

**In the Court of Rajesh Garg, Addl. District Judge;  
District Courts; Faridabad. (UID No. HR0120)**

**CNR No. HRFB01-002456-2021**

Civil Misc. No. \_\_ of 2021.

Regd. No. CMA. 20 of 2021

Date of Institution: 02.03.2021

Date of Decision: 10.03.2021

Piyush Heights Residents Welfare Association

Through its President

PHRWA Office, Piyush Heights Sector-89, Faridabad, 121002.

.... Appellant/ Defendant

**VERSUS**

1. Anil Kumar Singh S/o Late Sh. Hriday Narayan Singh, R/o F-116, Piyush Heights, Sector-89, Faridabad.
2. Arvind Mukherjee S/o Sh. K.L.Mukherjee, R/o D-113, Piyush Heights, Sector-89, Faridabad.
3. Surender Sangwan S/o Sh. Singh, R/o B-211, Piyush Heights, Sector-89, Faridabad.
4. Parveen Bhardwaj S/o Sh. Harbans Lal Bhardwaj, R/o B-113, Piyush Heights, Sector-89, Faridabad.
5. Neena Sikka W/o Sh. Parveen Sikka, R/o B-1016, Piyush Heights, Sector-89, Faridabad.
6. Rajesh Ranjan S/o Sh. B.S.Bhagat, R/o H-114, Piyush Heights, Sector-89, Faridabad.
7. Shashi Kant Tomer S/o Sh. Manveer Singh Tomar, R/o P-913, Piyush Heights, Sector-89, Faridabad.
8. Nagpal Singh @ N.P.Singh S/o late Sh. Girraj Singh, R/o D-115, Piyush Heights, Sector-89, Faridabad.
9. Meenakshi W/o Sh. Hitesh Kumar, R/o L-212, Piyush Heights, Sector-89, Faridabad.

(Rajesh Garg)  
Addl. District Judge,  
Faridabad, 21.07.2020  
(UID No. HR-0120)

10. P.K.Singh S/o Sh. T.B.Singh, R/o L-412, Piyush Heights, Sector-89, Faridabad.
11. Mahesh Joshi S/o Sh. Beni Ram Joshi, R/o I-415, Piyush Heights, Sector-89, Faridabad.
12. Sandeep Chawla S/o Sh. Krishan Lal Chawla, R/o P-916, Piyush Heights, Sector-89, Faridabad.
13. Brajesh Kumar Jha S/o Sh. Ram Narayan Jha, R/o L-415, Piyush Heights, Sector-89, Faridabad.
14. Rahul Dhingra S/o Sh. Surender Kumar Dhingra, R/o B-1013, Piyush Heights, Sector-89, Faridabad.
15. Kamlesh Chawla W/o Sh. Subhash Chawla, R/o I-213, Piyush Heights, Sector-89, Faridabad.

..... Respondents/Plaintiffs

**First Appeal Under order XLIII Rule 1 (c) of C.P.C. read with Section 104 and Section 151 of C.P.C. seeking setting aside of impugned order dated 15.02.2021 passed by the Court of Sh. Vivek Chaudhary, Ld. Civil Judge, Jr. Div., Faridabad.**

Present: Sh. Rishi Vohra, Advocate for the appellant  
Sh. Abhishek Pareek, Advocate for the respondents No.1 to 15

**ORDER :**

The appellant has assailed the order dated 15.02.2021 passed by the court of Sh. Vivek Chaudhary, Ld. Civil Judge (Jr. Divn.), Faridabad, whereby the application filed by the respondent/plaintiff, under Order 39 Rules 1 & 2 CPC was partly allowed.

2. The respondent was defendant No.1 appear before the Trial Court and is being referred as defendant and respondents were plaintiff before

the Trial Court are being referred as plaintiff for the sake of connivance.

