

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

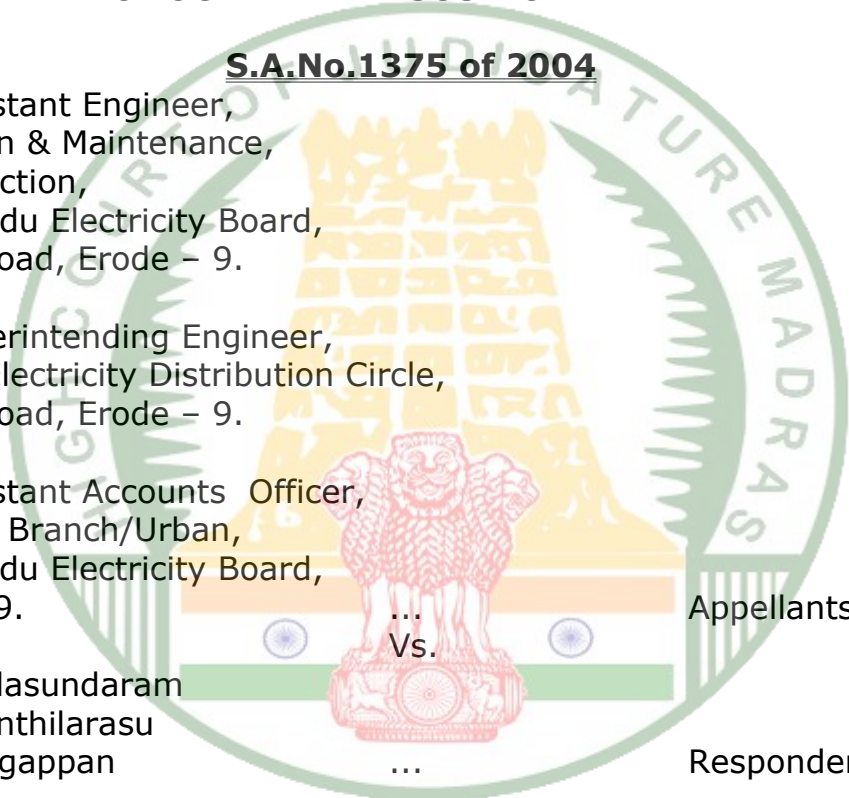
**RESERVED ON : 20.04.2018**

**PRONOUNCED ON : 04.06.2018**

**CORAM**

**THE HONOURABLE MR.JUSTICE T.RAVINDRAN**

**S.A.No.1375 of 2004**

- 
1. The Assistant Engineer,  
Operation & Maintenance,  
North Section,  
Tamil Nadu Electricity Board,  
Mettur Road, Erode – 9.
  2. The Superintending Engineer,  
Periyar Electricity Distribution Circle,  
Mettur Road, Erode – 9.
  3. The Assistant Accounts Officer,  
Revenue Branch/Urban,  
Tamil Nadu Electricity Board,  
Erode – 9.
- ...  
Vs.
1. T.R.A.Balasundaram
  2. T.R.A.Senthilarasu
  3. T.R.A.Nagappan
- ...
- Appellants  
  
  
  
  
  
  
  
  
  
Respondents

**Prayer :-** Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 24.04.2000 passed in A.S.No.298 of 1999 on the file of the 2<sup>nd</sup> Additional District Court, Erode, confirming the Judgment and Decree dated 18.11.1998 passed in O.S.No.640 of 1996 on the file of the District Munsif Court, Erode.

For Appellants : Mr.V.Viswanathan

For Respondents : Mr.C.Prakasam

**JUDGMENT**

This second appeal is directed against the Judgement and Decree dated 24.04.2000 passed in A.S.No.298 of 1999 on the file of the 2<sup>nd</sup> Additional District Judge, Erode, confirming the Judgment and Decree dated 18.11.1998 passed in O.S.No.640 of 1996 on the file of the District Munsif Court, Erode.

