urgency in respect of grant of ex parte prohibitory injunction as prayed for.

7.2.3 Hence, In view of the partial affirmative result of the point No.1 above and considering the fact that right to electricity is a

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part of right to life, I am of the considered opinion that the impugned order of the learned Trial Court deserves interference only to the extent of grant of ex parte mandatory injunction for restoration of electricity in the suit premises.

7.2.4 Accordingly, I am of the considered opinion that the impugned order dated 10.01.2019 passed by learned Munsiff, Margherita in Misc.(J) Case No.1 of 2019 is not maintainable in law, as a whole and as such liable to be set aside.

7.2.5 Accordingly, the present point for determination is also partially decided in favour of the appellant/petitioner.

ORDER

In view of the above discussions it is held that the learned Trial Court committed error in rejecting the prayer for grant of ex parte mandatory injunction against the respondent No.2 but has rightly rejected the prayer for grant of ex parte prohibitory injunction against the respondent No.1 vide the impugned order dated 10.01.2019 and thus, there is merit in the appeal only to the extent of restoration of electricity and consequently, the appeal is allowed partially and the impugned order dated 10.01.2019 passed by the Learned Munsiff, Margherita is hereby set aside and is accordingly modified to the extent that the petitioner is entitled to grant of mandatory injunction even without hearing the opposite parties in Misc.(J) Case No.1 of 2019.

Accordingly, **the ex parte mandatory injunction granted against the respondent No.2 by this Court vide Order dated 21.01.2019 in the present appeal is made absolute till the disposal of Misc.(J) Case No.1 of 2019.**

The learned Trial Court is directed to dispose of the injunction petition on merit after hearing both the sides

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without being influenced by the observations made by this Court in the present appeal as the present order of grant of mandatory injunction is made purely on the basis of urgency as well as the necessity of the matter involved.

The appeal is accordingly allowed partially on contest without any cost to either side.

Both the parties are directed to appear before the learned Trial Court on **21.02.2019**.

8. Given under my hand and seal of this Court on this 8th day of February, 2019.

(Sri Kiran Lal Baishnab),
Civil Judge, Tinsukia.

Dictated & Corrected by me

(Sri Kiran Lal Baishnab),
Civil Judge, Tinsukia