

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :22.01.2019

Pronounced on :31.01.2019

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN
S.A.No.114 of 2000

- 1.The Assistant Engineer, Distribution
Madras (North)/Tiruvottiyur, Chennai-19
- 2.The Executive Engineer, Thandaiyarpur,
MEDC/North/Chennai.
- 3.Tamil Nadu Electricity Board
Rep.by its Chairman/Anna Salai/Chennai-2.
... Appellants/ Defendants

Vs

Raja Metal Corporation
Rep.by its Managing
Partner Mr.Selvaraj Nadar ... Respondent/Plaintiff

PRAYER: The Second Appeal filed under Section 100 of CPC, against the judgment and decree of the VI Additional City Civil Court, Chennai in A.S.No.316 of 1992 dated 12.02.1998 confirming the judgment and decree of the VII Assistant City Civil Court, Chennai, in O.S.No.6004 of 1988 dated 13.11.1991.

For Appellants सत्यमेव जयते : Mr.V.Viswanathan

For Respondent : No appearance

WEB COPY

JUDGEMENT

The defendants in O.S.No.6004 of 1988 on the file of the VII Assistant City Civil Court, Chennai, are the appellants herein.

2. O.S.No.6004 of 1988 had been filed by the plaintiff Raja Metal Corporation against the Assistant Engineer (Distribution), Executive Engineer of the Tamil Nadu Electricity Board and the Tamil Nadu Electricity Board, represented by its Chairman, seeking a judgment and decree for a declaration that the order of the second defendant

dated 19.05.1988 is illegal and unenforcible and for a permanent injunction restraining the defendants from giving effect to the said order and for costs. By judgment and decree dated 13.11.1991, the suit was decreed by the learned VII Assistant City Civil Court, Chennai.

3.The defendants then filed A.S.No.316 of 1992. This came up for consideration before the VI Additional City Civil Court, Chennai. By judgment and decree dated 12.02.1998, the appeal was dismissed.

4.The defendants have then filed the present Second Appeal. The Second Appeal had been admitted on 18.02.2000, on the following four substantial questions of law:-

"1.Whether the Courts below are correct in decreeing the suit without considering the fact that the plaintiff has filed the suit without exhausting the appeal remedy available in the Terms and Conditions and Electricity Act?

2.Whether the Courts below are correct in decreeing the suit in view of the judgment by the Hon'ble Supreme Court reported in 1997 5 SCC 120?

3.Whether the Courts below are correct in decreeing the suit based on the findings given by the learned Magistrate in Criminal Case C.C.No.504 of 1990?

4.Whether the Courts below are correct in entertaining the suit without considering the submission that the consumer has to approach the court only after exhausting the appeal remedy available to them as per the Terms and Conditions of Supply which has been declared to be statutory in character by the Hon'ble Supreme Court reported in 1998 4 SCC 470 Hyderabad Vanaspath Ltd. Vs. Andhra Pradesh State Electricity Board?"

O.S.No.6004 of 1988(VII Assistant City Civil Court, Chennai):-

5.The plaintiff in O.S.No.6004 of 1988 is a registered partnership firm. They do business in wholesale purchase of Alluminium Vessels. They have an electricity supply under account No.22:37:24. They have installed capacity of 75HP. It is claimed that monthly average electricity charges was around Rs.2,000/- to 3,000/-. The defendants made a surprise inspection of the factory on 17.07.1987. Alleged theft of

electricity by tampering of meters was detected. A part-time electrician Bhaskaran and a maistry Jayaraj were arrested. A case was registered by the police in Crime Number J.O.966/87 in Tiruvotriyur Police Station under Sections 39, 40 and 44 (c) of the Indian Electricity Act. Apart from the two arrested persons the Manager and Managing Partner namely, Murugan and Selvaraj were also shown as accused. It was stated that the defendants claimed that there was theft of electricity and issued demand notice for a sum of Rs.4,50,135/-. The suit had been filed seeking a declaration that the said notice is null and void and for a permanent injunction restraining further connection under the notice.

