

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.12.2018

Delivered on : 19.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.995 of 2009

M/s. Sree Rajeswari Mills Ltd.,
"B" unit, Thennangudi,
Thirunallar Commune,
Karaikal.Appellant/Plaintiff

Vs

1. Union of India
Represented by Chief Secretary,
Government of Puducherry,
Goubert Avenue, Puducherry.
2. Government of Puducherry,
Represented by its Superintending Engineer,
Electricity Department, Puducherry.
3. The Executive Engineer-V,
Electricity Department,
Government of Puducherry,
Puducherry.Respondents /Defendants

PRAYER: The Appeal is filed under section 96 of Civil Procedure Code praying to set aside the Judgment and Decree made in I.A.No.91 of 2008 in O.S.No.9 of 2007 on the file of Additional District Judge Court of Puducherry at Karaikal dated 19-11-2008.

For Appellant : Mr.S. Thiruvenkataswamy

For Respondents: Ms.V. Usha,
AGP (Puducherry) for R1 to R3

Judgement

The plaintiff is the appellant challenging the rejection of their plaint in O.S.No.9 of 2007 on the file of the Additional District Judge, Karaikal. The facts in brief that has prompted and that has necessitated the filing of the above first appeal are as follows:

2.Plaintiff's Case

2.1.The plaintiff which is a medium scale industry engaged in the manufacture of cotton had filed the suit in O.S.No 9 of 2007 on the file of the Additional District Judge, Karaikal for the following reliefs

a) for a declaration that the Electricity demands raised by the defendant department authorities from 12/89 to March 2007 for the plaintiff HTSC Karaikal are all illegal, invalid, unlawful void and not binding on the plaintiff;

b) for a declaration that the plaintiff is entitled to adjustment of the amounts paid by them under mistake of law towards such bills from 12/89 to March 2007 with interest at the rate of 18% p.a. And;

c) for a declaration that the plaintiff raised bonafide dispute about the correctness of the meters and readings consequential relief of permanent injunction restraining the defendant department authorities and others claiming under them from disconnecting the plaintiffs HT service connection Thennagudi for non payment of the bills from March, 2007 onwards and cost of this suit.

2.2.With effect from 29.12.1989, the plaintiff was extended power supply by the defendants and at the time of the initial supply, the sanctioned demand was 500 KVA and at the time of filing of the suit, the demand had been enhanced to 900 KVA. From 27.08.2004, the plaintiff felt that the power supplied was not commensurate to the production and had therefore started addressing letters to the defendant requesting them to attend to this complaint. This was followed by the filing of a Writ in W.P.No.34854 of 2005 which was disposed by order dated 28.10.2005 with directions.

2.3.Thereafter, a check meter was installed by the Department on 24.10.2005. However, this check meter was installed without furnishing details of the last test provided under section 57(4) of the Indian Electricity Rules.

2.4.The plaintiff had once again raised the dispute on 19.01.2006 and the second defendant had passed a non speaking order against which the plaintiff had filed an appeal before the first defendant on 11.04.2006. Considering the fact that the defendant Board was not evincing any interest in rectifying the dispute, the plaintiff engaged the services of a former Chief General Electrical Engineer belonging to the Southern Railway to inspect the mill and to check the electricity consumed vis-a-vis

the production of cotton yarn for the period 29.12.1985 to date. At the request of the plaintiff, the said expert had also visited the mill in the last week of March 2007 and submitted an audit report dated 02.04.2007. A perusal of the said report revealed the following:

a) The meter recording the electricity consumed was defective

b) The meter (now in use) which was installed on 10.10.2001 and the check meter which was installed on 24.04.2007 also shows that the meters are defective on various days stated in the report.

c) Therefore the demand for the period 29.12.1989 to February 2000 was also valid since the report would indicate that right from the date of installation, the meter is defective.

2.5. On various occasions, the defendant department had also conceded and confirmed that the meter was defective. It was also the practise of the authority not to inform the plaintiff before the meter was rectified and therefore the plaintiff was not able to suggest that the meter be tested by a Electrical Inspector before the same was replaced.

