

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 176 of 2003**

1. C.G. State Electricity Board (Formerly known as Madhya Pradesh Electricity Board) through the Superintending Engineer Chhattisgarh State Electricity Board, 32 Bangla, Bhila, District Durg (Chhattisgarh)
2. The Assistant Engineer (City, Distribution Centre, Chhattisgarh State Electricity Board, Near Collectorate, Durg. **---- Appellants**

Versus

- Babulal Sharma, Son of Shri Dwarika Prasad Sharma, Aged about 70 years, Proprietor Mahesh Rice Mills, Milpara, Durg, District-Durg (Chhattisgarh)

---- Respondent

For Appellants : Shri Manish Nigam, Advocate

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****18/05/2017**

Heard on admission.

2. This is defendants' appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code of 1908' in short) against the judgment and decree dated 24.10.2002 passed by the District Judge, Durg, in Civil Appeal No. 2-A/2002 whereby the first appellate Court, while affirming the judgment and decree dated 06.09.2001 passed in Civil No.5-A/1998 by the 2nd Civil Judge, Class-1, Durg, has dismissed the appeal.

3. The undisputed facts of the case are that the plaintiff Babulal Sharma instituted a suit for declaration and injunction by submitting, inter alia, that the supplementary electricity bill amounting to Rs. 35,134/- issued by the appellant-

authorities on 12.09.1998 is not sustainable due to defect in electric meter. It is pleaded further that despite demanding the enquiry report with regard to the electric meter, the defendant authorities have neither provided him the same nor cancelled the alleged supplementary bill and instead trying to disconnect his electric connection. Therefore, the plaintiff has been constrained to institute the suit in the instant nature.

4. The defendants have contested the aforesaid claim of the plaintiff by submitting, inter alia, that there is no defect in the electric meter, as alleged by the plaintiff, therefore, the supplementary bill as issued on 12.09.1998 was proper and the plaintiff was liable to pay the same. It is pleaded in the written statement that the contention of the plaintiff with regard to the applicability of provisions of Section 26 of the Indian Electricity Act is not sustainable as the same does not come within the purview of the said provision. It is contested further on the ground that the suit as framed is not valued properly as the plaintiff has failed to pay the *ad valorem* Court fee with regard to the amount, mentioned in the supplementary bill, therefore, the claim is liable to be rejected.

5. In order to establish the claim, the plaintiff has examined himself while defendants have failed to produce any evidence and their evidence was closed by the trial Court.

6. The trial Court, after considering the evidence led by the plaintiff, has come to the conclusion that the alleged supplementary bill was sent by the defendant authorities without first verifying or examination of the said electric meter by the Electrical Inspector. As a consequence, it was held that the alleged supplementary bill as issued by the defendant authorities by demanding Rs.35,134/- is illegal. In consequence, the trial Court has decreed the plaintiff's claim.

7. The aforesaid finding of the trial Court has been affirmed further by the lower

appellate Court in an appeal preferred by the defendants.

8. Being aggrieved, the defendants have filed this appeal. Shri Manish Nigam, learned counsel for the appellants submits that since there is no defect in the electric meter, therefore, provisions prescribed in Section 26 (6) of the Electricity Act, 1910, would not be attracted. He, therefore, submits that the Courts below have erred in holding that the supplementary bill cannot be issued without first referring the matter to the Electrical Inspector. He submits further that the plaintiff was required to pay the *ad valorem* Court fee with regard to the amount mentioned in the alleged supplementary bill by relying upon the Full Bench decision rendered in the case of ***Subhash Chand Jain vs. The Chairman, M.P. Electricity Board and others, 2000 (4) M.P.H.T. 318***. Therefore, the Courts below, without considering the said facts and even without framing the issues in this regard, have erred in decreeing the plaintiff's claim.

10. I have heard learned counsel for the appellants and perused the entire record carefully.

11. The plaintiff's entire claim is based on the premises that the supplementary bill for the months of February, 1997 upto August, 1997, was raised by the defendants-authorities by issuing a supplementary bill on 12.09.1998 is not sustainable as the meter was not in proper functioning condition, therefore, there was a defect in the electric meter.

12. The trial Court has framed the issues in this regard and after considering the evidence of the plaintiff has held that there is a defect in the meter and without referring the matter first to the Electrical Inspector, as required under Section 26 (6) of the Indian Electricity Act, 1910, the alleged supplementary bill has been raised by the defendant authorities, therefore, it is liable to be quashed. The said finding is affirmed further by the lower appellate Court while examining the evidence of the

plaintiff. Pertinently to be mentioned here further that although the defendants have submitted their written statement, but, have failed to produce any evidence in order to establish the fact that there is no defect in the electric meter and the provisions prescribed under Section 26 of the Electricity Act, 1910, are not attracted. Besides, the Courts below, while examining the evidence and material available on record, have come to a definite conclusion that there is a defect in the meter, in consequence, the supplementary bill as raised without first referring the matter to the Electrical Inspector is not sustainable. This finding is a pure finding of fact based upon proper appreciation of the evidence, therefore, the same cannot be liable to be a perverse finding, so as to require to be interfered.

13. The case law, as relied upon by the learned counsel for the appellants, is distinguishable from the facts involved in the present case. That is the case where an objection with regard to the valuation of Court fee was raised before commencement of trial by filing an application as required under Order 7 Rule 11 of the Code of Civil Procedure, 1908. However, in the instant case, the defendants have never tried for framing of the issues in this aspect and under such circumstances, the said objection cannot be entertained at this second appellate stage. The objection as raised with regard to payment of *ad valorem* Court fee is, therefore, noted to be rejected.

14. In view of the foregoing discussions, I do not find any question of law, much less, the substantial questions of law involved in this appeal. Accordingly, the appeal, being devoid of merit is liable to be and is hereby dismissed at the admission stage itself. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge