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 plaintiffs, in brief, is that the service connection No.270 KD under Tariff IV was effected to the premises bearing Door No.222, Varahappa Iyer Street, Karungalpalayam, Erode – 3 and the plaintiffs are the present owners of the said premises and the plaintiffs are using the same for calendering business on wages and while so, white meter card was provided by the electricity department for the suit premises. Necessary entries are being made in the said white meter card by the Departmental Assessor while taking bi-monthly readings and the plaintiffs being the consumers used to pay the charges noted in the white meter card and there is no dispute that the meter installed in the suit premises has got 6 digits. However, while noting down the meter

readings, the Departmental Assessor concerned, has noted 5 digits by mistake and no way compared the same with the Electricity Accounts Register and the Green Meter Card and the plaintiffs have no access either to the Electricity Accounts Register or the Green Meter Card maintained by the defendants and as per the defendants case, the abovesaid mistake has been noted and as such, the plaintiffs had been asked to pay the difference amount of Rs.82,717/- for the period from 29.04.1993 till 29.09.1995 calculated at Rs.35,400/- units by way of their proceedings dated 27.11.1995 and the plaintiffs have no knowledge of the mistake committed by the department and the entire proceedings abovestated are illegal and violation of all cannons of natural justice and the amount arrived at is not proper. The plaintiffs had made several representations to the defendants to assess the amount correctly and allow them to pay the difference amounts in instalments. Though the defendants had allowed the plaintiffs to pay the difference amount in instalments, however maintained that the difference amount is Rs.82,717/- which is baseless and the Opening Meter Reading on 29.04.1993 and the Meter Reading taken on 22.09.1995 are to be taken into account and the consumption charges should be calculated deducting the amounts already paid by the plaintiffs for those periods and the same has not been followed in the present case and the defendants threaten to disconnect the service connection and the meter for effecting the domestic service connection has been struck off and in respect of the

complaint made to the department in connection with the same, the defective meter has not been replaced and instead they have charged at the rate of 210 units for every two months and the abovesaid reading calculated in respect of the domestic meter is also violative and not in accordance with the consumption of electricity and hence, left with no other alternative, according to the plaintiffs, they had 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 it is admitted that the white meter card has been provided to the plaintiffs by the department and it is further admitted that the meter has got 6 digits and while noting down the meter reading, the department assessor has noted 5 digits only by mistake. The defendants do not admit that the plaintiffs have no knowledge about the mistake committed by the department. As the white meter card is in the custody of the plaintiffs and the plaintiffs are well aware of the error / omission committed by the assessor in noting down the reading and the plaintiffs should have informed the board for further action as regards the same but the plaintiffs have not done so and out of the 6 digits, the last digit was omitted by the assessor for the period from 29.04.1993 to 29.09.1995 and on inspection by the Assistant Engineer, North, Erode, on 20.11.1995, the abovesaid mistake was noted and informed to the parties concerned by letter dated 27.11.1995 calling

upon them to pay the difference amount calculated at Rs.82,717/- for 35,400 units, which was omitted by the assessor during the abovesaid period. The department has got every right to recover the arrears amount if any arising on clerical error or mistake or wrong billing etc., under clause Nos.19.12, 19.14, 19.16 as per the terms and conditions of supply and the abovesaid terms and conditions also fall under the agreement entered into between the defendants and the plaintiffs with reference to the service connection effected in the suit premises and the request of the plaintiffs to pay the amount in instalments was considered by the department and the plaintiffs were given permission to pay the amount in 15 monthly instalments and accordingly, the plaintiffs had also paid the instalments for 7 terms and it is false to state that the amount calculated by the defendants as regards the electricity consumed by the plaintiffs during the relevant period on account of the wrong billing is not properly made and on the other hand, the amount has been calculated as per the rules of the board and the original meter reading on 29.04.1993 should be 554300. But it was wrongly entered by the assessor as 55430. Similarly on 22.09.1995, original reading should be 594000 but wrongly noted by the assessor as 59400 and hence, the department had calculated the consumption of electricity utilised by the plaintiffs during the relevant period on the calculation of the reading as per the 6 digits of the meter and in this connection, the department has also initiated separate departmental enquiry against the assessor, who had committed