2.6. Taking into consideration the defects in the meter, on 10.10.2001 an electrical meter was installed and the initial reading was however not recorded which is evident from the entries and this was clearly violative of Rule 57 (4) of the Indian Electricity Rules. The plaintiff would further submit that even after the electric meter was installed, the defect persisted. In fact before installing the electric meter and before the defective meter was removed, the defendant had not followed the procedure contemplated under section 26(4) of the Electricity Act, 1910, which prohibits the removal of a defective meter without the same being first referred to the Electrical Inspector. In view of the above, the plaintiff had contended that the demands from the period 12.12.1989 was therefore void, illegal and unlawful. The plaintiff had come to know about the extent of defect only after they had received the expert's report. The plaintiff would further submit that the demands which have been raised all these years by the defendant board were against the principles of fair play and justice and therefore left with no other alternative, the plaintiff had come forward with the above suit for the reliefs stated supra.

3. Defendants Case

3.1. The suit was resisted by the defendants board and in the written statement filed by 3rd defendant which was adopted by the defendants 1 and 2, the defendants would inter alia contend that the entire case of the plaintiff would rest upon the report of an engineer which procedure is unknown to the provisions of the Indian Electricity Act. They would further contend that the

correctness of the meter or otherwise was governed by the terms of G.O.Ms.No.28 dated 19.4.1993 of the Government of Puducherry which states that if the test of error had not exceeded the levels laid down under the Indian Electricity Rules, 1956 or any other Statutory notification, it shall be deemed that the entries are correct.

3.2.The defendant board would further submit that between the period 29.12.1989 to 29.2.1992, the plaintiff had not reported any inaccuracy in the reading and thereafter between 29.02.1992 to 21.06.2004, both dates being inclusive, defects were reported and entered in the metering card. During the period for which the meters were reported defective, the billing was done as per Clause 50 (a) of the Terms and Conditions of the Supply of Electricity. In fact, between the period 24.02.1992 to 1.10.2004, the plaintiff company was subject to 150 billing months and out of this only eight were reported defective. The defendants had rejected the report submitted by the expert stating that the report is just based on a theoretical formulae and not on actual usage.

3.3.The defendant had also taken a plea that referring the defective meter to the Electrical Inspector would only arise if there is a bonafide dispute between the consumer and licensee regarding the correctness of meter as per section 26 (6) of the repealed Act. The dispute, when it was first raised by the plaintiff was immediately attended to and the defective meter set right on 27.08.2004.

3.4.The defendants would further contend that they themselves purchase the electricity from the TNEB and PPCI and the same was being purchased by the defendant from out of the public funds. The defendants had also taken a plea that the plaintiff was simultaneously prosecuting W.P.No.16410 of 2005, where the cause of action as well as reliefs more or less overlapped that of the relief claimed in the suit and on this ground also the suit deserves to be dismissed.

3.5.The defendants had also raised the plea that the suit is barred in view of the section 145 of the Electricity Act, 2003, herein after called the 2003 Act and that the claim was barred by limitation since the relief was sought for with reference to the claim that had arisen in the year 1989 and that apart the plaintiff had not complied with the mandate under section 80 of the Civil Procedure Code.

4.Trial Court

4.1.The parties had gone to trial and after the cross examination of the plaintiff witnesses 1 and 2 in detail by the

defendants, the defendants had filed I.A.No.91 of 2008 to reject the plaint. The following were the grounds seeking rejection of the plaint:

a) Any grievance with reference to the meter or its reading should be addressed to the 3rd defendant who is the Executive Engineer V;

b) against his order an appeal would lie to the second defendant namely Superintendent Engineer I;

c) The demand could only be in respect of the amounts due 3 years immediately preceeding the filing of the suit and

d) The suit is based on a technical report of a 3rd party, which is not contemplated under the Act.

4.2.The plaintiffs had resisted the above application, inter alia contending that the filing of the application was highly belated as the suit was at a part heard stage with the evidence of the plaintiffs having reached conclusion and the defendant's having cross examined them extensively. The plaintiffs had further contended that the Terms and Conditions of Supply of Electricity which has been framed under G.O.Ms. No.28 was no longer valid in view of the amendment to the Electricity Act and the fact that the State Commission was yet to be constituted as per the provisions of section 82 of the Act and therefore the suit was maintainable. Further the Commission which was to be called the Electricity Regulatory Commission was yet to be constituted.

