

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2015

CORAM

THE HON'BLE Ms.JUSTICE K.B.K.VASUKI

S.A.No. 447 of 2006
And
C.M.P.No. 5626 of 2006

1. S.Venkatachalam
2. Palaniyandi
3. The Superintending Engineer
Dharmapuri Electricity
Distribution Circle
Tamil Nadu Electricity Board
Dharmapuri
4. The Chairman
Tamil Nadu Electricity Board
Chennai - 600 002 ...Appellants/Defenants.

Vs.

P.S.Hanifa Respondent/Plaintiff.

PRAYER: Second Appeal is filed under Section 100 of Code of Civil Procedure against the Judgment and Decree dated 26.12.2005 passed in A.S.No. 96 of 2003 on the file of the Sub Court, Dharmapuri, confirming the Judgement and Decree dated 27.08.2003 passed in O.S.No. 41 of 2002 on the file of the District Munsif Court, Harur.

For Appellants : Mr.V.Viswanathan

For Respondent : Ms.Zeenath Begaum for
Mr.T.Muruga Manickam

JUDGEMENT

The defendants 1 to 4, who are the Officials representing Tamil Nadu Electricity Board, are the appellants herein.

2. This second Appeal is arising out of the Judgment and Decree of the Courts below in awarding compensation of Rs.5,000/- towards mental agony caused to the plaintiff in facing the criminal trial in C.C.No. 58 of 1998.

3. Few relevant facts of the case are as follows:- The Department initiated criminal prosecution against the plaintiff for an act of theft of energy and the same culminated in C.C.No. 58 of 1998 and the same after due contest, ended in an order of acquittal in favour of the accused mainly on the ground that the prosecution failed to establish the original disconnection and unauthorised reconnection by the consumer and unauthorised consumption constituting an act of theft of energy by the consumer. The Department has not admittedly preferred any appeal questioning the correctness of the order of acquittal made in favour of the plaintiff. Thereafter, the plaintiff has come forward with the suit in O.S.No. 41 of 2002 claiming compensation of Rs.25,648/- and Rs.10,648/- for the mental agony suffered by the plaintiff in the judicial custody and for disconnection of the electricity service connection supplied to him.

4. The claim was seriously disputed by the defendants 1 to 4 by denying the plea of innocence of the plaintiff. According to the defendants, the order of acquittal will in no way absolve the plaintiff of his liability for an act of theft of energy and the criminal prosecution was initiated not out of malice and ill-will and the criminal prosecution ended in acquittal only for want of evidence and the same will not entitle the plaintiff to claim any compensation.

5. The trial Court as well as the Lower Appellate Court on the basis of the available materials accepted the plaintiff's case regarding the suffering undergone by him, while he was in judicial custody and in attending the criminal proceedings on every hearing and the mental hardship and agony undergone by him by reason of disconnection of the electricity supply and awarded compensation of Rs.5000/- with interest and costs. Aggrieved against the same, the defendants/ TNEB Official filed A.S.No. 96 of 2003. The Lower Appellate Court also on the basis of available evidence, confirmed the findings of the trial Court and dismissed the appeal. Hence, this Second Appeal by the defendants before this Court.

6. The Second Appeal is admitted on the following substantial questions of law:-

"(a) Whether the Courts below are justified in granting decree for Rs.5000/- towards mental agony and cost merely on the ground that the plaintiff was acquitted in the Criminal Case registered against him for the theft of energy?;

(b) Whether the Courts below are justified in holding that the disconnection of power and the inspection by the Anti Power Theft Squad was not proper in the present case for recovery of damages especially when the plaintiff has not challenged the

proceedings of the Appellant/Board ordering recovery of Rs.2,032/- towards theft of energy which became final and not challenged by the plaintiff?; and

(c)Whether the Judgment and Decree of the Courts below are justified in law as they failed to consider the material evidence on record."