the mistake and the plaintiffs have not placed any calculation repudiating the calculations done by the department and the domestic service effected is only an Industrial lighting load service and since the lighting load meter was already struck up, a computed basis of 210 units for bimonthly was worked out and billed and in this connection, no error has been committed by the department and hence, there is no cause of action for the suit and the suit is liable to be dismissed.

6. In support of the plaintiffs case, PW1 was examined and Exs.A1 to A13 were marked. On the side of the defendants, DWs1 to 3 were examined and Exs.B1 to B3 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to accept the plaintiffs' case and accordingly, granted the necessary reliefs sought for by the plaintiffs. Impugning the same, the present second appeal has been laid.

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

***" when there is no dispute that the plaintiffs utilised the electricity supplied to their service connection during the relevant period, can they be allowed in***

***law to resist the claim of the electricity board demanding money due from them, as shortteried during the same period on the ground that it is solely due to the assessor's mistake only?"***

9. It is not in dispute that the service connection No.270 KD under Tariff IV has been effected in the premises belonging to the plaintiffs and that, the plaintiffs has been carrying on calendering business in the said premises. It is also not in dispute that the meter provided in the premises for recording the consumption of electricity has got 6 digits. However, it is the case of the defendants that the assessor concerned while noting the meter reading during the period from 29.04.1993 till 29.09.1995 instead of noting 6 digits available in the meter, wrongly noted the same as 5 digits and on that basis, the charges had been collected from the plaintiffs and the said mistake had come to be noted by the department only on 20.11.1995 and accordingly, based on the same, as the wrong billing had been made as regards the actual consumption of electricity by the plaintiffs during the abovesaid period, it is the case of the defendants that as per the terms and conditions of the electricity board, the consumption of units during the abovesaid period was calculated at 35400 units and accordingly, the plaintiffs had been directed to pay the amount for the same worked out at Rs.82,717/-. Further, according to the defendants, the single phase meter provided in the premises has been found to be struck i.e. though the disc was running,

the dial meter was not recording the correct meter consumption and accordingly, based upon the detection of the same, it is stated that on a computed basis of 210 units for bimonthly had been calculated as the consumption of electricity by the plaintiffs and accordingly, the amount has been calculated and the plaintiffs had been directed to pay the necessary difference amount and it is stated that the defendants had issued a letter dated 27.11.1995 calling upon the plaintiffs to pay the difference amount as calculated by the department and the said letter dated 27.11.1995 is being impugned in the present suit.

10. According to the plaintiffs, they cannot be mulcted with the liability of paying the amount demanded for the mistake committed by the department assessor and the department cannot be sleeping over the matter for more than 2 years without validating and correlating their recordings of the meter with the records available with them and hence, the department is not entitled to charge the plaintiffs with a huge amount for the error committed by them and further, according to the plaintiffs, the calculation arrived at by the department as regards the amount in the impugned notice is not properly made and hence, the suit for necessary reliefs.

11. As above seen, there is no dispute that the meter fixed in the plaintiffs premises contains only 6 digits . Further, as seen from the

meter card marked as Ex.A7, the assessor concerned has noted only 5 digits during the relevant period as found in the said card and the earlier white card issued by the department has not been placed before the Court. Be that as it may, it is the case of the defendants that for the period from 29.04.1993 to 29.09.1995, the assessor concerned had noted the reading by taking into consideration only 5 digits instead of the 6 digits actually available in the meter and thereby, the mistake had crept in while recording the consumption of electricity by the plaintiffs and only thereafter, on 20.11.1995 the mistake has come to be detected and accordingly, it is stated by the department that the impugned letter has been issued to the plaintiffs calculating the amount, which is liable to be paid for the actual consumption of electricity, which had been arrived at for 35400 units. Further, it is the case of the defendants that the single phase meter had been provided and the same was not functioning and thereby, correct recording of the consumption of electricity has not been made and accordingly, it is the case of the defendants that on a computed basis of 210 units for two months, the amount has been calculated and the letter dated 27.11.1995 has been issued to the plaintiffs to pay the difference amount.