3. In brief, the case of the plaintiffs that they filed a suit for declaration, permanent and Mandatory injunction stating that plaintiffs are residents of “Piyush Heights, Faridabad”, a Group Housing Project (hereinafter be called as “Society) situated at Sector 89, Faridabad and members of defendant no.1 i.e. Piyush Heights Residents Welfare Association, herein after be called as “PHRWA” (a social welfare society formed, constituted and registered under the provisions of the Haryana Registration and Regulation of Societies Act, 2012 on 2<sup>nd</sup> October 2015) for the welfare of residents of “Piyush Heights, Faridabad”. It is stated that defendants no. 2 to 6 are the respective governing body members of defendant no.1 in present who are looking after and responsible for day to day affairs of defendant no.1. It is stated that the plaintiffs have filed the present suit through their co-plaintiff namely Anil Kumar Singh duly authorised vide authorisation dated 21.12.2020 to file and contest the present suit and to do all such acts on behalf of all the plaintiffs. It is stated that builder, in the year 2013, appointed one of its sister/subsidiary company namely M/s Piyush Facility Management Private Limited as Management Agency for Piyush Heights, Faridabad and separate maintenance agreements were executed by and between said maintenance agency and the respective flat buyers including plaintiffs with respect to provide the facilities and maintenance services under the said contract but

till the year 2016, no permanent power supply connection was obtained by Builder or the maintenance agency from DHBVN due to non payment of required security deposit and the power was being supplied by maintenance agency through Diesel Power Generators to residents. For the power supply, some of the residents opted for post-paid electricity connections and some (including the plaintiffs) opted for pre-paid electricity connections.

4. It is stated that on 2<sup>nd</sup> October 2015, the residents of Society formed “Piyush Heights Residents Welfare Association” (PHRWA). It is stated that meanwhile Builder got sanctioned Single Point Supply connection bearing Account number F-15-85HT-0023 under Bulk Supply Domestic Category from the distribution Licensee (DHBVN) in its name to supply electricity to all apartment owners but the Builder and maintenance agency did not pay the dues for DHBVN qua usage of electricity for a long time despite collecting the same from the residents well in advance.

5. It is stated that some civil suits and criminal complaints were filed by some investors or lenders against the Builder company and its directors and in pursuance of the same, the Directors of the Builder Company and maintenance agency were arrested by the police in May 2018 and at present they are in judicial custody in Neemka Jail, Faridabad.

6. After the arrest of Directors of Builder Company and Maintenance Agency, PHRWA informally started looking after the maintenance work of

common area as well as other facilities's also, as there has been no formal handover by the Builder to PHRWA qua above said maintenance works till date.

7. It is stated that thereafter, some of the governing body members of PHRWA started acting in arbitrary and undemocratic manner like the Maintenance Agency. The members of PHRWA started harassing the flat owners by demanding the money on different heads and in case of non-payment, flat owners were denied to recharge their pre-paid electricity coupons. It is stated that despite there being many requests by the residents, defendants continued their arbitrariness against which some of the residents approached HERC by way of a petition sent on mail. It is stated that simultaneously, residents of society raised their grievances for redressal by way of an application (same as above said petition to CGRF) moved to the SDO (OP)-DHBVN) and also gave a memorandum to the Superintending Engineer (defendant no.8) on 25.8.2020 against the arbitrary decision taken by defendant no.1 to 6 to replace the electric meters of flat owners with the new meters, without any certification/approval or even without testing and calibration by DHBVN. It is stated that on 2.10.2020, PHRWA issued notice intimating revision of electricity grid charges but with the new meters and no support to old meters. It is stated that RWA governing body seems to be in great hurry to do transactions of procurement/purchase of SUMERU meters to change

