

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: 28.01.2011
Judgment Pronounced on: 02.02.2011

+ **CS(OS) No. 298/2004**

SUPER AUTO CENTRE

.....Plaintiff

- versus -

BSES RAJDHANI POWER LTD.

.....Defendant

Advocates who appeared in this case:

For the Plaintiff:	Ms Radhika Chandrasekhar
For the Defendant:	Mr Sunil Fernandes, Standing Counsel with Mr Deepak Pathak

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | NO |
| 2. To be referred to the Reporter or not? | NO |
| 3. Whether the judgment should be reported in Digest? | NO |

V.K. JAIN, J

1. This is a suit for declaration and permanent injunction. The plaintiff is the registered consumer of the defendant in respect of electricity supplied through K.No.009/0888987, installed at its petrol pump at Ring Road, Srinivas Puri, New Delhi.

2. It is alleged that on 11.4.2003, some officials of the

defendant came to the premises of the plaintiff and took down notes about the machines and equipments installed there. A show-cause notice was thereafter served on the plaintiff wherein it was alleged that load of 89.101 KW was found connected as against sanctioned load of 51.35KW. It was also alleged in the notice that shunt capacitor was not installed and both half seals were not installed in respect of meter No.4H9701519. The plaintiff replied to the show-cause notice. This was followed by yet another notice bearing No.AE(ENF)/S/2002-2003/2098/297 dated 31.5.2003. A writ petition being CW No.4147/2003 was filed by the plaintiff. A re-inspection was also carried out on 30.12.2003 and at that time the connected load was found to be 48.59 KW. Vide order dated 13.8.2003, passed in the writ petition, this Court directed the defendant to give a personal hearing to the petitioner on 27.8.2003. After giving a fresh hearing to the petitioner, a speaking order was passed on 10.09.2003, rejecting the objections of the petitioner and holding that he was duty bound to pay the full bills raised under relevant tariff provisions, besides LPF. Noticing that a speaking order had been passed after giving hearing to the petitioner, this Court permitted the petitioner

to withdraw the writ petition with liberty to file appropriate proceedings against the order dated 5.9.2003 in accordance with law. The plaintiff has now filed this suit challenging the speaking order dated 10.9.2003 and has sought a declaration that the aforesaid order is null and void. He has also sought an injunction restraining the defendant from disconnecting the electricity being provided to it.

3. The defendant has contested the suit and has taken preliminary objections that (i) the suit is not maintainable in view of Section 145 of Electricity Act; (ii) this Court does not have pecuniary jurisdiction to try the suit and; (iii) the suit is not properly valued for the purpose of pecuniary jurisdiction. On merits, it is alleged that during inspection, which was carried out by the Enforcement Team, it was found that the plaintiff had tampered with seals of the meter. It is also alleged that a bill dated 17th June, 2003 of Rs 16,07,168/- was raised against the plaintiff.

4. The following issues were framed on the pleadings of the parties:-

“1. Whether the suit filed by the plaintiff for declaration and permanent injunction is maintainable in view of Section

145 of Electricity Act, 2003? OPP

2. Whether this court has pecuniary jurisdiction? OPP

3. Whether the suit is property valued for the purpose of pecuniary jurisdiction? OPP

4. Whether the plaintiff was not indulging in Dishonest Abstraction of Energy on 11.04.2003 when inspection was carried out at its premises by the defendant? OPP

5. Whether the Order No.D/AGM/Enf./C433 dated 10.09.2003 not correct? OPP

6. Whether the plaintiff is entitled to the decree of declaration as prayed for in the plaint? OPP

7. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for in the plaint? OPP

8. Relief.”

5. Vide order dated 20th October, 2009, Issue Nos. 1 to 3 were treated as preliminary issues.

Issue No. 1

6. Section 145 of Electricity Act reads as under:

“Civil Court not to have jurisdiction - No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in Section 126 or an appellate authority referred to in Section 127 or the adjudicating officer appointed

under this Act is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act..”

7. In **B.L. Kantroo Vs. BSES Rajdhani Power Ltd.**

154 (2008) Delhi Law Times 56, the plaintiff/appellant had filed a civil suit, seeking declaration that the bill issued by the respondent/defendant was false and illegal and had also sought consequential relief of injunction against disconnection of electricity supply. He had also sought a declaration that he was not guilty of theft of electricity and the inspection reports/speaking orders of the defendant were illegal and void.

8. The plaint was rejected by the learned Single Judge on the ground that the matter false within the jurisdiction of Assessing Officer under Section 126 or/and Adjudicating Officer appointed under the Act. In that case also before filing the suit, the plaintiff had filed a writ petition being WP(C) No. 5124/2007 to give an opportunity of hearing to him, which was disposed of with a direction to pass speaking order and not to disconnect the electricity supply of the plaintiff. This was followed by another writ petition

which was disposed of with directions to the plaintiff/petitioner to approach Civil Court or any other forum in accordance with law.