12. To the impugned letter marked as Ex.A1, it is found that the plaintiffs have sent a reply dated 16.12.1995 marked as Ex.A2 and with reference to the same, the department has issued the letter dated

01.02.1996, whereunder, it has been mentioned that inasmuch as the meter provided has got 6 digits and the reading had been recorded wrongly by mistake by taking into consideration only 5 digits and further, the attention of the plaintiffs had been drawn that if the 6 digits noted on 20.11.1995 is taken and the difference calculated, the units would work out to more than lakhs of units and accordingly, the remittance of the amount by the plaintiffs had been calculated properly by the department under Ex.A1 letter, which directed the plaintiffs to pay the amount if necessary in instalments. Accordingly, it is found that following Ex.A3, the plaintiffs had agreed to pay the amount in instalments and sought for necessary permission with reference to the same by way of the letter dated 12.03.1996 marked as Ex.A4. The abovesaid request of the plaintiffs has been considered by the department and accordingly, from Ex.A5 letter sent by the department to the plaintiffs, it is found that the plaintiffs had been granted 15 instalments period to pay the amount demanded and accordingly, it is the case of the defendants that the plaintiffs had paid 7 instalments thereafter. This fact has not been controverted by the plaintiffs. Subsequently, by way of a letter dated 16.03.1996, the plaintiffs had requested the department to determine the amount correctly and permit them to pay the amount in instalments without disconnecting the electricity.

13. It has been fairly admitted by the defendants that the assessor concerned had noted the meter reading wrongly by noting only 5 digits instead of 6 digits. When it is also admitted by the plaintiffs that the meter provided in the premises has only 6 digits, accordingly, it is found that the assessor concerned should have recorded the meter reading only on the basis of 6 digits instead of 5 digits. It is thus found that by mistake or inadvertence, the error had been committed and it may be concluded the recording of the consumption of electricity during the relevant period from 29.04.1993 till 29.09.1995 has not been properly recorded by taking into account the digits available in the meter. Accordingly, it is found that the actual consumption of electricity by the plaintiffs during the said period has not been properly recorded and it is resultantly found that the defendants' board is put to loss. It is not the case of the plaintiffs that they had not consumed the electricity for the premises concerned during the relevant period while engaging in their business. Thus, it is seen that the plaintiffs had been consuming the electricity during the relevant period and accordingly, they are bound to pay the electricity charges as per the correct recording of the meter. When the materials placed on record go to disclose that the meter reading had not been correctly taken, accordingly, it is found that the defendants have got all the entitlement to work out the correct consumption of electricity based upon recording of the units as per the 6 digits available in the meter and accordingly, it is seen that the

defendants board by way of Ex.A1 letter had calculated the same and accordingly, directed the plaintiffs to pay the charges demanded therein. Similarly, it is also found and not in dispute that the single phase meter is not functioning and been a defective one as the dial meter did not record the meter reading properly though disc was running. This was calculated at an anterior date and accordingly, the calculation was done on computed basis of 210 units per 2 months and accordingly, amount had been calculated by the defendants and directed the plaintiffs to pay the amount by way of Ex.A1 letter.

