

W. B. State Electricity Board

Vs

Fakir Chand Rice Mills and Others

Civil Appeal No. 4720 of 1996

(K. Ramaswamy, S. Saghir Ahmed JJ)

27.02.1996

ORDER

1. Mr A.D. Sikri, the learned counsel accepts notice on behalf of the respondents. We have heard the counsel for the parties.

2. Leave granted.

3. As rightly pointed out by the counsel for the respondents, it is a discretionary order. The discretion would also be properly exercised by the courts below when dealing with the points in controversy. A demand of Rs 28,68,264.06 was made on the allegation that there were pilferages in the meter reading of the electrical energy supplied to the respondents. In a suit by the respondents for supply of energy to the respondents, the trial court directed payment of Rs 2,60,000 and odd. On appeal, it was confirmed. When it was carried in revision, the High Court in CO No. 2714 of 1995 modified the order and directed the respondents to deposit a sum of Rs 5,60,000. The this appeal by special leave.

4. A demand notice for Rs 28 lakhs and odd having been issued, the question is : whether the court was right in directing ultimately payment of Rs 5,60,000 ? The High Court does not appear to have addressed itself to the questions. It simply repeated that it was a discretionary order passed by the courts below directing payment of Rs 2.60 lakhs and at the same time directed the respondents to deposit Rs 5,60,000 without adjudicating the matter. Normally, in matters of money claim, at least half of the amount would be directed to be deposited. In the situation obtaining in this case, when the appellant is obligated to supply electrical energy to the respondents, an equal obligation has to be cast on the respondents to pay the amount subject to determination of controversy in the suit. Under these circumstances, the respondents are directed to deposit a sum of Rs 12 lakhs within a period of two months from today. If the amount of Rs 5,60,000 has already been deposited, the same may be given credit for the payment and the balance be paid within the aforesaid period.

5. The appeal is accordingly disposed of. No costs.