6. In the written statement filed on behalf of the defendants, it was stated that the factory of the plaintiff was inspected on 17.07.1987 by the Anti Power Theft Sqard. It was noticed that two numbers seals in each of the three meters were removed and substituted with unauthorized bogus seals. The meter cover screw was unscrewed and the meter was found to be opened. A Police complaint was lodged for the theft of electricity. A show cause notice was issued on 21.07.1987 for payment of Rs.4,50,135/-. An enquiry was conducted subsequent to the orders in W.P.7463 of 1987 by this Court after issuing of notice. An order was passed on 19.05.1988 to pay a sum of Rs.4,00,135/- after adjusting the amount already paid. It was stated that instead of filing an appeal before the appropriate authority, the suit was filed. It was specifically stated that the suit was not maintainable.

7. On the basis of the above pleadings, the following issues were framed:

1. Whether the plaintiff was entitled to the relief of declaration?
2. Whether the plaintiff was entitled for the relief of permanent injunction?
3. To what other relief?

8. During trial, the plaintiff examined Ponsekar as PW1 and the defendants examined Nagaraj, Shanmugam and Ramasubramaniam as DW1, DW2 and DW3. The plaintiff marked Exs.A1 to A24. The electricity receipts were marked as Ex.A8. The other documents related to exchange of notices. The defendants marked Exs.B1 to B6. These included the show cause notice and demand notice. By judgment dated 13.11.1991, the VII Assistant City Civil Court, Judge, decreed the suit as prayed for. It was found that the plaintiff was entitled for a declaration since it was found that the enquiry against the plaintiff was not conducted in a proper manner.

A.S.No.316 of 1992 (VI Additional City Civil Court, Chennai):-

9.The defendants then filed the said first appeal. By judgment dated 12.02.1998, the learned VI Additional City Civil Court, Judge, Chennai, confirmed the findings of the Trial Court and dismissed the first appeal.

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10.Challenging the judgment in A.S.316 of 1992, the defendants have filed the present Second Appeal. The Second Appeal had been admitted on 18.02.2000, on the following four substantial questions of law:-

"1.Whether the Courts below are correct in decreeing the suit without considering the fact that the plaintiff has filed the suit without exhausting the appeal remedy available in the Terms and Conditions and Electricity Act?

2.Whether the Courts below are correct in decreeing the suit in view of the judgment by the Hon'ble Supreme Court reported in 1997 5 SCC 120?

3.Whether the Courts below are correct in decreeing the suit based on the findings given by the learned Magistrate in Criminal Case C.C.No.504 of 1990?

4.Whether the Courts below are correct in entertaining the suit without considering the submission that the consumer has to approach the court only after exhausting the appeal remedy available to them as per the Terms and Conditions of Supply which has been declared to be statutory in character by the Hon'ble Supreme Court reported in 1998 4 SCC 470 Hyderabad Vanaspathi Ltd. Vs. Andhra Pradesh State Electricity Board?"

11.Both the courts below have unfortunately not framed any issue relating to maintainability of the suit. They have not examined whether a suit is maintainable before exhausting the appeal remedies available in the Electricity Act. They have also not examined whether the Civil Court has

jurisdiction to examine the issues raised by the plaintiff.

12.The first and second substantial question of law related to whether the suit is maintainable without exhausting the appeal remedy available in the Electricity Act and in the terms and conditions.