14. In this matter, the defendants have also placed the Green meter card maintained by them in connection with the recording of the meter and no doubt, the witnesses examined on behalf of the defendants had not properly explained certain recordings in the Green meter card projected in the matter and on that basis, it is found that the Courts below had disbelieved the defence version. As rightly putforth, merely because one or two meter readings are not properly recorded in the green meter card that would not entitle the plaintiffs to contend that they are not liable to pay the amount demanded, inasmuch as the same had crept only due to the error committed by the defendants. However, the fact remains that it is not in dispute by the plaintiffs that during the relevant period, they had been consuming the electricity and in such view of the matter, it is found that when the plaintiffs had drawn the electricity

and utilised the same for the business purpose, accordingly, the plaintiffs are bound to pay the difference in charges wrongly billed and collected by the department and in such view of the matter, it is found that department is justified in calculating the units consumed by the plaintiffs at 35400 units during the relevant period based upon 6 digits and in such view of the matter, it is seen that the challenge thrown to Ex.A1 letter does not merit acceptance.

15. Though an argument has been putforth by the plaintiffs that the calculation has not been arrived at by the department properly as per the terms and conditions of the electricity board, in what manner the calculation has been wrongly made, there is no material forthcoming on the part of the plaintiffs. On the other hand, as seen from the evidence of DWs1 to 3 as well as the impugned letter marked as Ex.A1 and the evidence adduced thereof, it is found that taking into account, the 6 digits of the meter reading and accordingly, based upon the said calculation, it is found that the department had arrived at the units, which had been consumed by the plaintiffs and worked out the amount and in such view of the matter, without any materials, the mere allegations on the part of the plaintiffs would not be sufficient to prove that the amount demanded by the department has not been properly calculated.

16. Similar is the case with reference to the defective one phase meter, which is admittedly not functioning as the dial meter provided therein, did not function, which resulted in the improper recording of the meter consumption of electricity by the plaintiffs, accordingly, on computed basis, it is found that in accordance with the terms and conditions of the energy supply, the department had calculated 210 units bimonthly and accordingly, also fixed the amount thereby, which is liable to be paid by the plaintiffs.

17. In the light of the abovesaid reasons, merely because some fault or mistake has been committed by the defendants' staff that cannot be taken advantage of by the plaintiffs for contending that they are not liable to pay the amount demanded. In reality, the plaintiffs had drawn and utilised the electricity during the relevant period. The contract/agreement entered into between the plaintiffs and the department with reference to the suit service connection has come to be marked as Ex.B1. On a perusal of Ex.B1, it is found that as per the clause 13(a) relating to applicability of Indian Electricity Act, 1910, Electricity (Supply) Act, 1948 and further as per clause 13(b) relating to savings as to clerical, which provide as follows:

**" APPLICABILITY OF INDIAN  
ELECTRICITY ACT, 1910, ELECTRICITY  
(SUPPLY) ACT,1948.**

**13. (a). The agreement shall be read and construed as subject in all respects to the provisions of the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 and of any modification or re-enactment thereof for the time being in force and the rules for the time being in force thereunder so far as the same respectively may be applicable and subject to the conditions of supply approved from time to time by the Board.**

**SAVINGS AS TO CLERICAL:**

**(b). (i) In the event of any electrical errors or mistakes in the amount levied demanded or charged by the Board then in the case of under charging the Board shall have a right to demand an additional amount and in the claims were not barred by limitation under the law then in force.**

**(ii). the parties hereby further agree that the amount claimed in the bills shall be payable within the time allowed, irrespective of any decision to be taken regarding any dispute about its correctness or otherwise of the amount levied, demanded or charged by the Board. The Board shall have a right to**

***proceed in accordance with law on the basis of the amount claimed in the bills till it is proved or established that the amount claimed was in excess or what was actually due. The consumer shall not on the plea of the in correctness of the bills with hold any portion of the bills.***

A combined reading of clause 13 (a) & (b) would go to show that when as per the agreement entered into, the plaintiffs had agreed to be bound by the Electricity Act and other allied Acts as well as any modification of the Act for the time being in force and the Rules framed in connection with the same as well as the conditions of supply of electricity approved from time to time by the board and further, when it is found that in the event of any clerical errors or mistakes in the amount levied/ demand or charged by the board in the case of under charging and the plaintiffs thereby had agreed that the board is entitled to charge the additional amount with reference to the same and equally, in the case of the board collecting excess charges, the plaintiffs being consumers also had been provided with the right to get the refund of the excess amount paid, accordingly, it is found that merely because, some mistakes had been committed by the staff concerned that would not give a blanket protection to the plaintiffs in not paying any amount for the consumption of electricity drawn by them during the relevant period as per the correct meter reading.

