

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.01.2017

PRONOUNCED ON : 18.01.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.651 of 2011

and

M.P.No.1 of 2011

J.Ramu

...

Appellant

Vs.

1.The Assistant Engineer
City Distribution III
(Panampetpattai)
Tamil Nadu Electricity Board,
Villupuram.

2.The Superintendent Engineer,
Having his office at
Power house Road,
Villupuram.

...

Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 11.01.2011 made in A.S.No.105 of 2010 on the file of the Principal District Judge, Villupuram, confirming the Judgment and Decree dated 13.04.2010 made in O.S.No.415 of 2007 on the file of the Additional District Munsif Court, Villupuram.

For Appellant : Mr.C.Prabakaran

For Respondents :Mr.V.Viswanathan

JUDGMENT

Challenge in this second appeal is made by the plaintiff against the judgment and decree dated 11.01.2011 made in A.S. No.105 of 2010 on the file of the Principal District Judge, Villupuram, confirming the judgement and decree dated 13.04.2010 made in O.S.No.415 of 2007 on the file of the Additional District Munsif Court, Villupuram.

2. The suit has been laid by the plaintiff for declaration and permanent injunction.

3. It is not in dispute that service connection No.29 has been allotted to the suit property by the defendants. Claiming that the meter pertaining to the above said service connection depicted inconsistent, invalid and exorbitant reading as regards the actual consumption of electricity by the plaintiff in the suit property, it is the case of the plaintiff that complaints have been lodged with the defendants and in pursuance thereof, a new digital meter was put up and even thereafter, the reading of the consumption of electricity had not been properly recorded in the meter fixed by the defendants and showed excess reading. It is the further case of the plaintiff that though complaints have been preferred with the defendants, however, it is stated that the defendants had sent the impugned letter calling

upon the plaintiff to pay a sum of Rs.11,471/- being arrears of consumption of charges to be paid by the plaintiff and according to the plaintiff, inasmuch as the above said impugned letter had been sent by the defendants without proper perspective of the issues and illegally and the defendants are making attempts to disconnect the electricity connection of the plaintiff, he had been necessitated to lay the suit against the defendants for appropriate reliefs.

4. Per contra, it is the case of the defendants that as far as the service provided by the defendants is concerned, there is no deficiency and the old meter box provided in the suit property was replaced and a new meter box had been installed on 30.04.2007 and proper reading was made as regards the consumption of electricity by the plaintiff and as regards the slow reading charges of the consumption of electricity by the plaintiff, the difference had been calculated by the defendants for the requisite period and thereby, the letter had been sent on 29.10.2007 calling upon the plaintiff to pay the slow reading difference charges amount of Rs.11,471/- and the same had been issued as per law and the plaintiff's requests to waive the charges was disallowed and therefore, according to the defendants, without any cause of action, the suit has been instituted by the plaintiff.

5. From the evidence adduced by the respective parties, it could be seen that the old meter fitted in the suit property was replaced by another meter. However, as found by the Courts below, in support of the case of the plaintiff that the meter fixed in the suit property depicted invalid, excess reading, as regards the actual consumption of electricity by the plaintiff, there is no material produced on the part of the plaintiff. If really, any such complaint of excess reading had been made by the plaintiff, as rightly found by the Courts below, he would have produced copies of the same. However, no complaint said to have been lodged by the plaintiff with the defendants has been marked.

6. It could be seen that as per the electricity consumption card marked as Ex.A1 pertaining to the service connection No.29, from the readings recorded periodically, it could be seen that there had been recording of slow consumption charges as put forth by the defendants and the Courts below have noted that periodically, the consumption charges recorded were very low and accordingly, it could be seen that on the basis of the complaints of slow reading of the meter concerned, the defendants have provided the new meter and also, as per the procedure, had also calculated the difference in the slow reading consumption charges for the requisite period and accordingly, called

upon the plaintiff by the impugned letter to pay the necessary charges. It is also found from Ex.A1 itself that the first defendant had directed the plaintiff to pay the impugned charges plus the actual consumption charges also and from the impugned letter marked as Ex.A3, it could also be seen that the request of the plaintiff to waive the consumption had been rejected. In such view of the position, the case of the plaintiff that the meter concerned had recorded invalid, excess charges, as regards the actual consumption of the electricity by the plaintiff is not acceptable. If really, on that ground, the meter had been replaced as put forth by the plaintiff, nothing prevented from the plaintiff from marking the copy of the complaint. Further, the document produced on the part of the plaintiff, particularly, Ex.A1 would itself go to show that as found by the Courts below, the meter had been recording slow reading of the actual consumption of electricity and therefore, in the lawful manner, the defendants have calculated the difference in the charges, which the plaintiff has to, legally pay and accordingly, directed him to pay the amount under the impugned letter. Therefore, the findings and conclusions of the Courts below that the impugned letter had been lawfully issued by the defendants and the same need not be set aside do not call for any interference.

7. However, the plaintiff's counsel contended that before determining the difference in charges, as regards the slow reading of the meter concerned, he had not been given any opportunity to place his objections. Countering the same, it is argued by the defendants' counsel that there is no procedure for calling upon the plaintiff or any consumer before the fixation of the amount as regards the slow reading charges. Further, the plaintiff having come forward with the suit asking for necessary reliefs has to prima facie establish that the determination of the slow reading difference charges by the defendants is arbitrary, exorbitant and illegal. No mala fide has been attributed on the part of the defendants by the plaintiff for calling upon him to pay the difference in the slow reading charges. In such view of the matter, when nothing has been placed by the plaintiff to show that the determination of the slow reading consumption charges fixed by the defendants is made without any basis and on the other hand, as seen from the documents marked on the side of the plaintiff and also as seen from the evidence of DW1, the defendants have, on the basis of the procedures adopted by them, had fixed the difference in charges as regards the slow reading and called upon the plaintiff to pay the amount.

8. In the light of the above discussions, the rejection of the plaintiff's case by the Courts below is found to be based on proper appreciation of the evidence on record and also, by affording cogent and acceptable reasons.

9. However, the Courts below have also held that the suit laid by the plaintiff in the Civil Court is barred under Section 145 of the Electricity Act, 2003. However, a reading of Section 145 of the Electricity Act, 2003 would go to show that as far as the impugned letter is concerned, it does not fall under the assessment made by the defendants as provided under Section 126 or 127 of the above said Act. It is also fairly admitted by the defendants' counsel that the impugned letter does not fall under the scope of either Section 126 or 127 of the Electricity Act 2003. In such view of the matter, it could be seen that as regards the findings of the Courts below that the plaintiff's suit is barred under Section 145 of the Electricity Act, 2003 cannot be accepted.

10. In any event as discussed above, the courts below have on the merits of the case had rightly found that the plaintiff is not entitled to seek the reliefs of declaration and permanent injunction as sought for against the defendants.

At the end, sans any substantial question of law being involved in this second appeal, the same is not entitled for acceptance and accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.01.2017

Index : Yes/No
Internet: Yes/No
sms

To

1. The Principal District Court,
Villupuram.
2. The Additional District Munsif Court,
Villupuram.

T.RAVINDRAN,J.

sms

Pre-delivery order in
S. A.No.651 of 2011
and
M.P.No.1 of 2011

18.01.2017