

Present. Sh. Abhishek Pareek Advocate for plaintiffs.
Sh. Rishi Vohra Advocate for defendants no. 1 to 6.
Kr. Raj Kumar Sharma Advocate for defendants no. 7 to 9.
Defendant no. 11 exparte vide order dated 9.2.2021.

ORDER:-

This order shall dispose of an application under Order XXXIX Rule 1 & 2 read with Section 151 CPC filed by plaintiffs.

2. The plaintiffs have filed 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 2nd 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

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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 said power supply, some of the residents opted for post-paid electricity connections and some (including the plaintiffs) opted for pre-paid electricity connections. It is stated that on 2nd 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. 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 are in judicial custody in Neemka Jail, Faridabad.

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 maintenance also, as there has been no formal handover by the Builder to PHRWA qua above said maintenance works till date. It is stated that thereafter, some of the governing body members of PHRWA started acting in arbitrary and undemocratic manner like the Maintenance Agency was acting earlier. Said 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

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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 and 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 harassing the applicants 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

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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.

3. 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. 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. 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. That the Builder did not clear the past dues of electricity to DHBVN despite collecting the full amount due

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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.

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 Smart 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. 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 problems regarding 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

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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. 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. 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.

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4. I have heard the learned counsel for the plaintiffs and have perused the case file very carefully.

5. At the very outset, for grant of interim injunction, the Court has to satisfy itself with three conditions, which are as follows:-

i) The plaintiff has a strong case for trial. That is, the party seeking the relief of interim injunction should establish a prima facie case in its favour;

ii) Whether the interference of Court is necessary to protect him from that type of injury which the Court call “irreparable” before his legal right can be established during trial;

iii) The balance of convenience is in favour of the one seeking such relief.

6. The plaintiffs have filed present application stating that the defendants no. 1 to 6 are illegally trying to disconnect the electricity supply of the plaintiffs by not recharging their electrical meters. It is alleged by plaintiffs that the defendants no. 1 to 6 are acting in contravention with HERC guidelines and forcefully trying to replace their ELMEX electricity meters with SUMERU electricity meters. It is alleged that the activities of defendants is arbitrary and against the rights of the plaintiffs, who are also residents and members of defendant no.1 association (PHRWA). By way of present application, the plaintiffs have prayed that defendants no. 1 to 6 be directed to keep on charging electricity meters and not to disconnect the electricity supply by forcefully installing the SUMERU electricity meters. On the other hand, it is alleged by defendants no. 1 to 6 that the defendant no.1 i.e. PHRWA is taking steps for the betterment of the residents of the society. It is stated that the plaintiffs have no grounds to allege that the SUMERU meters currently installed by the defendant no.1, are faulty rather they are tested and better than the previous ELMEX meters installed by builder. It is stated that only plaintiffs have raised objection in changing meter due to their habit of

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disturbing development works by defendant no.1.

7. The present dispute appears to be result of decision made by defendant no.1 to replace the existing ELMEX meters with SUMERU meters. The plaintiffs have not agreed with defendant no.1 to charge their meters despite the fact that majority of the residents (about 694) have switched to SUMERU meters. The plaintiffs have alleged that the new meters are neither tested nor calibrated by DHBVN. However, the defendants have placed on record Annexures D15, D16 and D17 which reflects that SUMERU meters are BIS certified and duly checked by DHBVN and their accuracy were found within permissible limit. On the other hand, the plaintiffs have not placed on record any document to establish that the ELMEX meters are more convenient and efficient than the SUMERU meters. Further, it is alleged by plaintiffs that the defendants are avoiding to recharge their meters on pretext that ELMEX has failed to extend support of software and recharge to defendant no.1, however, the ELMEX is ready to extend necessary support. On the other hand, the defendants no. 1 to 6 have categorically stated that they do not have any support from ELMEX.

8. This Court is of view that the residential society of the parties is receiving single point electricity supply and it is convenient for the electricity department as well as the residents of the society to have similar and common mode of recharging and usage of electricity meter. A common facility enjoyed by the residents is not only convenient to the managing body and residents but is also economical as it reduces, the maintenance charges of the device, services as well as the manpower employed to operate the same. The defendants have placed on record list of flat owners who have opted for SUMERU meters in place of ELMEX meters which is about 694. In these circumstances, it would be not prudent to get similar facility from another service provider and burden the majority of residents with further maintenance charges. On the other

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hand, it is also not appropriate on the part of defendant no.1, to not recharge the electricity meters of plaintiffs if the facility of recharge is made available to it. Therefore, this Court is of view that at this stage, the plaintiffs cannot be forced to switch to new meters despite the fact that majority of the residents have opted to do so.

9. Hence, the defendants no.1 to 6 are directed 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. 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. The observation made herein shall have no bearing when the case is taken up for final adjudication.

15.2.2021

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Present. Sh. Abhishek Pareek Advocate for plaintiffs.
Sh. Rishi Vohra Advocate for defendants no. 1 to 6.
Kr. Raj Kumar Sharma Advocate for defendants no. 7 to 9.
Defendant no. 11 ex parte vide order dated 9.2.2021.

Order pronounced. Vide my separate order of even date,
application stands partly allowed. Now to come upon 12.4.2021 for
filing written statement on behalf of defendants no. 7 to 9. Notice to
defendant no. 10 be also issued for date fixed.

15.2.2021

Vivek Chaudhary

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Neeraj Kumar

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