the existing meters of ELMAX on the grounds that ELM AX vendor is not ready to extend the technical support which is clearly wrong and false as the ELMAX is ready to continue its technical support. Further, PHRWA did not provide any other plausible reason alongwith any supporting documents for change of the existing electric meters. It is stated that defendants no. 1 to 6 (in connivance with defendants no. 7 to 11) by their arbitrary and illegal acts and conduct, are bent upon to harass the plaintiff by not recharging the existing working prepaid electricity meters thereby withdrawing the supply of electricity without having any authority, charging for electricity at higher rate more than the tariff fixed by HERC, charging for DG backup power at exorbitant rate @ Rs. 21.25/- per unit (much higher than the cost of its generation and maintenance of DG sets), charging for both the above mentioned facilities without separately recording the actual consumption of units of direct energy and DG generated energy, charging for the common area electricity without separately recording the electricity consumed for common area facilities, not issuing the detailed bills showing the actual electricity units consumed flat-wise, changing the existing working electricity ELMAX meters with SUMERU meters which are non tested, non calibrated and non certified from DHBVN and threatening the applicants to disconnect the power supply of their residences if they will not agree with the decision of defendants no. 1 to 6 to change the electricity meters without having any

such authority and justification. In precise words, defendants no. 1 to 6 are not adhering to any direction/rules/regulation issued by the competent authorities further deliberately and intentionally in connivance with the other defendants, violating the applicable law of land by their illegal decisions, acts and conduct.

8. Upon notice, defendants no. 1 to 6 filed written statement and reply to application under Order XXXIX Rule 1 and 2 CPC stating that one Anil Kumar has been authorised, but the said authorisation is no document in terms of law and the plaintiff no.1 is not authorized to file any litigation on behalf of the said person. Thus the present suit is liable to be rejected on this score only.

9. It is stated that “Piyush Heights, Faridabad”, a Group Housing Project (hereinafter be called as “Society”) situated at Sector 89, Faridabad was constructed by M/s Piyush Buildwell India Ltd (hereinafter be called as “Builders”). The Builders in the year 2013 appointed one of its sister/subsidiary company M/s Piyush Management Pvt. Ltd. As its facility and management agency for the society. It is stated that M/s Piyush Facility Management Pvt. Ltd. was under an obligation to provide electricity and power backup supply to the society and the common area, but no power supply was obtained by M/s Piyush Facility Management Pvt. Ltd., till the year 2016 as the requisite security deposit was not paid by M/s Piyush Facility Management Pvt. Ltd to of DHBVN.

10. It is stated that the Builder after several complaints got sanctioned Single Point Supply connection bearing account no. F-15-85HT-0023 under Bulk Supply Domestic Category from DHBVN in its name to supply electricity to the society. The Builder did not clear the past dues of electricity to DHBVN despite collecting the full amount due from the society members. That later on, due to several criminal complaints filed by the investors or lenders against the Builders and the maintenance agency, they got arrested and presently in Neemka Jail, Faridabad.

11. It is stated that after the arrest of the Builders and the Directors of the maintenance agency, PHRWA took over the functioning of the Society and thereafter, PHRWA became responsible for providing facilities and maintenance to all the members of the society. It is stated that as there were several issues with the electricity units actually consumed and the per unit bills raised by the Authority (DHBVN). An Annual General Meeting was held on 28.07.2019 and in the said meeting a proposal was laid for forming electricity review team for reviewing electricity charges. It is stated that on 19.09.2019, a report on Proposal for replacement of Prepaid Electricity Meter was submitted by the Electricity Review Team to the Executing Committee of RWA wherein all the details were mentioned regarding the old meters and installation of new meters. It is stated that on 15.9.2019, a notice was circulated by the Executing Committee regarding the decision taken in the AGM held on 28.07.2019



and regarding installation of smart meters by M/s SUMERU Verde.

12. The notice further stated that installation of new meter will cost of Rs. 6127/- per flat. It is stated that there were problems with the electricity connections and issue with regard to theft, a complaint was registered with the Commissioner of Police Sector 21C, Faridabad for internal electricity theft in Piyush Heights, Sector 89, Faridabad. In the said complaint names of the residents involved in theft of electricity were also mentioned. It is stated that as the process of installation of new meters had already commenced, a notice dated 10.08.2020 was circulated amongst the Residents stating that the RWA had received additional 80 meters from SUMERU and the same had been installed, and a total of 300 meters are installed in the society. In the said notice, it was made clear to the Residents of the Society, that SUMERU will provide 650 meters (in total) at a rate of Rs. 6127/- out of which the remaining 350 will be delivered to the RWA within 4 to 5 weeks and the meters will be installed at first cum first serve basis and once these 350 meters will be installed any new meter will cost of Rs. 7000/- per meter.

