

**Civil Revision**

**PRESENT: THE HON'BLE MR JUSTICE KALIDAS MUKHERJEE**

**Judgment on: 29.01.2010.**

**C.O. NO. 3691 OF 2008**

**Kallol Kumar Das**

**Vs.**

**Kanan Bala Das & Ors.**

**Point:**

**New Connection:** A tenant against whom a suit for eviction is pending whether entitled to get new connection-Electricity Act, 2003-S.43

**Fact:** The defendant/petitioner filed the instant Revisional application assailing the order passed by Ld. Civil Judge in an Ejectment Suit rejecting the petition under Section 151 of Code of Civil Procedure for an order restraining the landlords/plaintiffs for causing any interference with the matter of installation of electric meter in the name of the defendant. The Ld. Court below rejected the prayer of the defendant/petitioner under Section 151 Civil Procedure Code holding that the ground stated in the petition was not a firm ground.

Setting aside the order passed by the Ld. Court below and allowing the Revisional application the High Court,

**Held:** The suit was instituted for ejectment describing the defendant as tenant. Until and unless the defendant is evicted in accordance with the procedure established by law, he is a lawful occupier of the premises and supply of electricity being an essential service, the defendant/petitioner herein is entitled to apply for having a separate meter on completion of necessary formalities and the C.E.S.C. authority is under obligation to supply it. The plaintiffs/landlords have no

authority to oppose the installation of a separate meter in the tenanted premises.

(Paragraph – 8)

Cases cited: 1. (2008)3 WBLR (Cal) 413 [Santosh Jaiswal Vs. CESC Limited & Ors.]

2. 2009(4) Indian Civil Cases 502 [‘Fashion’ Proprietor Aswani Kumar Maity Vs. West Bengal State Electricity Distribution Co. Ltd. & Ors.]

For the petitioner: Mr. Sivo Prasad Ghosh

Mr. Swapan Chakraborty

Mr. Biswajit Sarkar

For the O.Ps. : None appeared

The Court: 1. This is an application under Article 227 of the Constitution of India assailing the order dated 30.6.2008 passed by learned Civil Judge (Jr. Division), Second Court, Sealdah in Ejectment Suit No. 320 of 2006 rejecting the petition dated 03.5.2008 under Section 151 of Code of Civil Procedure.

2. The plaintiff being the landlord instituted the suit against the defendant/petitioner herein praying for ejectment on the ground of reasonable requirement for own use and occupation and that the defendant was a defaulter. In the instant application under Article 227 of the Constitution of India the defendant/petitioner herein has contended that the landlord previously suspended the supply of water in the tenanted premises and by the next step the landlord cut off the electric connection in the tenanted portion. The original owner, since deceased, at the time of induction permitted the petitioner to take electricity for consumption. The petitioner thereafter applied before the CESC and when CESC technicians came to inspect the premises for installation of a new meter in the name of the petitioner, the plaintiffs/landlords did not allow them to inspect the spot. The petitioner has been facing much inconvenience and hardship for want of electricity and for that reason filed an application before the learned Court below

for an order restraining the landlords/plaintiffs for causing any interference with the matter of installation of electric meter in the name of the defendant for the ends of justice.

3. The learned Court below after hearing both sides rejected the prayer under Section 151 CPC holding that the ground stated in the petition was not a firm ground. Being aggrieved by the said order, the defendant has preferred the instant application under Article 227 of the Constitution of India.

4. None appeared on behalf of the respondent.

5. The learned Counsel for the petitioner submits that before filing of the written statement in the suit, the supply of electricity was cut off by the landlord. The learned Counsel submits that previously from the landlord's meter the tenant used to get electricity and the tenant is now in the dark for want of electricity. The learned Counsel has referred to and cited the decision reported in **(2008)3 WBLR (Cal) 413 [Santosh Jaiswal Vs. CESC Limited & Ors.] and 2009(4) Indian Civil Cases 502 [‘Fashion’ Proprietor Aswani Kumar Maity Vs. West Bengal State Electricity Distribution Co. Ltd. & Ors.]**

6. It appears from the impugned order that in the letter written to the District Engineer, Calcutta, North District no specific allegation of resistance by the plaintiff in respect of installation of meter was brought by the defendant and, as such, the learned Court below held that there was no corroboration. On this ground the learned Court below rejected the application under Section 151 C.P.C. In the case of Santosh Jaiswal Vs. C.E.S.C. Ltd. & Ors. (Supra) it has been held as follows:- *“16. The word occupier in Section 43(1) of the new Act has not been defined therein. In its decision in Industrial Suppliers (P) Ltd. V. Union of India reported in AIR 1980 SC 1858, the Apex Court has held that in the legal sense an occupier is a person in actual possession.”*

*“22. In the present case, the petitioner has claimed to be an occupier of the premises in question and has sought to substantiate his occupation by annexing telephone bill and voter's identity card.”*

7. In the case of 'Fashion' Proprietor Aswani Kumar Maity Vs. West Bengal State Electricity Distribution Co. Ltd. & Ors (Supra). it has been held that the tenant cannot be denied an essential utility as electricity. The observation of the learned Single Judge in the said decision is quoted herein:-

*“13. Section 43 of the Act makes it incumbent on a licensee to supply electricity to an owner or occupier of any premises. It is, probably, inappropriate to compare section 43 of the present Act with section 12(6) of the previous Act. The definition of “occupier” in section 12(6) of the previous Act was restricted to section 12 of the said Act. Section 12 of the previous Act operated in a different field and is not comparable with Section 43 of the present Act. Sub-section (6) was introduced into the 1910 Act by an amendment of 1959.”*

*“14. If the law of the land provides that a person in possession of any premises may not be dispossessed therefrom except in accordance with law, it is implicit that the possession of the person is protected till such time that an appropriate forum holds otherwise and the person is removed from the premises under due process of law. It would then defy reason to suggest that such person can continue to be in possession but be denied an essential utility as electricity which is within the broad sweep of the right to life guaranteed under Article 21 of the Constitution.”*

8. The suit was instituted for ejectment describing the defendant as tenant. Until and unless the defendant is evicted in accordance with the procedure established by law, he is a lawful occupier of the premises and supply of electricity being an essential service, the defendant/petitioner herein is entitled to apply for having a separate meter on completion of necessary formalities and the C.E.S.C. authority is under obligation to supply it. The plaintiffs/landlords have no authority to oppose the installation of a separate meter in the tenanted premises. The order of rejection of the prayer made in the application under Section 151 C.P.C. is not supported by cogent and sound reason. The learned Court below erred in law necessitating thereby interference by this Court on the application under Article

227 of the Constitution of India. The impugned order is, therefore, set aside. The application under Section 151 of the C.P.C. filed by the defendant/petitioner herein is allowed. The plaintiffs/landlords are restrained from interfering with the matter of installation of electric meter in the name of the defendant in the tenanted premises.

9. There will be no order as to costs.

10. Let a copy of this order be sent to the learned Court below immediately.

11. Urgent Photostat certified copy, if applied for, be handed over to this parties as early as possible.

**(Kalidas Mukherjee, J.)**