4.3.The learned District Judge after hearing the parties and relying upon the Judgment reported in (1997) 5 SCC page 120 held that the suit was not maintainable. Challenging this order the plaintiff's are before this Court.

5.SUBMISSIONS

5.1.Mr.S.Thiruvankadaswamy, learned counsel appearing on behalf of the appellant would contend that the case of the plaintiff is not one of theft of energy or tampering of meter, the dispute was only relating to a defective electric meter. The suit had been filed as early as in the year 2007 and the impugned petition came to be filed after a detailed written statement had been filed and parties had commenced trial. He would argue that under the Act namely 1910 Act, there was a section which dealt with defective meters which has been done away with in the Amendment Act. Section 26 of the Indian Electricity Act, 1910, hereinafter called the 1910 Act dealt exclusively with meters and Sub-Section 6 dealt with a defective meter and it would read as follows:

“(6)Where any difference or dispute arises as to whether any meter referred to in Sub Section (1) is or 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 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 I notice of his intention so to do."

Under the 2003 Act there is no corresponding provision.

5.2.He would further contend that the report of the Chartered Engineer has been confirmed and corroborated by the response to the RTI query which had been made by the plaintiff. The new Act had contemplated the setting up of a Redressal Committee and up to the date of the filing of the suit, the same has not come into existence and only on 07.05.2010, the said Committee had been constituted. That apart, the Supply Code had come into existence only in the year 2009. The rejection of the plaint was sought for on a ground which is basically a case of alternative remedy and not a case of lack of jurisdiction to the City Civil Court.

5.3.He would also draw the attention of the Court to paragraphs 25 and 26 of the plaint where the plaintiff has dealt with in detail the reasons for invoking the jurisdiction of the City Civil Court. He would also argue that the defendants have themselves admitted that the meters installed in the plaintiff's premises were defective. He would further argue that the regulations have been issued under this Act, after the suit which clearly does not oust the jurisdiction of the Civil Court and it has been ousted only in respect of cases falling within the scope of sections 126, 127 or 143 of the Act. In the view of the fact that the Regulatory forum had not been constituted, the petitioner/plaintiff was justified in moving to the Civil Court for his redressal. The counsel had relied on the Judgements narrated herein below in support of his arguments.

1. Union of India, represented by its Chief Secretary and others vs. Vasantha Carbide Company Ltd [reported in 2004-1-L.W. Page 810]

2. The Madras Race Club vs. M.Victor and 163 others [reported in 2013(6) CTC page 481]

3.M. Prince Manohar and others vs. Bhima Lakshmi Narasammah and others [reported in 2014 (1) CTC Page 160]

4. Assistant Engineer, Acquisition, Tamil Nadu Electricity Board and others vs. S. Baskaran [reported in 2008(5) CTC 307]

5. Punjab State Electricity Board and Another Vs. Ashwani Kumar [reported in (1997) 5 SCC 120].

5.4.Per contra, Ms. V. Usha, AGP, Puducherry would contend that the suit is barred in view of section 26(6) of the Indian Electricity Act, 1910. She would contend that in view of the vacuum being created on account of the non constitution of the regulatory authority, the only recourse is to fall back on the earlier Act of 1910 and she would also draw the attention of the Court to the fact that the plaintiffs have themselves admitted that it is the Electrical Inspector who is the authority and they having admitted to the said fact that it will only be the 1910 Act which would apply and the plaintiff is bound by the said contention raised by them in their plaint.

5.5. She has relied on the judgements narrated herein below:

1.The Executive Engineer -IV & Another vs. Varadha Steels & Others [reported in 2005 4 MLJ Page 462]

2.B.C.Ray and L. Jagannatha Shetty,JJ M.P.E.B. And others vs. Smt.Basantibai [reported in 1988 0 AIR(SC) 71].

5.6.In reply to the above contentions, the learned counsel for the plaintiff once again reiterated that the case on hand is not one of the theft of energy and Section 126 of the 2003 Act is contemplated only in the case of theft of energy. The rejection of plaint is based on a dead Act. He would further contend that in view of section 145 of the Act and considering the fact that there is no corresponding provisions to section 26 (6) of the earlier act, the civil suit filed is maintainable.