13. It is stated that similar Notices were circulated by the RWA time to time make the Residents aware of the situation and to bring transparency. It is stated that on 2.10.2020, another notice was issued by the RWA where in it was specifically stated that the installation of New meter in the society will completed by 31.10.2020 and the new revised grid rate will be

Rs. 5.96 per unit and further in the notice it was specifically stated, that after the setup of new meter the RWA will not be able to provide support for ELMEX meters and further requested all the Residents to Install new Smart meters. It is stated that after much deliberations and discussions on the notice received from the SDO, DHBVN, the Executive Committee of the RWA came to a conclusion that was in the interest of all the Residents and on 26.11.2020, a notice was issued where it is stated that the RWA is being served with a notice from the SDO, DHBVN and upon receipt of the said notice, electricity charges are revised to Rs. 5.50 per unit. The notice further mentioned that the RWA is not having any support from the old ELMEX meters and thus the Executive Committee had no choice other than maintaining status quo on the grid electricity rates charges to the residents who have not installed new Smart Meters.

14. It is stated that yet another notice dated 15.11.2020 was circulated by the PHRWA stating that as the ELMAX is not supporting the answering defendants and the answering defendants would not be able to technically support the old ELMAX Meters and further requested the residents to shift to new SUMERU meters as the same are more advance, calibrated with DHBVN and BIS Certified. It is pertinent to mention here that till date around 690 meters have been installed in the society. It is prayed that the application be dismissed with costs.

15. The Trial Court dealing with the application directed the defendants

no.1 to 6, to recharge the pre-paid meters of the plaintiffs on payment of amount till the disposal of this suit. The recharge shall be done in similar manner and on similar charges/rate as applicable to ELMEX meters prior to filing of the suit. The recharge shall be done on condition that the plaintiffs shall provide the necessary support from ELMEX. The plaintiffs shall be solely responsible for the AMC, repair and other expenditures incurred due to remaining in existing ELMEX meter connection. The plaintiffs shall on their own facilitate any updation in the software required for the recharge of meters. Further, the defendant no.1 to 6 shall not forcefully change the existing meters of plaintiffs till disposal of the suit.

16. As far as other prayers made by the plaintiffs are concerned, the same can only be adjudicated once, the evidence is placed on file by the parties. Therefore, the application stands accordingly partly allowed.

17. The observation made herein above have been assailed on the ground that the Trial Court committed irregularity and illegality. The impugned order was passed on false premises. There was no ground to grant ad-interim injunction. The Trial court rightly observed the contentions of the defendant but despite that passed the order in violation of guidelines issued by Haryana Electricity Regulatory Commission (HERC). It has been further stated that the Trial Court has rightly observed that the decisions of change of electricity meter from ELMEX to

SUMERO was taken by majority in the AGM but despite that the impugned order was passed. He urged that the Trial Court failed to appreciate that in order to harass the defendant, the plaintiff in connivance with SDO, DHBVN served upon notice dated 01.02.2021 and 03.02.2021. Further, the Registrar of the societies, the application of the plaintiff, was rejected.

18. Learned counsel for the appellant while advancing arguments submitted about history of the society and it is contended that in the year 2018 a bill of Rs.52 Lakhs was received and it was decided in the minutes of RWA that an amount of Rs.15,000/- be contributed by each resident. He urged that at the time, plaintiff No.1 who had filed the suit being authorized by other plaintiff was the President of the RWA. He further submitted that when the meeting was held on 05.08.2018, all the members present there raised the issue of misconduct and improper functioning of the plaintiff as as President of RWA. He was asked to vacate the post of President of RWA with immediate effect. He further submitted that vide resolution dated 02.09.2018, the plaintiff No.1 was terminated from the post of President. He was requested to hand over the documents, which he has failed to do. Ultimately the defendant, RWA was formed on 28.07.2019. He urged that in the said meeting of the RWA, issue of electricity charges was raised and it was agreed that Mr. Anubhav and Mr. Sehful Ahmad will examine and submit their report to the RWA in this