18. Further, as per the terms and conditions of the supply of the electricity of Tamil Nadu Electricity Board, clause 19 relates to billing and payment and on a perusal of the same, the following terms and conditions as noted in clauses 19.12, 19.14 and 19.16 read as follows:

**" 19.12. In the event of any clerical errors or mistakes in the amount levied, demanded or charged by the Board, the Board will have the right to demand an additional amount in case of under-charging and the consumer will have the right to get refund of the excess amount in the case of overcharging (Also refer to Clause 19.16).**

**Where it is found that the consumer has been overcharged, the excess amount paid in such cases will be adjusted against future current consumption charges. If, even after such adjustment against future current consumption charges for two assessment periods, there is still a balance to be refunded, the refund of will be made by cheque as in the case of refund of excess amount collected towards Current Consumption Deposit.**

**19.14: Where arrears arise due to revision of past bills/assessments for various reasons viz., defective meter,**

**defective metering arrangements, incorrect application of tariff, wrong billing, revision of tariff etc., payments in instalments will be permitted.**

**Each instalment will be equivalent to one month's average bill amount/assessment amount besides the current bill/assessment, subject to the maximum instalments being thirty-six in number.**

**The amount of instalments will be rounded to the nearest Rs.25/- and the balance left over will be included in the last instalment.**

**The facility of payments in instalments will be made available to the consumer on request. To avail of this facility, the consumer should execute an undertaking in the form prescribed by the Board (vide Appendix III)**

**19.16: Revision of bills for Low Tension service connections arising out of any reason attributable to the Board like defective meter, defective metering arrangement, incorrect application of tariff, wrong billing, etc., will be made for the duration of the period for which such revision is called for, subject to a maximum back period of three years from the date of billing.**

***Revision of bills arising out of any reason attributable to the consumer will be made for the duration for which such revision is called for.”***

19. To the abovesaid terms and conditions, the plaintiffs had agreed to abide by as per Ex.B1 agreement, it is found that the board has got all the right to demand the additional amount in case of undercharging, in the event of any clerical error or mistake in the amount levied, demanded or charged by the board and it is also found that the consumer is also entitled to request the board to permit him to pay the amount demanded in instalments and when the revision of bills had been made on account of the defective meter reading, wrong bill etc., the board has got the powers to revise the same for the relevant period subject to a maximum back period of three years from the date of the billing. It is seen that accordingly, for the defective recording of the meter reading as regards the meter provided in the plaintiffs' premises as well as the defective meter available in the plaintiffs premises, it is found that the board has calculated the amount as per the terms and conditions of the electricity board or the supply of energy and accordingly, calculated the same and directed the plaintiffs to pay the said amount. As rightly putforth, if the unit as recorded in the meter at the time of notifying the defect had been taken into account, lakhs of units should have been calculated as having been consumed by the plaintiffs. On the other hand, it is found that the

department has calculated the reading only as per the terms and conditions of supply and accordingly, fixing the units consumed during the relevant period at 35400 and accordingly, called upon the plaintiffs to pay the necessary amount with reference to the same. In such view of the matter, it is found that the plaintiffs cannot take advantage of the mistakes done by the staff for repudiating their liability to pay the amount demanded by the department when in fact they had actually consumed the electricity supplied during the relevant period. The reasonings and conclusions of the Courts below for accepting the plaintiffs' case on the footing that certain defects are noted in the meter reading of the green card projected in the matter, that by itself would not entitle the plaintiffs to avoid the payment demanded from them for the consumption of electricity during the relevant period and when there is no material placed by the plaintiffs contra that the amount had not been properly calculated by the department as per the terms and conditions of the supply of electricity and when the materials placed on record by the defendants both oral and documentary seen cumulatively, it is found that the calculation has been done properly and accordingly, it is also found that the plaintiffs had agreed to pay the amount in instalments, which had been favourably considered by the department, directing the plaintiffs to pay the amount in 15 instalments, which was also accepted by the plaintiffs and 7 instalments have come to be paid by the plaintiffs and in such view of the matter, the plaintiffs cannot be allowed to reagitate the

