

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2016

CORAM

THE HONOURABLE MR. JUSTICE P.KALAIYARASAN

S.A. No.1648 of 1999

1. Tamil Nadu Electricity Board
Rep. by its Superintending Engineer,
Salem.
2. The Assistant Engineer
Tamil Nadu Electricity,
Subramaniya Nagar, Meyyanoor,
Salem - 5. Appellants

vs.

1. Alli Ammal
2. Rajarajan Respondents

Second Appeal is preferred under Section 100 of the Code of Civil Procedure against the Judgment and Decree, dated 18.02.1999 made in A.S.No.16 of 1998 on the file of the Additional Sub-Court, Salem, reversing the Judgment and Decree, dated 31.03.1998 made in O.S.No.1139 of 1996 on the file of the Principal District Munsif Court, Salem.

For Appellants : Mr.V.Viswanathan
For Respondents : Mr.T.Murugamanickam

J U D G M E N T

The Second Appeal is filed against the Judgment and Decree, dated 18.02.1999 made in A.S.No.16 of 1998 on the file of the Sub-Court, Salem, reversing the Judgment and Decree, dated 31.03.1998 made in O.S.No.1139 of 1996 on the file of the District Munsif Court, Salem.

2. This Second Appeal arises from O.S.No.1139 of 1996, praying to set aside the order passed by the second defendant, by his order, in LR.No.AE/O&M/MYR/I.A./file RPS/D 387, 92-93, dated 19.03.1993 / 22.03.1993 as void and consequently, restrain the defendants from disconnecting the service connection.

3. The trial court dismissed the suit. On appeal filed by the plaintiffs, the first appellate court, reversed the findings of the trial court and granted the relief in favour of the plaintiff.

4. For convenience, the parties are referred to as plaintiffs and defendants in this appeal.

5. The defendants are the appellants in this second appeal. The plaintiffs 1 and 2 are the owner and tenant respectively. The service connection No.10 of Pallapatti, Salem belongs to the first plaintiff. The second plaintiff is running a PVC factory as tenant of the first plaintiff. There are three meters for 3 phases. The second plaintiff was regularly paying the consumption charges to the defendants. Without informing the plaintiffs, the defendants replaced one of the meters and the second defendant also sent a demand notice, dated 19.03.1993 / 22.03.1993, calculating the consumption charges as Rs.20,792.13/-. The unilateral and arbitrary decision of the second defendant is not valid. Since there was a threat of disconnection, the suit has been filed.

6. In answering to the suit claim, the defendants contended that on 26.12.1991, when meter reading was taken, one meter was found defective and therefore, that meter was replaced with a new meter. The plaintiffs knew about the change of meter. The plaintiffs agreed to pay the charges as demanded by the Department and also paid two instalments and therefore, the plaintiffs are now estopped from contending otherwise. The plaintiffs are liable to pay the balance amount, as demanded and the suit is liable to be dismissed.

7. The trial Court, after recording evidence both oral and documentary, found that the plaintiffs have agreed to pay the charges as demanded and also paid two installments and therefore, they are not entitled to the relief as prayed for.

8. In the appeal filed by the plaintiffs, the first appellate court, in a well reasoned Judgment, found that the defendants had not followed the procedure contemplated under Section 26 (6) of the Indian Electricity Act, 1910.

9. At the time of admission of the Second Appeal, the following Substantial Questions of Law were raised for consideration :

1. Whether the lower appellate court is correct in not considering, Ex.B.5 wherein the respondents herein has requested the appellant for grant of installments for paying the short levy amount ?

2. Whether the lower appellate court is correct, in view of the reported Judgment in 1997 (3) CTC 527 ?

3. Whether the lower appellate court is correct in reversing the judgment of the trial court, by wrong application of mind, in respect of Section 26(6) of the Indian Electricity Act ?

10. There is no dispute that the defendants replaced one of the three meters, at the time of taking reading, as that meter was found defective. Thus replacement was made due to the defectiveness of the meter and not due to the fault of the consumption. Charges were also calculated by the defendants for the period from 26.10.1991 to 08.09.1992. Though the defendants contend that the plaintiffs knew about the replacement of the meter, there is no documentary proof for that.

11. Learned counsel appearing for the respondents / plaintiffs contend that the appellants / defendants, without following the procedure laid down under Indian Electricity Act, 1910, fixed the consumption charges arbitrarily, that too for the period exceeding 6 months.

12. Section 26 (6) of the Indian Electricity Act, 1910 reads as follows :

(6) Where any difference or dispute arises as to whether any meter referred to in sub-section (1) is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity.

Provided that before either a licensee or a consumer applies to the Electrical Inspector under this sub-section, he shall give to the other party not less than seven days' notice of his intention so to do.

