

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.10.2017

PRONOUNCED ON : 27.10.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.774 of 2001

Kaliamoorthy

...

Appellant

Vs.

1. The Tamil Nadu Electricity Board,
rep. by its Chairman,
Anna Salai, Chennai.

2. The Executive Engineer
(Revenue Division)
Tamil Nadu Electricity Board,
having office at Sirkali Town,
Nagapattinam District.

...

Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 09.06.2000 made in A.S.No.9 of 2000 on the file of the Principal Sub Court, Mayiladuthurai confirming the judgment and decree dated 18.09.1998 made in O.S.No.66/1996 on the file of the District Munsif Court, Sirkali.

For Appellant : Mr.V.Rajesh
for M/s.S.Sounthar

For Respondents : Mr.V.Viswanathan

JUDGMENT

Challenge in this second appeal is made to the Judgment and decree dated 09.06.2000 made in A.S.No.9 of 2000 on the file of the Principal Sub Court, Mayiladuthurai confirming the judgment and decree dated 18.09.1998 made in O.S.No.66/1996 on the file of the District Munsif Court, Sirkali.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for declaration and permanent injunction.

4. The case of the plaintiff, in brief, is that the suit rice mill, bearing service connection No.1, was owned and run by the plaintiff's grandfather Govindasamy and he has died and the said rice mill was allotted to the plaintiff and his paternal uncle Periyasamy and in this connection, the suit in O.S. No.72 of 1976 was laid on the file of the Sub Court, Mayiladudurai and the appeal filed thereafter in A.S.No.406 of 1982 is pending and as per the order of the Civil Court, the receiver appointed had been maintaining and running the rice mill and thereafter, the plaintiff was nominated to run the mill by the Court and accordingly, the plaintiff is running the mill and as such, he is not the real owner of the rice mill in question and the contracted load for the

rice mill is 60 HP. and on the other hand, the two motors fixed in the rice mill, each bearing 20 H.P, of them, only one motor is in running condition and accordingly, the plaintiff has deposited a sum of Rs.4,911/- as security deposit with the defendants. While so, the defendants had sent a communication calling upon the plaintiff to deposit additional sum of Rs.13,100/- towards security deposit and inasmuch as the plaintiff is running the mill only with 20 HP load and not with the contracted load of 60 HP, the defendants are not entitled to seek the security deposit amount at Rs.13,100/- and therefore, the notice issued by the defendants directing the plaintiff to deposit the additional security amount of Rs.13,100/- is not valid and the defendants are aware that the plaintiff is running the mill only with the motor capacity of 20 HP load and inasmuch as the defendants are attempting to disconnect the electricity connection, on the failure of the plaintiff to deposit the additional security amount as demanded by them, despite the reply sent by the plaintiff to the demand notice of the defendants, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that the suit is not maintainable either in law or on facts and the defendants are not aware of the civil proceedings between the plaintiff and his relatives as

regards the ownership of the rice mill. As per record, the rice mill stands in the name of S.S.Govindan, who is alleged to be dead and the factum of his death was not reported to the defendants and no body has come forward to apply for name transfer of the service connection and as such, the plaintiff is not entitled to file the suit as he is not a party to the contract with the defendants. On that score, the suit is liable to be dismissed and as per the contract entered into between Govindan and the defendants, the sum demanded has to be paid as necessary security deposit for the contracted load and as per the terms and conditions, the board has raised the quantum of current consumption deposit amount in the year 1994 and accordingly, as stipulated by the Government and the Rules and regulations of the Indian Electricity Act, the plaintiff has to pay the additional deposit amount as demanded by the defendants and hence, the demand of the additional current consumption deposit amount of Rs.13,100/- is perfectly valid and legal and hence, the suit is liable to be dismissed.

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6. In Support of the plaintiff's case, PW1 has been examined and Exs.A1 to 16 were marked. On the side of the defendants, DW1 was examined and Exs.B1 to 4 were marked.

7. On a consideration of the oral and documentary evidence

adduced by the respective parties and the submissions made, the Courts below was pleased to dismiss the suit laid by the plaintiff. Impugning the same, the present second appeal has been preferred.

8. At the time of the admission of the second appeal, the following substantial question of law was framed for consideration;

"Whether the judgments of the courts below are vitiated in finding that respondents are entitled to demand deposit from appellant, when he is not the full owner of the mill and he is only running the mill as per the order of the Civil Court pending decision as to no ownership?"

