

ORDER

Misc. (J) 44/13

08-10-2013 :

Parties are represented. Order arises out of petition No. 1568/13 filed under section 151 of CPC with a prayer to direct the OP/tenants to pay the arrear electrical charges of Rs. 12800/- & further to direct him to pay the electrical charges regularly & promptly.

Petitioner's case in brief is that in Misc (j) case No 36/11, filed under section 7 of Assam Urban Areas Rent Control Act,1972 by present O.P , petitioners were directed to restore electricity supply to the tenanted premises .

Against the order present petitioners preferred appeal in the court of Hon'ble Civil Judge, Jorhat being Misc(A) 11/11 wherein appeal was dismissed. Thereafter applicant preferred revision petition before the Hon'ble High Court and High Court vide order dtd 11-6-13 in CRP no 220/2013 directed the applicants to restore the electrical connection to the tenanted premises within 1 week and on such restoration liberty was given to the applicants to file appropriate application before this court seeking payment of electrical charges consumed by the opposite parties. It is stated that in compliance of Hon'ble High Court the applicant had supplied the electrical connection to the premises on 18-6-13. It is also stated that Ops have been enjoying electrical connection accordingly and has voluntarily agreed to pay Rs 400/- only per month for electrical connection. But subsequently he failed to pay the amount from January, 2009 till 08-8-11. The arrear electrical charges amounts Rs. 12800/- .Further it is said that applicants have restored the electrical connection to the tenanted premises. Situated thus the O.P's may be directed to pay the arrear electrical charges.

On receipt of notice opposite party appeared and inspite of availing adjournments neither filed objection nor appeared for hearing.

Perused the available materials on record, the order of Hon'ble Hauhati High Court, Record of Misc (j) case No 36/11. Careful perusal of the petition reveals that, it is filed by the petitioner claiming the electrical charges, i.e the petition is for recovery of money.

Perusal of record further reveals that in the mean time present petitioner had filed an eviction suit against the present defendant , which has been decreed on 14.08.13.

Situated thus I am of the considered opinion that although the petitioner may have a valid claim against the O.P , but for his claim i.e claim of recovery of money he has failed to choose the proper forum and proper procedure and as such I am of the considered opinion that petition is not maintainable in its present form and accordingly the same stands rejected.

Misc(J) case is accordingly disposed of on contest.

Munsiff No.1, Jorhat.

11.06.2013

Parties are represented. Seen petition No.1432/13 filed by Smti. Rekha Barooah, U/O 26 Rule 1 R/W 151 of C.P.C. with a prayer to allow her to face cross examination through a Commissioner appointed by this court.

Petitioner's case is that she has filed her examination in chief on 4/4/2013 but due to her prolong illness and various ailments she could not stand for cross examination. It is further stated that due to development of certain cardiac problems, doctor has advised her not to undertake any work of stress both mental and physical. It is also stated that right ear of the defendant is totally damaged and she can hear only by her left ear that to about 40% with the aid of machine and as such the cross-examination would not be possible at witness box as usual within a short span of time.

I have already heard the counsels of both the parties. Gone through the medical certificates issued by Medical practitioners, in connection with the ailment of the defendant and after going through the same I am satisfied that defendant is suffering from the ailments as stated above and it would not be possible as well as convenient for her to stand for cross examination in the witness box and as such prayer of petitioner is allowed.

Fix- for appointment of Commissioner and payment of cost of Commission by the Defendant.

**Mrs. Achma Rahman,
Munsiff No.1, Jorhat**