9. Noticing the provisions contained in Section 145 of Electricity Act, the Court, inter alia, observed as under:

“the jurisdiction of the civil court is excluded for entertaining any suit or proceeding in respect of any matter which the assessing officer referred to in section 126 or the appellate authority referred to under section 127 or adjudicating officer appointed under this act has to determine. It is further expressly provided that no injunction shall be granted by any court or any authority in respect of any action taken or to be taken in pursuance of powers conferred or under this Act. Therefore, there is express provision for excluding the jurisdiction of the civil court in respect of the matters, which the assessing officer has to decide under section 127 of the Act.

Disagreeing with the learned Single Judge and holding that the matter involved in the suit does not fall within the jurisdiction of the Assessing Officer under Section 126 and 127 of Electricity Act, the Court further observed as under:-

It is apparent that the cases of theft under section 135(1) involve mens rea.

The jurisdiction of civil court is not barred but the power to try offences punishable under section 135 to 139 is conferred exclusively on the Special Court constituted under section 153 of the Act and the provisions of sub-section (5) of section 154 specifically invest Special Court with the jurisdiction to determine any dispute regarding the quantum of civil liability in theft cases whether or not the allegation of theft is disputed, is still entitled to make such a challenge to the disputed bill before the Special Court, even in cases where no criminal complaint is filed against the consumer and the amount of civil liability so determined shall be recovered as if it were a decree of a civil court and it can act as civil court as well as criminal court while conducting the cases before it.

23. In the present case by speaking order dated 15th January, 2008 passed by the HOD-Enforcement, a case of theft has been registered against the appellant on the basis of the checking report given by the officers of the defendant. Therefore, it has to be decided as to whether a civil suit is maintainable to challenge such a bill given on the basis of purported theft. In other words, the question is whether maintainability of such proceeding at the instance of the consumer as discussed above necessarily excludes the jurisdiction of Civil Court.

It is true that ordinarily, the Civil Court has jurisdiction to go into and try the disputed questions of civil nature, where

the fundamental fairness of procedure has been violated. By necessary implications, the cognizance of the civil court has been excluded. As a consequence, in the present case, the Civil Court shall not be justified in entertaining this suit and giving the declaration without directing the party to avail of the remedy provided under the Act. Therefore, by necessary implications, the appropriate competent authority should hear the parties, consider their objections and pass the reasoned order, either accepting or negating the claim. Of course, it is not like a judgment of a civil court. Civil court has no jurisdiction by necessary implication to entertain suit for declaration and injunction against specially constituted Forum in view of the specific provisions found in the Electricity Act [(1997) 5 SCC 120].

Although there is no specific provision in Section 145 of the Act for exclusion of jurisdiction of Civil Court to entertain any proceeding in respect of any matter which the Special Court is empowered by or under the Act to determine, we are of the view that any dispute about civil liability in theft cases is impliedly excluded from the jurisdiction of civil court in view of the provisions of Section 153 and 154 of the Act wherein Special Court has got the jurisdiction to determine any dispute regarding the quantum of civil liability specifically in theft cases and the said court can act as civil court as well as criminal court while conducting the cases before it.

10. In **BSES Rajdhani Power Ltd. vs. State N.C.T. of Delhi & Anr.**, 2010 AD DEL. 73, this Court, while dealing with the question as to whether BSES Rajdhani Power Ltd., which was the complainant in those cases was required to pay Court fee on the amount of the Bill, inter alia, observed as under:

“Section 154 of Electricity Act which prescribes the procedure and power of special court does not say that the special court, while determining civil liability u/s 154(5) of the Act would adopt the procedure prescribed in the Code of Civil Procedure for trial of suits. It does not even say that the special court, while determining civil liability u/s 154(5) of the Act shall be deemed to be a civil court. Use of the words as if it were a decree of the civil court in Section 154 (5) of Electricity Act is a strong indicator of the legislative intent and clearly shows that the determination of civil liability by special court by itself will not be a ‘decree’ passed by the civil court and it is only by fiction of law that such a liability would be recovered as if it were a decree of civil court. Had the intention of the legislature been that the special court while dealing with a request for determination of civil liability, should adopt the procedure prescribed for trial of a civil suit, it would have stated so either expressly or by necessary implication and it would not have merely said that the amount of civil liability shall be recovered as if it were a decree of civil court. The legislature would then have said that the

special court while determining such a liability would act as a civil court or that the determination made by it shall be deemed to be the decree of a civil court.

In fact, Section 154(5) of Electricity Act casts an obligation upon the special court to determine the civil liability, even if no prayer for determination of such a liability is made by either party. Therefore, even if no request had been made by the petitioner for determination of civil liability, the special court would still have to carry out the legislative mandate given to it u/s 154(5) of the Act.