regard. Issue of change of existing meter of ELMEX was also raised. The responsibility of finalizing the same was given to Mr. Deepak Sharma and Mr. Debasis Barik. He urged that in the meeting of AGM on 28.07.2018, the committee of six residents were constituted and as per the their report, in which they had made a comparative study of various option of electricity meter available in the market i.e. ELMEX, HPL, SECURE, SUMERU, GENUS and it was found that SUMERU is the best available meter in the market. Subsequently, in the fourth AGM held, it was decided to replace the existing meter. Notice was duly published on 15.09.2019, 10.08.2020, 09.09.2020 and 02.10.2020.

19. He urged that as per the report of BIS placed on file dated 26.09.2016, 11.11.2019 and 13.11.2019, the meter is duly certified by the BIS. Further, there is a report of HBVN dated 21.01.2021 whereby the accuracy of SUMERU meter is within permissible limit. He further submitted that now out of 720 residents, 711 residents have already replaced their meter.

20. He also drew my attention to the issues being faced with the ELEMAX meters, there were lot of complaints and defects. He further submitted that as per the letter received from SDO placed on file on para No.467 of the paper book that there was a theft of electricity in the society. They were being forced to restore the electricity connection of plaintiff Anil Kumar Singh, Mrs. Arpana Kumari and Mrs. Shashi. The

arrangement is being made till the decision of the civil suit. He also drew my attention on the letter dated 03.02.2021 whereby they are being directed to comply with the provisions of HERC guidelines. Thereafter, they were further directed not to change the existing meter and maintain electricity supply to all the residents of society. He also relied upon the order passed by SDM dated 11.01.2021. He further submitted that the plaintiff has also approached District Registrar of Societies whereby, it was held by him that the installation of new electricity meter is an internal meter and has been taken by AGM unanimously but despite that the plaintiff are creating hurdle. It is not possible to maintain different types of meters setup. He further submitted that the plaintiff was removed from the post of the President. He urged that prejudice has been cancel by permitting the plaintiffs to have their separate type of meter. He urged that the RWA has to act for the benefit of the society. He further submitted that if these plaintiffs are allowed to have separate type of meters, than some other group may come up, who would like to have another types of electricity meters whereas as per the guidelines of HERC, the defendant No.1 being RWA are responsible for payment. The defendant are being prejudice due to the guidelines of the HERC. With these submission, he prayed that impugned order may set aside and the application filed by the plaintiff/respondent may be dismissed.

21. On the other hand, learned counsel for the respondents No.1 to 15

submitted that the Trial Court has simply directed not to force the residents to change their meter. He urged that the District Registrar of Societies had directed that no member should be forced to change the meter, despite that the plaintiff being member of the society are facing them. He further submitted that in the fourth AGM hardly 50 to 60 members participated whereas they have mentioned as 196 out of 440 members were present. He further submitted that no consent from the respondents have been taken before directing them to replace the meter from ELEMEX to SUMERU. The defendant have forced the plaintiffs and other residents to change the meter despite, order dated 11.01.2021, passed by SDM and District Registrar Societies. He submitted that the plaintiff has sought various relief in the application and has been partly allowed. He urged that there is no prejudice to the RWA if the impugned order continues. In case the appeal is allowed, their suit would become infructuous. The issue raised by the defendant No.1/appellant are matter of trial. The truthness of their claim would come on surface after the evidence is lead by the parties. He urged that it is not a proper stage to entertain the appeal. He further submitted that the beneficiaries are the defendant/appellant who are involved in a big scam. More than Rs.7,000/- per resident being changed by the RWA. He further submitted that the Trial Court after appreciating the admitted fact on record passed a reasoned order whereby their application was partly allowed. He urged that there is no merit in the

appeal and prayed that the same may be dismissed.