7. Heard the rival submissions made on both sides and perused the records.

8. The present second appeal is filed against the award of compensation of Rs.5,000/- payable by the officials 1 to 4 for the mental agony and sufferings undergone by the plaintiff by reason of the criminal prosecution initiated against him for the alleged act of energy theft. Both the courts below have on the basis of the available evidence, arrived at conclusion that the defendants have failed to prove that the plaintiff was before the supply of electricity was disconnected by the department, given due notice and the plaintiff on his own, effected reconnection for consuming unauthorised energy and caused loss to the tune of Rs.2,032/- to the department. Both the trial court as well as the lower appellate court passed reasoned judgment as to how the case of the defendants was lacking in evidence and the amount of sufferings to which the plaintiff was subjected to, under the guise of investigation into the police complaint and in the course of investigation as well as in the course of criminal proceedings. It is not mere order of acquittal of the plaintiff from the criminal proceedings which compelled the courts below to hold that the defendants acted in arbitrary and capricious manner in lodging the complaint without any basis and in prosecuting the case without evidence. Both the courts below after duly analysing the materials available before the same and the conduct of the parties, were inclined to accept the plaintiff's case that he was unnecessarily harassed and made to suffer and parted with amount to face the criminal prosecution. Such factual findings rendered by the courts below, which are based on sufficient materials and supported by proper reasoning, call for no interference by this Court. As such, there is no merit in this Second Appeal and the substantial questions of law are hence answered against the appellants.

9. In the result, the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Vsg/rk

s/d-
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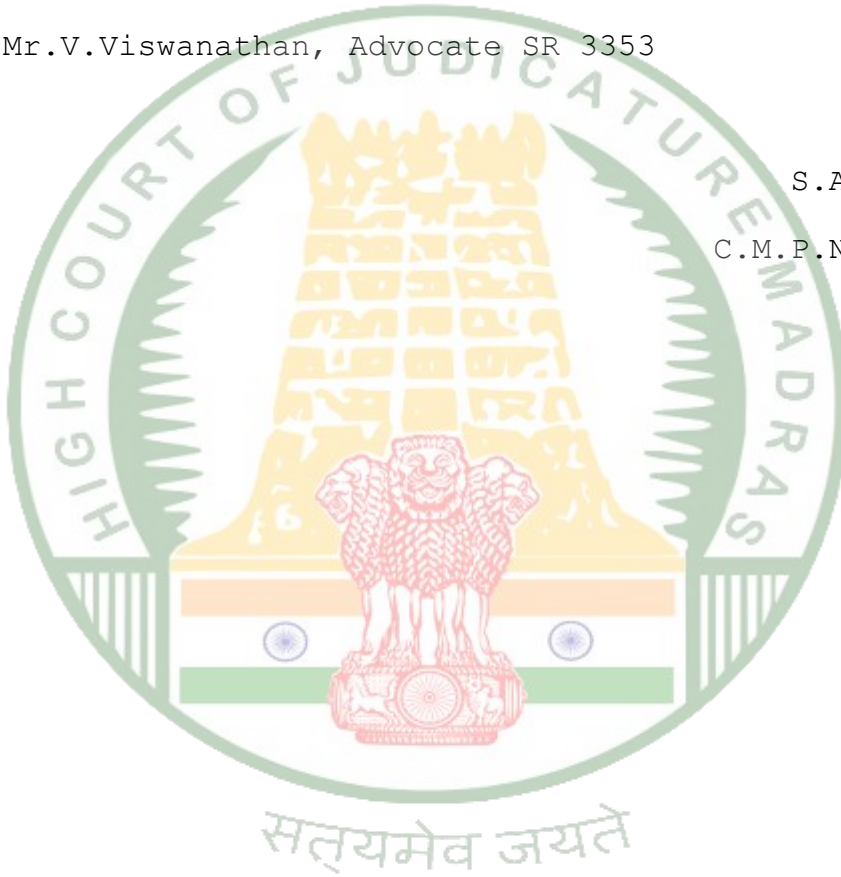
1. Sub Court, Dharmapuri.
2. District Munsif Court, Harur.
3. The Section Officer,
VR Section, High Court,
Madras.

+ 1 cc to Mr.T.Murugamanickam, Advocate SR 3363

+ 1 cc to Mr.V.Viswanathan, Advocate SR 3353

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