6.Discussion:

6.1.The crux of the plaintiff's case is that the reading in the meter was not commensurate to the actual usage and therefore the dispute between the plaintiff and the defendant was that of a defective meter, the dispute did not contemplate either a theft of energy or a tampering of the meter. This conclusion is further fortified on account of the fact that the defendants have not proceeded to invoke any of the provisions of Section 126 of the 2003 Act. The plaintiff has not been accused of tampering with the meter. It is also to be noted that the Regulatory Authority has come into effect in the year 2009 and the suit in question has been filed in the year 2007 itself. On the date of the filing of the suit, the Electricity Act of 2003

was in force. Section 145 of the Electricity Act, 2003 is the section which ousts the jurisdiction of a Civil Court. In order to appreciate the contentions raised in the above appeal, it is necessary to herein below extract the provisions of section 145 of the Electricity Act, 2003:

145. Civil Court not to have jurisdiction.- No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in section 126 or an appellate authority referred to in section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

6.2. Therefore from the reading of this section, it is clearly evident that the Civil Courts Jurisdiction has been ousted only with reference to the matters that come within the ambit of sections 126 and 127 of the Act or an order passed by an adjudicating authority constituted under Section 143 of the Act. A reading of Section 126, would clearly indicate that when the Assessing Officer after inspection of records maintained by the person or the inspection of the equipments/gadgets/machines etc. connected to the electrical supply finds that the person is indulging in the unauthorised usage of electricity the provisions of the said section would kick start and the investigation would follow. The explanation to the said section defines/elaborates the term unauthorised usage of electricity under clause "b":

- (b) "unauthorised use of electricity" means the usage of electricity-
- (i) by any artificial means; or
 - (ii) by a means not authorised by the concerned person or authority or licensee' or
 - (iii) through a tampered meter ; or
 - (iv) for the purpose other than for which the usage of electricity was authorized ; or
 - (v) for the premises or areas other than those for which the supply of electricity was authorized

6.3. Section 127 deals with appeals from the orders under section 126 of the Act. Section 143 is the provision under which an adjudicating Authority is appointed and this appointment is contemplated under Part XIV of the Act which relates to offences and penalties.

6.4. Therefore from the above Sections, it is clearly evident that the dispute which is now raised in the suit is not one that

comes within the scope and consideration of section 145 of the Electricity Act, 2003.

6.5.The Hon'ble Bench of this Court in the Judgment reported in 2004-1-L.W. Page 810 had observed that the existence of an alternative remedy was not a bar to the filing of the suit. In that case, the dispute was with reference to the disconnection of supply and since there was no appeal provision against the disconnection, the Bench took the view that the suit filed was maintainable.

6.6. The learned Government Pleader had relied upon the Judgment reported in 2005 (4) MLJ Page 462 to support her case that until the fresh appointment is made, the Assessing Officer appointed under the old Act would continue to operate as the Assessing Officer under the new Act and therefore in the instant case also the provisions of the old Act would apply as the Regulatory Authority had not been appointed at the time of the filing of the suit. This decision may not help the defendant as it is a case of theft of energy.

6.7.She would also rely upon the Judgment of the Supreme Court reported in AIR 1988 (SC) 71 to point out that under section 26 (6) of the 1910 Act, the Electrical Inspector alone was empowered to decide the dispute and she would argue that considering the fact that there is a vacuum and since the plaintiff's have themselves raised the plea that the Electrical Inspector should have inspected the meter, the suit would not lie as there is a clear bar under section 145 of the Act. As already stated section 145 contemplates the bar of jurisdiction only in cases falling under the provisions of section 126 and 127 namely theft of energy.

6.8.Coming to the issue of the rejection of the plaint it is seen that in the Judgement reported in 2013(6) CTC page 481, this Court had considered the various situations in which the plaint could be rejected. This Court had gone on to hold that when dealing with an application under the provisions of Order 7, Rule 11 of the Code of Civil Procedure, the only basis on which the same could be rejected is the averments contained in the plaint and the documents filed there on. The averments in the written statement or documents filed by the defendant would not give rise to a situation to reject the plaint.