9. It is not in dispute that the suit rice mill bearing service connection No.1 stands in the name of Govindan, who is stated to be the grandfather of the plaintiff. It is also not in dispute that the contracted load for the rice mill is 60 HP, as per the materials placed on record. It is seen that there is some dispute as regards the ownership of the above said rice mill between the plaintiff and his paternal uncle and in this connection, civil suit in O.S.No.72 of 76 has been laid and challenging the judgment and decree passed in the suit, it is further seen that A.S.No.406 of 1892 has been preferred and the same is still pending. It is further found that based on the order of the

civil Court, the plaintiff has been nominated to run the rice mill in question and accordingly, it is seen that it is only the plaintiff, who is running the rice mill.

10. Now according to the defendants, as per the records, only Govindan is shown to be the owner of the service connection No.1 and his death has not been reported to them and further, no one has made any requisition claiming the change of the ownership of the service connection No.1 with them. As such, it is seen that the service connection No.1 still stands in the name of Govindan. Be that as it may, it is now found that as per the order of the Civil Court, it is only the plaintiff, who is running the rice mill in question.

11. It is also not in dispute that as mentioned above, the contracted load for the rice mill sanctioned by the defendants is 60 H.P and accordingly, it is found that as per the Rules and Regulations of the Indian Electricity Act and the stipulation of the Government, it is found that the defendants have made a demand for additional current consumption deposit for the service connection No.1 and accordingly, made a demand from Govindan amounting to Rs.13,100/- and as the rice mill in question is now presently run by the plaintiff as per the order of the Court, it is found that the plaintiff has received the

demand notice and contended that inasmuch as the rice mill is being run only with the motor capacity of 20 HP load and the said fact having been known to the defendants, according to the plaintiff, the defendants are not entitled to seek additional deposit for the contracted load of 60 HP and hence, the security deposit already furnished is sufficient and hence, according to the plaintiff, the demand notice of the defendants directing the plaintiff to deposit the additional security amount of Rs.13,100/- is invalid and hence, the suit for appropriate reliefs.

12. Per contra, it is the case of the defendants that inasmuch as the contracted load for the service connection No.1 is 60 H.P, the defendants are legally entitled to seek the additional deposit amount as per the Rules and Regulations of the Indian Electricity Act and the conditions stipulated by the Government and therefore, contended that the demand notice seeking for the enhancement of the security amount is perfectly valid and legal and hence, the plaintiff is not entitled to seek any relief as regards the same and the suit is liable to be dismissed.

13. It is seen from Ex.A1 that the demand notice has been sent by the defendants claiming additional security amount for a sum of Rs.13,100/- for the service connection No.1. To the same, the plaintiff has sent a reply marked as Ex.A2 claiming that the mill is being run

only with 20 H.P. load motor. However, as seen from the test report of the defendants prepared pursuant to the inspection of the rice mill in question marked as Ex.B1, it is found that the mill has been running with the more power load than that claimed by the plaintiff. That apart, as seen from the letter submitted by the plaintiff marked as Ex.B2, it is found that the mill in question is being run only with 60 H.P. Load power and therefore, as rightly determined by the Courts below, the claim of the plaintiff that the mill has been run only with the motor capacity of 20 H.P load and not 60 H.P. load as such cannot be readily accepted.

14. The contention put forth by the plaintiff that Ex.B2 has been concocted by the defendants with the help of his signature obtained in the blank paper cannot be countenanced in the absence of any pleas with reference to the same by the plaintiff and also, sans proof pointing to the above case of the plaintiff. In such view of the matter, it is found that the contracted load for the service connection No.1 being 60 H.P. and when it has not been established by the plaintiff that he has been running the mill only with 20 HP load and on the other hand, as determined by the Courts below, when the rice mill in question is being run with the full capacity of 60 H.P load, accordingly, it is seen that the defendants are legally entitled to claim the necessary security deposit amount for the service connection No.1 in

question and accordingly, it is found that the demand notice issued by the defendants for the additional security deposit is perfectly valid and legal and therefore, the determination of the Courts below that the plaintiff is not entitled to challenge the same for the reasons put forth by him are not liable to be interfered with in any manner as the reasonings and conclusions of the Courts below with reference to the same are found to be perfect in order.

