

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

AS.No. 499 of 1996

JUDGMENT DATED 24-06-1996 IN OS 112/1994 OF SUB COURT, VADAKARA

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APPELLANT(S):

1. MAMENTAMEETHAL M.M., NARAYANAN,
S/O.CHOYI, MANAGING PARTNER,
KERALA COIR MOVEES HOUSE, VADAKARA AMSOM,
DESOM, VADAKARA TALUK. (DIED).
- * ADDITIONAL A2 IMPEADED
2. SRI.M.M.CHANDRAN,S/O.CHOYI, PRESENT MANAGING PARTNER,
KERALA COIR MOVEES HOUSE, VADAKARA TALUK.
- * IS IMPEADED AS THE APPELLANT AS PER ORDER
DTD.13.12.2010 IN IA.2500/2010.

BY ADVS.SRI.O.RAMACHANDRAN NAMBIAR,
SMT. K.P.SANTHI
SRI.GEEN T.MATHEW

RESPONDENT(S):

1. THE CHAIRMAN, KERALA STATE ELECTRICITY BOARD,
TRIVANDRUM.
2. THE EXECUTIVE ENGINEER,
ELECTRICITY OFFICE, VADAKARA.
3. THE ASSISTANT EXECUTIVE ENGINEER,
ELECTRICITY OFFICE, VADAKARA NORTH,
VADAKARA.

BY ADVS. SRI.P.SANTHALINGAM (SR.)
SRI.S.SHARAN, SC

**THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 21-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

P.B.SURESH KUMAR, J.

A.S.No. 499 of 1996

Dated this the 21st day of May, 2015

JUDGMENT

The defeated plaintiff in a suit for injunction is the appellant.

2. The plaintiff is running a Cinema Theatre. On 3.8.1994, he was served with Ext.A2(a) invoice by the Kerala State Electricity Board (hereinafter referred to 'the Board' for short), directing him to pay a sum of Rs.52,147/- towards arrears of electricity charges for the period from December 1993 to June 1994. In the notice accompanying the said invoice, it is stated that in the course of an inspection conducted in the premises of the plaintiff, one phase of the power meter installed in the premises was found rotating reversely due to wrong CT connection to the meter and consequently only 1/3rd of the actual

consumption in the premises of the plaintiff was being recorded in the meter installed therein. According to the plaintiff, he is paying regularly the demands made to him towards electricity charges and there is no arrears at all. It is also his case that if at all the meter was not recording correctly the energy consumed in the premises, the Board has no authority to issue an invoice in the nature of Ext.A2 (a). Instead, according to the plaintiff, the Board has to require the Electrical Inspectorate to examine the correctness of the meter and only if the Electrical Inspectorate holds that the meter was not recording the energy consumed in the premises correctly, the Board can raise an invoice based on the quantum of energy not recorded by the meter as found by the Electrical Inspectorate. The relief claimed in the suit was a decree of permanent prohibitory injunction restraining the Board and its officers from disconnecting the power supply to the premises of the plaintiff and realising the amount covered

by Ext.A2(a) invoice.

3. The defendants filed a written statement, contending among others, that there is no defect in the meter installed in the premises of the plaintiff; that the defect was only in respect of the connection given to 'Y' phase of the meter; that as per Regulations relating to the Conditions of Supply of Electrical Energy framed by the Board, the Board is entitled to realise the loss caused to the Board on account of the wrong connection made to the meter as in the case of the plaintiff.

4. The evidence in the case consists of the testimony of PW1 and Exts.A1 to A5 on the side of the plaintiff and the testimony of DW1 and Ext.B1 on the side of the defendants.

5. The Trial Court, on an appraisal of the entire materials on record, found that since the meter installed in the premises of the plaintiff was not a defective one, the Board and its officials are entitled to recoup the loss caused to the Board on account of the wrong connection.

Consequent to the said finding, the suit was dismissed. Hence this appeal.

6. The learned Counsel for the appellant contended that Section 26(6) of the Indian Electricity Act mandates that in all cases where the Board proposes to revise the invoice served on the consumer on the ground that the meter installed in the premises of the consumer was not recording the energy consumed in the premises correctly, a reference has to be made to the Electrical Inspectorate and only based on the decision of the Electrical Inspectorate as to the correctness of the meter, a revised bill can be raised. According to the learned counsel, Ext.A2(a) invoice served on the plaintiff by the Board without recourse to Section 26 (6) of the said Act is without jurisdiction. The learned counsel for the appellant has also contended that if it is found that the meter did not record the energy consumed in the premises correctly, whatever be the reason for the non recording of the energy in the meter, the matter has to be

referred to the Electrical Inspectorate.

7. The learned Counsel for the Board has contended that Section 26(6) of the Electricity Act has no application to the facts of the present case in so far as the meter installed in the premises of the plaintiff is not defective. It was also contended by the counsel that in the light of the provisions contained in the Regulations relating to the Conditions of Supply of Electrical Energy, a suit seeking the aforesaid relief is also not maintainable. According to him, the remedy, if any, of the plaintiff was to invoke the provisions contained in the said Regulations for redressal of his grievances. He relied on the decision of this Court in R.S.A No.949/2004 in support of the said contentions.

8. In **Kerala State Electricity Board and Others vs. Managing Director, M/s.Anappuram Rubber Products (P) Ltd** [2012(2) KHC 719 (DB)] this Court has held that if the non recording of the consumption by the meter installed in the premises of a consumer is on account of the defective

connection given to the meter, such disputes would not come within the ambit of Section 26(6) of the Electricity Act. In the said case, it was also held that in such cases the Board is entitled to revise the invoice served on the consumer. In the light of the said decision of this Court, the contention raised by the appellant is only to be rejected.

In the result, there is no merit in the appeal and same is accordingly dismissed. It is however clarified that if the appellant remits the amount due pursuant to Ext.A2(a) demand less the amount, if any, paid by him as per the interim order passed by this Court in this appeal on 19.8.1996, within one month from the date of receipt of a copy of this judgment, the power supply to the premises of the petitioner shall not be disconnected.

P.B.SURESH KUMAR, JUDGE.

smm