22. On perusal of the file, it observed that the plaintiff in their application under Order 39 Rules 1 & 2 CPC has sought the following relief:-

(I) Directing defendant No.1 to 6 not to withdraw the electricity supply and recharge the pre-paid coupons qua existing working pre-paid meter of the plaintiff.

(ii) Restraining defendants No.1 to 6 from changing the existing working ELMAX electric meters of plaintiffs with any other meter not certified by DHBVN.

(iii) Restraining defendants No.1 to 6 from charging for electricity at higher rate more than the tariff fixed by HERC/DHBVN, from charging for captive energy/DG backup power at higher rate more than the cost of its generation and maintenance of DG sets without recording separately and disclosing to the applicants the actual consumed units of direct energy and DG back up energy by them.

(iv) Restraining defendants No.1 to 6 from mixing/charging the other facilities maintenance charges with electricity charges and from charging for electricity without any detailed bill qua actual consumption of the electricity by the plaintiffs and common area electricity consumption recorded separately.

(v) Directing defendants No.1 to 9 to ensure the compliance of the



applicable regulations passed by HERC/DHBVN and further to ensure the compliance of order dated 15.10.2020 passed by CGRF-DHBVN and conduct proper audit of the records of electricity consumption in the society flat-wise and conduct the audit of SUMERU meters to check its competency & its calibration with involvement of 5-10 residents/members of the society to stop the corrupt activities of PHRWA governing team members.

(vi) Directing the defendants to act strictly as per law and specially directing the defendants No.7 to 11 take swift action on the complaints/memorandums given by the plaintiffs strictly in accordance with law.

(vii) To pass any other or direction which this Hon'ble Court deems fit and just in the facts and circumstances of the case and in the interest of justice.

23. It is admitted that the applicant have not challenged the impugned order despite all the interim relief being claimed have not been granted except to re-charge the pre-paid meters with conditions.

24. It is further admitted that the plaintiff claimed that in their plaint and the application that their electricity meters are not being recharged in violation of the guidelines issued by HERC and they are being forced to replace their ELMEX with SUMERU electricity meters. He urged that the action on the part of the defendant is arbitrary. Further on perusal of the

file, it is observed that the plaintiff No.1 who was the President was removed by the members of the RWA as there were allegations of misconduct against him. The decision to replace existing ELMEX electricity meters with SUMERU electricity meters was taken in the AGM of the RWA. It is pertinent that the decision was communicated to the residents by issuance of notice. Copy of the same is placed on record dated 15.09.2019, 10.08.2020, 09.09.2020, 02.10.2020 and 26.11.2020. It was also intimated that the revised grid electricity rate will be 5.50 per unit, which were being claimed earlier at the higher rate.

25. It is also observed that the defendant RWA has worked for betterment of the resident of the society. A comparative study was carried out by a group of members, comprising of a committee, who have considered various options available in the market and on being satisfy the decision was taken to replace the existing ELMAX electricity meter with SUMERU electricity meter.

26. Furthermore, the plaintiffs in their plaint has alleged that the new SUMERU meters are neither standardized nor caliberated by DHBVN. However as per the report of BIS dated 26.09.2019, 11.11.2019 and 13.11.2019, it transpires that Bureau of Indian Standard (BIS) have issued certificate to SUMERU and licence was granted to use the standard mark in respect of their electricity meters. Further, the DHBVN vide their report dated 21.01.2021 placed on file at page No.450 observed that SUMERU

electricity meter accuracy is within permissible limit. Thus, the averments so made by the plaintiff in the plaint are factually incorrect.

27. Further, on perusal of the comparative study brought on record at page No.368 of the paper book, it transpires that the SUMERU electricity meter is found to be best suitable on offering the solution, connecting media, BIS certification, online re-charge facility, mobile data monitoring, Remote Recharging, Dedicating Customer Care, Meter Tempering Monitoring etc. Thus, it cannot be said that the decision so taken by the defendant RWA was not for the benefit of resident of the society.

