



S.A.No.1121 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2025

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

S.A.No.1121 of 2008

and

M.P.No.1 of 2008

- 1.Tamil Nadu Electricity Board
Rep. by its Superintending Engineer,
Coimbatore Distribution System,
North Power House, Coimbatore.
- 2.The Executive Engineer,
Tamil Nadu Electricity Board,
Mettupalayam.
- 3.The Assistant Engineer,
Tamil Nadu Electricity Board,
Karamadai.
- 4.The Assistant Executive Engineer,
Anti Power Theft Squad,
Ootacamund

... Appellants

vs

M/s. Ashvika Spinning Mills
a Registered Partnership Firm
Rep. by its Partner, P.Jagadeesha Perumal
having Mill at 9/29A, Maranna Goundenpudur,
Karamadai, Mettupalayam Taluk.

... Respondent



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Prayer: Second Appeal filed under Section 100 of the Code of Civil

Procedure against the Judgment and Decree dated 23.01.2007 made in A.S.No.138 of 2006 on the file of I Additional Sub-Court, Coimbatore confirming the Judgment and Decree dated 02.11.2005 made in O.S.No.113 of 1999 on the file of the District Munsif Court at Mettupalayam.

For Appellants : Ms.Hemalatha Gajapathy

For Respondent : Mr.Venkatajalapathi
for Mr.S.Kadarkarai

JUDGMENT

Heard Ms.Hemalatha Gajapathy, learned counsel appearing for the appellants and Mr.Venkatajalapathi, learned counsel appearing for the respondent.

2.The Second Appeal arises against the judgment and decree of the Court of the learned I Additional Subordinate Judge, Coimbatore in A.S.No.138 of 2006 dated 23.01.2007 in confirming the judgment and decree of the Court of the learned District Munsif, Mettupalayam in O.S.No.113 of 1999 dated 02.11.2005.

3.The defendants are the appellants.



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4.O.S.No.113 of 1999 is a suit for declaration that the show cause notice dated 21.06.1999 issued by the Assistant Engineer, Tamil Nadu Electricity Board, Karamadai/3rd defendant dated 21.06.1999 is void, illegal, unenforceable and consequently, for permanent injunction and costs.

5.The case of the plaintiff is that, it is a partnership firm running a spinning mill. It claims that it is running the mill in compliance with the Electricity Supply Rules and Regulations without giving any room for violation. It pleaded that even before starting the mill, the defendants had inspected the mill and had granted permission for usage of 105 HP, apart from the lighting load. Subsequently, the plaintiff's firm had expanded, so he applied for additional load, which was sanctioned by the defendants, and the 105 HP was increased to 150 HP. The motors were connected to service connection No.451.

6.On 04.06.1999, the 4th defendant-Assistant Executive Engineer, Anti Power Theft Squad, Ootacamund inspected the premises. It is alleged that he noted down the horse power capacity of the motors from the plates affixed to them. He did not follow the proper procedures contemplated under law. The plaintiff pleaded that, at the time of inspection, the person in charge of the mill had stated that the horse



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power mentioned in the plates given on the motor, is not correct. He pleaded for a proper inspection to be done before concluding this issue.

The 4th respondent did not heed to his words and forcibly took signatures of the person in charge of the mill on the report that was written by him.

7.The plaintiff pleaded that the actual load connected to service connection No.451 was only 148.84 HP, which is below the sanctioned limit of 150 HP that they are entitled to consume. They were shocked and surprised to receive a show cause notice on 21.06.1999, which stated that the plaintiff had violated the terms and conditions of supply of electricity. It was alleged in the notice that the plaintiff was utilising 165.84 HP, which was 15.84 HP more than what they are legally entitled to use. The plaintiff alleged that the notice, though titled as a show cause notice, is actually a final order, which was passed even before causing an enquiry to be conducted and, therefore, it deserves to be set aside. Hence the suit.