6.9.In an another Judgment of this Court reported in 2014 1 CTC Page 160, this Court has gone on to hold that if the plaint discloses some cause of action and there is an opinion that the

plaintiff will not succeed ultimately in the suit, even in such a situation, the plaint cannot be rejected, if a reading of the plaint has disclosed a cause of action.

6.10. However, the reading of Section 145 of the 2003 Act would clearly indicate that it is only in cases coming within the provisions of sections 126 and 127 that the jurisdiction of the Civil Court stands ousted. The further reading of the explanation to Section 126 would clearly indicate that the issue of defective meter does not come within the scope of section 126 and consequently will not attract the bar of section 145.

Therefore on a conjoint reading of Sections 126, 127, 143 and 145 of the 2003 Act and the Judgements supra it is evident that the order passed by the learned District Judge at Karaikal is liable to be set aside and this Court holds that the jurisdiction vests with the Civil Court to deal with the issue which is presently the bone of contention between the plaintiff and the defendant. The Appeal Suit therefore stands allowed. The learned District Judge, Karaikal is directed to take on file the suit and dispose of the same from the stage at which it was rejected within a period of four (4) months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

mrn

To,

1. The Additional District Judge Court,
Puducherry,
Kariakal.

2. Union of India
Represented by Chief Secretary,
Government of Puducherry,
Goubert Avenue, Puducherry.

3. Government of Puducherry,
Represented by its Superintending Engineer,
Electricity Department, Puducherry.

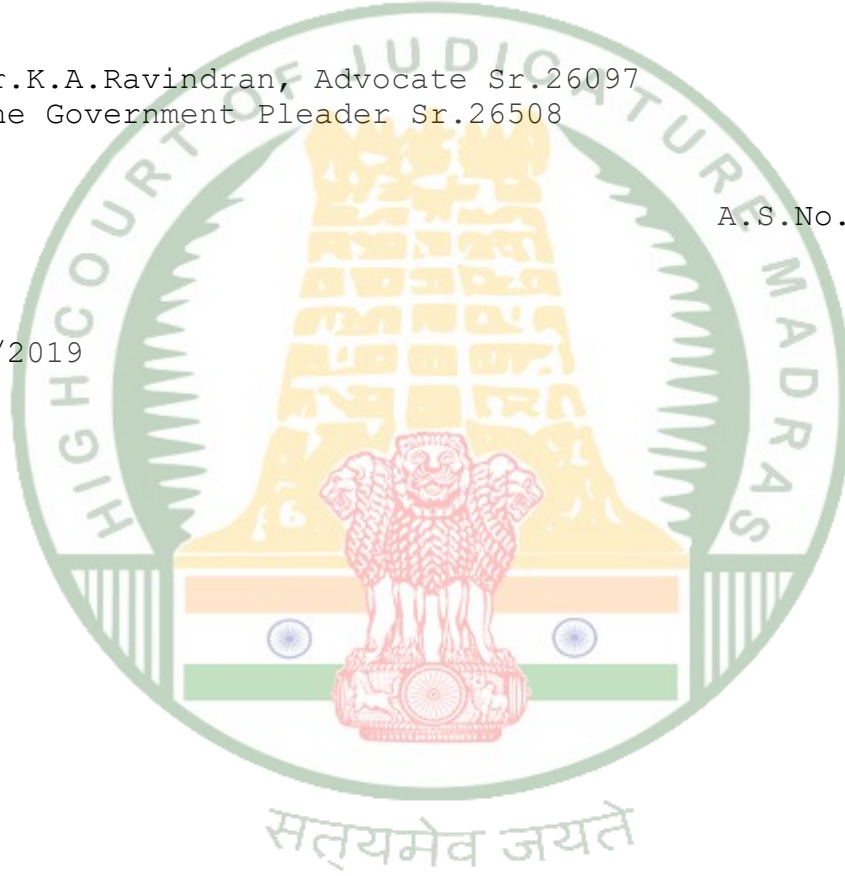
4. The Executive Engineer-V,
Electricity Department,
Government of Puducherry, Puducherry.

5. The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.K.A.Ravindran, Advocate Sr.26097
+1cc to the Government Pleader Sr.26508

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