13.In 1997 5 SCC 120, Punjab State Electricity Board and Another Vs. Ashwani Kumar, the Punjab State Electricity Board had given connection of supply of electrical energy to the respondent on 16.01.1983. Since the meter installed was suspected to have been tampered with it was removed on 06.05.1984. Feeling aggrieved, the respondent filed Civil Suit No.85 of 1985 on 25.03.1985 for permanent injunction, restraining the Board or its officers from collecting and recovering the amount from the respondent. The Sub Judge on 16.09.1987 granted a decree. On appeal, it was confirmed and the second appeal has been dismissed. In the appeal by special leave petition, the Honourable Supreme Court held that,

"8.The question then arises whether the Civil Court would be justified in entertaining the suit and issue injunction as prayed for?.....Such suit would not be maintainable. It is true that ordinarily, the Civil Court has jurisdiction to go into and try the disputed questions of civil nature, where the fundamental fairness of procedure has been violated. The statutory circulars adumbrated above do indicate that a fundamental fairness the procedure has been prescribed in the rules and is being followed. By necessary implication, the cognizance of the civil cause has been excluded. As a consequence, the Civil Court shall not be justified in entertaining this suit and giving the declaration without directing the party to avail of the remedy provided under the Indian Electricity Act and the Indian Electricity (Supply) and the Instructions issued by the Board in that behalf from time to time as stated above."

"9.....In our view, by necessary implication the suit is not maintainable....."

It had been specifically found that the suit is not

maintainable without exhausting the remedies available under the Electricity Act.

14. The third substantial question of law related to whether the Courts below were correct in decreeing the suit based on the findings given by the learned Magistrate in C.C.No.504 of 1990. It is trite to point out that proof required in a criminal case is beyond reasonable doubt. However, in a civil matter balance of probabilities alone is examined. The acquittal in the criminal case cannot have any bearing on the civil proceeding. Consequently, both the Courts below erred in relying on the judgment in C.C.No.504 of 1990.

15. The fourth substantial question of law is whether the consumer approach Civil Court before exhausting remedies under the Electricity Act. One of the terms and conditions of supply of electricity is that,

"where on the inspection of consumer's installations or premises or on the basis of other information or data there is scope for suspecting that a consumer is guilty of 'supply of electricity to any service, which is disconnected by the Board' or 'pilferage of energy', the officer authorised in this behalf by Board may without prejudice to the Board's other rights, cause the supply of electricity to such consumer to be forthwith disconnected without any notice and report the matter to the final assessing authority."

16. It had been very clearly laid down in 1998 4 SCC 476, Hyderabad Vanaspathy Ltd. Vs. Andhra Pradesh State Electricity Board & Others, wherein it was contended, that the above condition was violative of Article 14 of the Constitution of India, that

"41. What remains to be considered is whether clause 39 is violative of Article 14 of the Constitution of India. Under this head, the argument of learned counsel for the consumers is that the provisions in the clause are wholly unreasonable and against the principles of natural justice. According to them, the clause enables the officers to disconnect the service on a suspicion of malpractice and the consumer has to pay 50% of the provisional assessment amount

before getting it restored. It is also contended that the officials of the Board are enabled to judge its own cause and the doctrine of bias will apply. We have already referred to the judgment of this Court in M.P.Electricity Board Vs. Harsh Wood Products case, 1996 4 SCC 522, wherein it is held that when power theft was found by the officials, immediate disconnection of the supply was not violative of Article 14 of the Constitution and principles of natural justice would not apply. "

In the present case also, theft of electricity had been detected and the civil suit is not maintainable without exhausting the appellate remedy.

17. In view of the above reasoning, I hold that the Second Appeal has to be allowed and the judgment and decree of both the Courts below have to be necessarily interfered with. The plaintiff had been charged with commission of theft of electricity and without exhausting the appeal remedies, the jurisdiction of the Civil Court is totally ousted. The judgment and decree of the learned VI Additional City Civil Court, Judge, Chennai, in A.S.No.316 of 1992 dated 12.02.1998 and the judgment and decree of the learned VII Assistant City Civil Court, Judge, Chennai, in O.S.No.6004 of 1988 dated 13.11.1991 are both set aside. The Second Appeal is allowed, with costs right throughout.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Smv

To

1.The Presiding Judge, VI Additional, City Civil Court, Chennai.

2.The Presiding Judge,
VII Assistant, City Civil Court, Chennai.

Copy to

The Section Officer, VR Section,
Madras High Court.

S.A.No.114 of 2000

A.SK(04/11/2019)