....Taking into consideration the proposition of law enunciated by the Hon'ble Supreme Court in the case of Paramjeet Singh Patheja (Supra), special courts cannot be deemed to be civil court, the same having been specially set up u/s 153 of the Special Courts Act primarily for the purpose of trial of offence punishable U/ss 135 to 140 and Section 150 of Electricity Act. These special courts are not regular courts envisaged under Article 136 of the Constitution irrespective of the fact that the person who can be appointed as a Judge of a Special Court needs to be an Additional District & Sessions Judge immediately before his appointment as a Judge of a Special Court. In any case, in the absence of any specific statutory provision to this effect, a court set up primarily for the purpose of trial of the criminal offences cannot be considered to be a civil court within the meaning of Article 1 of Schedule 1 of Court Fee Act.

Section 26(2) of Code of Civil Procedure provides that in every plaint, facts shall

be proved by affidavit. On the other hand, Section 154 of Electricity Act, 2003 provides that the special court may try the offences referred to in Section 135 to 140 and Section 150 in a summary way in accordance with the procedure prescribed in the Code of Criminal Procedure and the provisions of Section 263 to 265 of the Code of Criminal Procedure shall, so far as may be, apply to such trial. It does not prescribe any separate procedure for determination of civil liability. The Electricity Act does not envisage application of two procedures, by special court, one for the purpose of trial of offences referred to in Section 135 to 140 and Section 150 of the Act and the other for determination of civil liability u/s 154(5) of the Act. Had the legislative intent been that for the purpose of determination of civil liability, the special court would adopt the procedure prescribed in the Code of Civil Procedure for trial of a suit, it would have expressly stated so in the Act. In any case this is not the case of the respondents that the Special Courts, are conducting two independent proceedings, one in accordance with the procedure prescribed in Cr.P.C. for trial of the offences of which the complaint has primarily been filed and the other in accordance with the procedure prescribed in CPC for trial of civil suits, for determining civil liability u/s 154(5) of Electricity Act.

The scheme of the Code of Civil Procedure for trial of a suit instituted by presenting a plaint is altogether different from the procedure prescribed in Section 154 of Electricity Act for trial of offences u/s 135 to 140 and 150 of the Act. Order V of the Code of Civil Procedure provides the

mode of service of summon in a civil suit. Order VIII provides for filing of a written statement by the defendant within 30 days from the date of service of summons upon him. If the written statement is not filed within the prescribed period, the court is required to pronounce a judgment against the defendant as provided in Rule 10 of Order VIII of the Code of Civil Procedure. Order IX of the Code of Civil Procedure for dismissal of a suit, if the plaintiff does not appear when the suit is called on for hearing. Rule 6 of Order IX provides for making an ex-parte against the defendant if he does not appear despite service of summon upon him. A suit dismissed in default under Rule 8 of Order IX precludes the plaintiff from bringing a fresh suit on the same cause of action. The final determination of a civil suit results in passing of a decree. No decree, however, is envisaged in Section 154(5) of Electricity Act.

The entire procedure for trial of a civil suit instituted by presentation of a plaint as prescribed in the Code of Civil Procedure is altogether different from the procedure prescribed for dealing with the complaints in respect of the offences referred to in Section 135 to 140 and Section 150 of Electricity Act. Neither adoption of such a procedure has been prescribed by Section 154 of Electricity Act nor is such a procedure otherwise implicit in that Act.

The interpretation given by the Hon'ble Supreme Court in the case of Gujarat Industrial Finance Corpn. (Supra), followed by this court in Prakash Playing Cards Manufacturing Co. (Supra) equally applies to Section 154 (5) of Electricity

Act, 2003. The view being taken by me also finds full support from the decision of the Hon'ble Supreme Court in, *Paramjit Singh Patheja (Supra)*, interpreting Section 15 of Arbitration Act of 1899 and Section 36 of Arbitration and Conciliation Act, 1996.

11. The facts in the case of **B.L. Kantroo** (supra) were identical to the facts of the case before this Court. In this case, admittedly, a bill No. 3315 dated 17th June, 2003 has been raised by the defendant against the plaintiff. In this case also, the plaintiff has sought a declaration that the speaking order dated 10th September, 2003 is null and void and cannot be enforced. In this case also, the plaintiff is seeking injunction against disconnection of the electricity. The issue before the Division Bench in that case was as to whether the jurisdiction of Civil Court in respect of a suit seeking a declaration that the bill raised by the defendant was illegal, the plaintiff was not guilty of theft of electricity and the inspection reports/speaking orders were illegal and also seeking injunction against disconnection of electricity supply was barred or not. The same is the issue involved in the case before this Court. The matter before this Court is therefore squarely covered by the decision in the case of

B.L. Kantroo.The issue is decided in favour of defendant and against the plaintiff.

Issues No. 2 and 3

12. In view of my findings on issue No. 1, I need not give any finding on these issues.

ORDER

In view of my finding on issue No. 1, the plaint is liable to be returned to the plaintiff for being presented to the Court in which the suit should have been instituted. The plaintiff is intimated accordingly and is given 15 days' time to file appropriate application under Order 7 Rule 10A (2) of the Code of Civil Procedure. If no such application is filed, the plaint be returned to the plaintiff alongwith a brief statement of reasons for returning the same.

(V.K. JAIN)
JUDGE

FEBRUARY 02, 2011
bg/'sn'