15. In this second appeal, it is mainly contended by the plaintiff's counsel that inasmuch as ownership of the rice mill is still not vested with the plaintiff as on date and he is running the rice mill only as per the order of the civil Court temporarily, according to him, the defendants are not entitled to seek additional security amount from the plaintiff and hence, on that score, the plaintiff should have been granted the necessary reliefs as prayed for. However, as rightly put forth by the counsel for the defendants, the defendants are not concerned about in which capacity the plaintiff is running the mill in question. As rightly contended by them, when it is found that the defendants' contract as regards the rice mill in question has been made with one Govindan and when after the death of Govindan, no requisition has been made to the defendants for the change of the ownership of the service connection by any one including the plaintiff and when the plaintiff claims that he is running the mill as per the

order of the civil Court and when his plea that he has been running the mill with 20 HP load only is found to be not acceptable and on the other hand, when it is found that the mill is being run with full capacity load of 60 H.P., it is seen that as per the contract, the defendants are entitled to seek additional security deposit for the consumption load as per the rules and stipulations and accordingly, the plaintiff cannot avoid the payment of additional security amount claimed by the defendants on the footing that he is not the owner and only running the rice mill in question as per the order of the civil Court. As rightly put forth by the counsel for the defendants, even then the plaintiff is bound to pay the additional security amount as demanded by the defendants and it is for the plaintiff to seek appropriate orders/direction from the civil Court with reference to the payment of additional security amount by him as demanded by the defendants. In such view of the matter, it is seen that the contention of the plaintiff that he is not liable to pay the additional security deposit sans the ownership of the rice mill being vested with him as on date as such cannot be accepted. When it is admitted by him that he is running the rice mill in question as on date and when it is further seen that the rice mill has been functioning with contracted load of 60 H.P., in such view of the matter, it is found that the plaintiff, as determined by the Courts below, is bound to pay the additional security amount as demanded by the defendants.

16. In view of the above discussions, the substantial question of law formulated for consideration in this second appeal is answered against the plaintiff and in favour of the defendants.

17. In conclusion, the second appeal fails and accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

27.10.2017

Index : Yes/No

Internet : Yes/No

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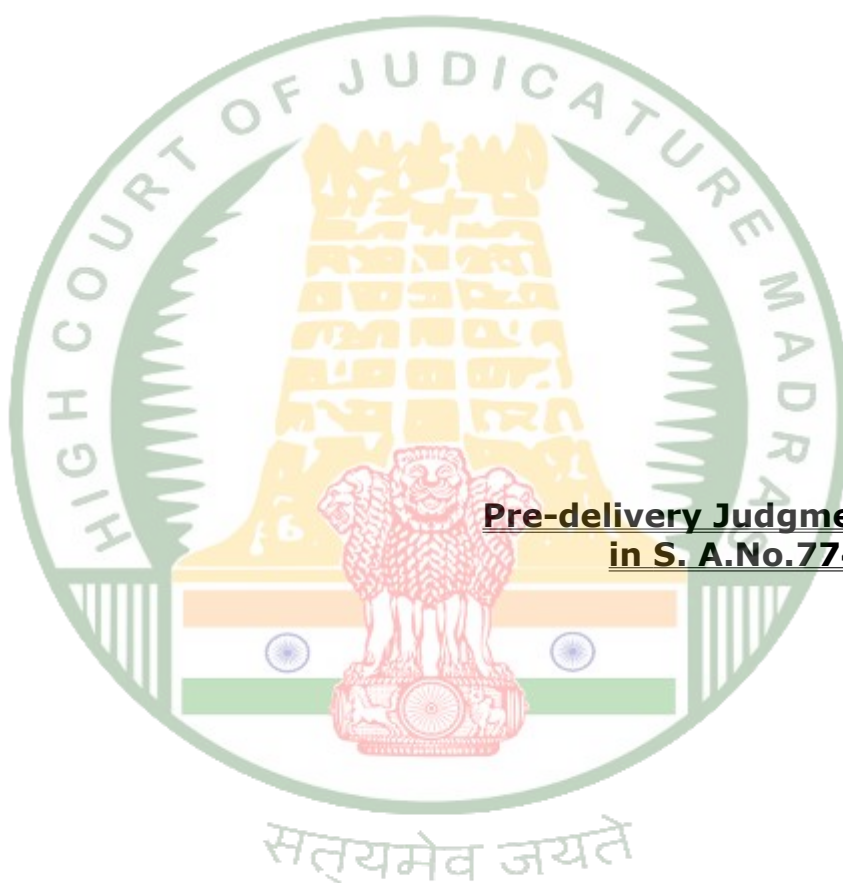
To

1. The Principal Sub Court, Mayiladuthurai.
2. The District Munsif Court, Sirkali.

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T.RAVINDRAN,J.

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**Pre-delivery Judgment made
in S. A.No.774 of 2001**

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