same once again by contending that the mistake of the staff cannot be the basis for the impugned letter dated 27.11.1995 marked as Ex.A1 and accordingly, it is held that when there is no dispute that the plaintiffs had utilised the electricity supply vide their service connection during the relevant period, they are liable to pay the charges with reference to the same as demanded by the board and the plaintiffs cannot be allowed to take advantage of the board staff's mistake in calculating the charges by taking into account only the 5 digits instead of 6 digits available in the meter. The substantial question of law formulated in this second appeal is accordingly answered in favour of the defendants and against the plaintiffs.

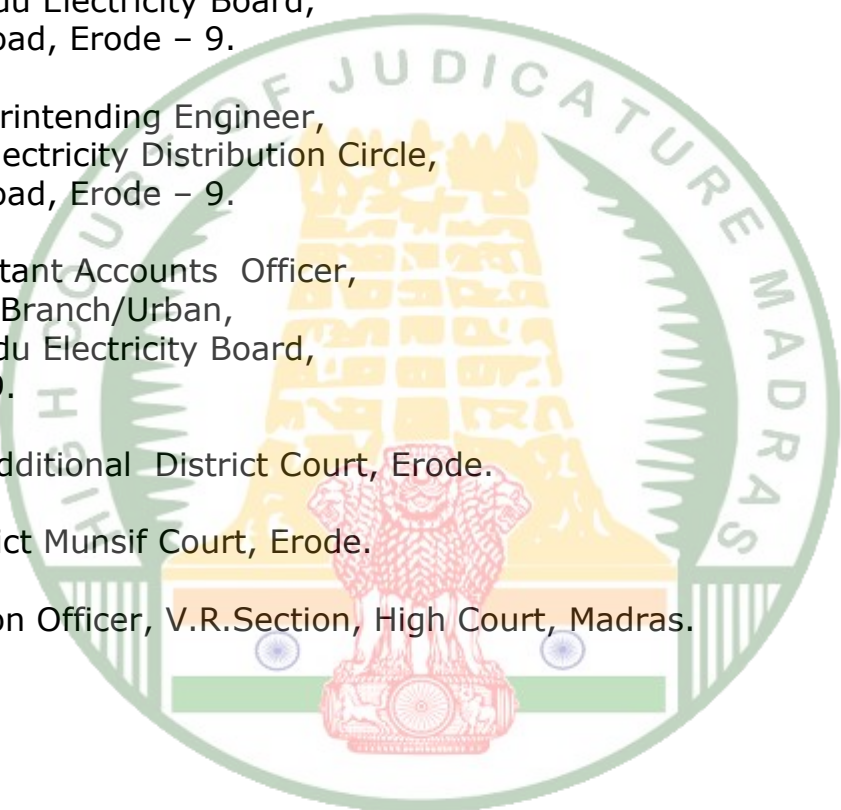
For the reasons aforestated, the Judgement and Decree dated 24.04.2000 passed in A.S.No.298 of 1999 on the file of the 2<sup>nd</sup> Additional District Judge, Erode, confirming the Judgment and Decree dated 18.11.1998 passed in O.S.No.640 of 1996 on the file of the District Munsif Court, Erode, are set aside and resultantly, the suit laid by the plaintiffs in O.S.No.640 of 1996 is dismissed without costs. Consequently, the second appeal is allowed without costs and connected miscellaneous petition, if any, is closed.