13. Learned counsel appearing for the respondents / plaintiffs has also brought to the notice of this Court the decision,

in Shree Ganapathy Industries v. The Assistant Engineer, Distribution / Sipcot, reported in 2004 (1) CTC 515. In the above ruling, this Court has held as follows :

"In the above provision, it is stipulated that if there is difference or dispute with regard to the correctness of the meter, the consumer or the Board may make an application to the Electrical Inspector and on such application being made, the Electrical Inspector has to verify and ascertain the correctness of the meter and if the meter is found to be defective, the Electrical Inspector shall estimate the amount of energy supplied to the consumer for a period not exceeding six months.

In the present case, the above procedure has not been followed. The respondent Board has itself estimated the amount of energy supplied to the consumer for a period more than six months and has passed the impugned order demanding payment of that sum. As per Section 26(6) of the Act, the Authority to declare the meter as ceased to be correct is only the Electrical Inspector and on making of such declaration, he has to estimate the amount of energy supplied to the consumer, during such time, not exceeding six months."

14. In this regard, the lower appellate court has also cited a decision, M.P.Electricity Board v. Basantibai, reported in AIR 1988 SC 71 in its Judgment. The Supreme Court, in the above ruling held as follows :

"In the instant case the dispute relates to whether the meter is a correct one or it is faulty not recording the actual energy consumed in running the oil mill of the respondent. So this dispute squarely falls within the provisions of the said Act and as such it has been rightly found by the High Court that it is the Electrical Inspector who alone is empowered to decide the dispute. If the Electrical Inspector comes to the finding that the meter is faulty and due to some defect it has not registered the actual consumption of electrical energy, then the Inspector will estimate the amount of energy consumed and will fix the amount to be paid in respect of such energy consumed within a period not exceeding six months. Appellant 1 is not competent pending the determination of this dispute by the

Electrical Inspector to issue the impugned notice threatening disconnection of supply of electricity for non-payment of supplementary bill prepared and sent by it. The Board is also not competent to prepare and send a supplementary bill in respect of energy consumed by the respondent from the one phase which stopped functioning and did not record any consumption of energy."

15. In the case on hand, the Department replaced the meter without notice to the plaintiffs. The meter alleged to be defective was also not sent to statutorily empowered Electrical Inspector, to decide whether the meter is faulty and fix the amount to be paid after estimation of the amount of energy consumed, if the meter is defective. The defendants themselves fixed the amount of consumption by replacing the meter.

16. Therefore, it is clear that the impugned order has been passed in utter disregard of the provision in Section 26(6) of the Indian Electricity Act, 1910 and is liable to be quashed.

17. Learned counsel appearing for the appellants / defendants contend that the respondents / plaintiffs, having agreed to pay the charges, as demanded in installments, they are estopped from taking contra stand. The impugned order of demand is dated 22.03.1993. Disputing the demand, reply was given by the second plaintiff under Ex.A.3, dated 27.04.1993. The suit was filed on 30.04.1993. The first plaintiff, gave an undertaking in the, the first plaintiff undertook to pay on installments, the demand made by the stamped paper, to pay the amount on installments on 05.05.1993 (stamp paper, dated 04.05.1993). Only subsequent to the filing of the suit defendants. Since, portion of the demand amount was paid in installments, during the pendency of the suit, it is to be considered that the plaintiffs paid those amount, without prejudice to the contentions, they took in the suit. Therefore, the lower appellate court has rightly considered this issue and rejected the contentions of the defendants, taking into account the utter disregard to the statutory provision by the Department.

18. Yet another contention of the learned counsel for the appellants is that the lower appellate court is not correct, in view of the judgment reported in (1997) 3 CTC 527 (Asmath Begum v. Tamil Nadu Electricity Board, Mettur). This ruling relates to Section 24 of the Indian Electricity Act and this provision is a special provision to safeguard the interest of the Electricity Board, to ensure recovery of arrears due to them and cannot be

said to have been lost by any period of limitation, stipulated in the Limitation Act.

19. The defendants in this case, without sending the defective meter to the Electrical Inspector, for examination and assess the consumption for a period not exceeding 6 months, have unilaterally decided the short levy amount for a period of about a year. The question of limitation does not at all arise in this case, questioning the arbitrariness of the appellants / defendants in the impugned order. Plaintiffs undertaking, Ex.B.5 to pay the demand on installments and payment of two installments was only during the pendency of the suit and therefore, plaintiffs did so, without prejudice to their contentions in the suit. Therefore, this Court answer all the Substantial Questions of Law raised at the time of admission against the appellants / defendants and in favour of the respondents / plaintiffs and accordingly, the second appeal is liable to be dismissed.

In the result, this Second Appeal is dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Sub-Court,
Salem.
2. The District Munsif Court
Salem.

Copy to

The Section Officer,
V.R Section, High Court,
Madras.

+1cc to Mr.T.Murugamanickam, Advocate sr.25568

S.A. No.1648 of 1999

kk(CO)
srg(18/05/2016)