28. It is admitted that the defendant society is getting single point electricity supply as per the notification dated 22.04.2020 and it was required from the residents that they switch over to electricity supply through pre-paid meters by the distribution licensee. Further, the RWA are responsible for the payment. Further, it is the responsibility of the RWA that none of the meter of the residents or common user services are defective and clear. Thus, if the plaintiff failed to replace the existing meter then it will not be, practically possible for the RWA to manage the electricity supply, smoothly.

29. Further, it appears that the plaintiff No.1, who was the President and removed from the President post of RWA is creating hurdle by moving the applications before various authorities, so that existing RWA maynot be able to perform its duties i.e. to take care of residents of the society. Since

the earlier bill of Rs.52 Lakhs was received by the societies and amount was paid by collecting from each residents. Thus, it appears that some residents of the society are involved in theft of electricity. Moreover, in the existing system it is not practically possible for the residents to get it recharge on his own and can not monitor the consumption of meter. Further, the prejudice will be caused to the RWA as practically it would not be possible by the RWA to manage the electricity supply, if the residents used different type of electricity meters. Further, it would be a costly to manage the electricity supply by using two different meters as it would require services of two different authorities for maintenance and recharging of electricity meter. Thus, it appears that the present suit alongwith application has been filed with a ulterior motive to create hurdle to implement the decision taken by the fourth AGM.

30. It is pertinent that the learned counsel for the plaintiff also filed copy of order dated 27.01.2021 whereby the application filed under Order VII Rule 11 read with Section 151 of CPC filed by the defendant No.1/appellant and others, was dismissed by the court. He filed the copy of the same. He urged that the all the grounds which have been taken in the appeal have already been dealt with by the Trial Court while adjudicating upon the said application. The copy of the order perused and it transpires that considering the nature of dispute involved between the parties, the legal issues raised by the defendant/appellant were required to

be adjudicated upon and have not been decided by the court of competent jurisdiction. Therefore, it was held that principle of res-judicata is not applicable in the case in hand. Moreover, the court while dealing with the appeal has nowhere come to the conclusion that the suit of the plaintiff/respondent is not maintainable or that it does not disclose cause of action or that the suit is barred by principle of res-judicata. Therefore, the said order dated 27.01.2021 is not relevant for the purpose of decision of the appeal.

31. It is pertinent that the Trial Court observed that for grant of injunction, there should be a prima facie case, balance of convenience and irreparable loss in favour of the plaintiff. However, if the residents replace the meters, the each resident will incur an expenditure of Rs.7,000/- and would not suffer irreparable loss in any manner. Furthermore, by keeping the electricity supply by using one type of electricity meter would facilitate the RWA to discharge its duties in accordance with the guidelines issued by HERC. Thus, even the balance of convenience does not lie in favour of the plaintiff. Further, **the plaintiff himself was the President who was removed from the RWA because of his misconduct and it shows that there is not prima facie case in favour of the plaintiff as the suit has been filed with some ulterior motive and there is no merits in their contention.** The Trial Court has accepted all the contentions of the defendant being supported by the documents but despite that granted a interim relief

without any reason whatsoever. Thus, the court is of the view despite the fact that the plaintiffs are having no prima facie case, balance of convenience and irreparable loss in their favour, the trial Court has wrongly allowed the application (partly). Thus, the court is of the view that the Trial Court fell into error and the impugned order is liable to be set aside. The impugned order is set aside accordingly and the application filed by the plaintiff under Order 39 Rules 1 & 2 stands dismissed. The observation made in the order is for the decision of the appeal and would not effect the case on merit. Copy of the order be sent to the concerned court. File be consigned to record room after due compliance.

Pronounced in open court:

Mohit Sardana

(Rajesh Garg)  
Addl. District Judge,  
Faridabad, 10.03.2021  
(UID No. HR-0120)

Note: All the pages of this order have been checked & signed by me.

(Rajesh Garg)  
Addl. District Judge,  
Faridabad, 10.03.2021  
(UID No. HR-0120)