Index : Yes / No  
Internet : Yes / No  
sms

04.06.2018

To

1. The Assistant Engineer,  
Operation & Maintenance,  
North Section,  
Tamil Nadu Electricity Board,  
Mettur Road, Erode – 9.
2. The Superintending Engineer,  
Periyar Electricity Distribution Circle,  
Mettur Road, Erode – 9.
3. The Assistant Accounts Officer,  
Revenue Branch/Urban,  
Tamil Nadu Electricity Board,  
Erode – 9.
4. The 2<sup>nd</sup> Additional District Court, Erode.
5. The District Munsif Court, Erode.
6. The Section Officer, V.R. Section, High Court, Madras.

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital of Ashoka in front of it. The text 'HIGH COURT OF JUDICATURE MADRAS' is written in a green circle around the central image. Below the seal, the Sanskrit motto 'सत्यमेव जयते' (Satyameva Jayate) is written in Devanagari script.

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**T.RAVINDRAN, J.**

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**Pre-Delivery Judgment made  
in S.A.No.1375 of 2004**

**WEB COPY 04.06.2018**

**Pre-delivery Judgment made**

**in S.A.No.1375 of 2004**

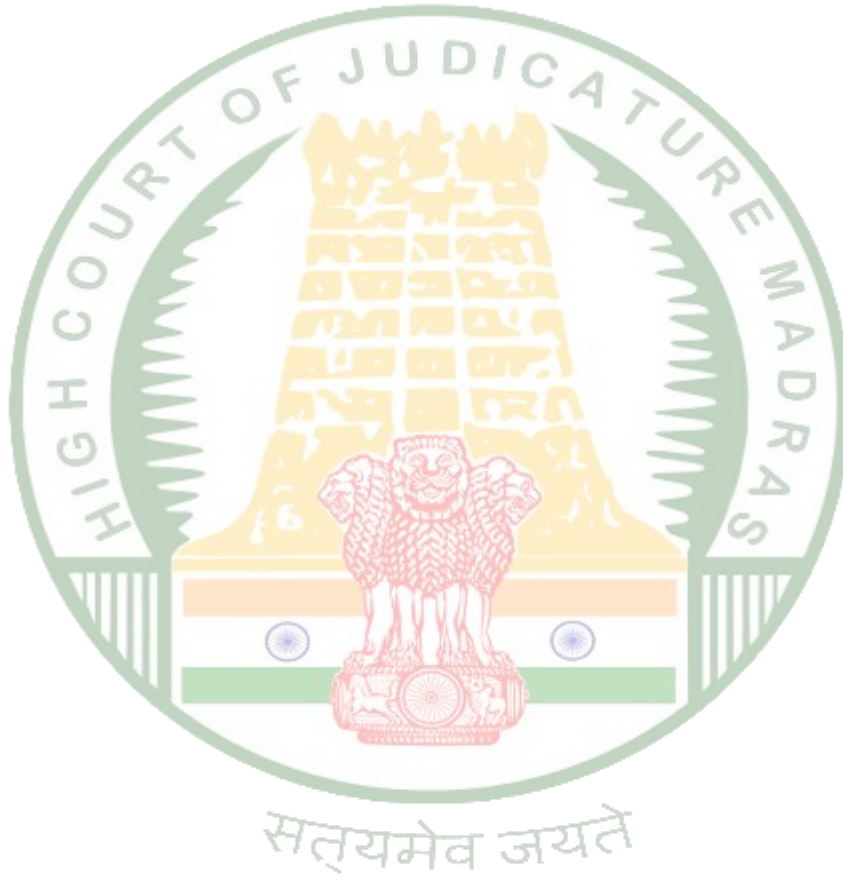
**To**

**The Hon'ble Mr.Justice T.RAVINDRAN**

**Most respectfully submitted**

**sms**

**P.A.to the Hon'ble Judges**



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