8.Summons were served on the defendants. The learned Government Pleader who appeared for the defendants had filed a written statement on behalf of the 4th defendant. This written statement was adopted by defendants 1 to 3.

9.The defendants pleaded that the department had granted initial load of 105 HP and, thereafter, increased it to 150 HP. They admitted that



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at the time of granting the connection, and, as well as while increasing the load, they had inspected and verified the motors. However, they took a plea that the motors which were used at the time of inspection, were not the motors that were found to be used by the plaintiff on the date of inspection dated 04.06.1999. They denied the averment that the person in charge was not heard by the 4th defendant and that signatures had been taken unauthorisedly from the said person. They further denied the fact that the 4th defendant took note of the HP readings from the name plate attached to the motors, without following due procedure as contemplated by law.

10.They denied the fact that the actual load was only 148.84 HP, and not 165.84 HP. They pointed out that the show cause notice had been issued for violation of clause 6.01 under schedule part-1 of the Terms and Conditions of supply of electricity. They pointed out that in case the plaintiff desires, they can always appear before the appropriate authority and contest the allegations made in the show cause notice. They pleaded that, without exhausting the specific remedy available under the Act and Rules, the plaintiff had rushed to the Court, and the suit has no cause of action. They also pleaded that the suit is barred by virtue of the provisions under the Indian Electricity Act, 1910.



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11.On the basis of these pleadings, the learned trial Judge framed the following issues:

'(1) Whether the plaintiff is entitled for a relief of declaration and consequential injunction as prayed for?

(2) To what relief ?'

12.On the side of the plaintiff, the Managing Partner of the plaintiff firm entered the witness box as PW1, he marked Exs.A1 to A4. On the side of the defendants, a retired Executive Engineer who had conducted the inspection on 04.06.1999 was examined as DW1. The Assistant Executive Engineer, Tiruppur, who issued the show cause notice, namely, the 3rd defendant, was examined as DW2. They produced Exs.B1 to B5.

13.Pending the litigation, the plaintiff took out an application for appointment of an Advocate Commissioner to be assisted by an expert to inspect the spinning mill and to submit a report. The Advocate Commissioner took the assistance of a private concern, called M/s.Tekniic Associates, and submitted a report, which was prepared in the presence of the defendants. The report of the expert and that of the Advocate Commissioner were marked as Exs.C1 and C2.

14.On the basis of the evidence let in by the parties, the learned trial Judge came to a conclusion that Ex.A1 is not a show cause notice,



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but a final order. The learned Trial Judge further concluded that the test conducted by the flying squad was not necessarily fair proof, for the test conducted by the private concern, as per Ex.C2, shows that the total load was in fact, 148.84 HP, which is well within the sanctioned load of 150 HP. Having come to that conclusion, the learned trial Judge decreed the suit as prayed for without costs.

15. Aggrieved by the same, the defendants 1 to 4 preferred an appeal to the learned Subordinate Judge, Coimbatore in A.S.No.138 of 2006. After hearing both sides, the learned Appellate Judge dismissed the First Appeal, confirming the findings of the learned trial Judge. Hence the present Second Appeal.

16. This Court entertained the Second Appeal on 20.10.2008 and framed the following substantial question of law:

'Whether suit filed without exhausting the remedies available under the Terms and Conditions of Supply of Electricity is maintainable in view of the apex Court Judgment reported in 1997 (5) SCC P.120?'

17. The short point pleaded by Ms. Hemalatha Gajapathy is that, when there is an alternate remedy available under the terms and conditions of supply of electricity, and since the filing of a civil suit is barred under the Indian Electricity Act, 1910, the suit itself ought not to



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have been entertained by the learned trial Judge. She relied upon the following judgments:

(i) Punjab State Electricity Board and another v. Ashwani Kumar (1997 5 SCC 120)

(ii) The Superintending Engineer-Distribution, Tamil Nadu Electricity Board and Others v. S.Sheik Dawood (2009 SCC OnLine Mad 554)

(iii) Thirumangalam Agricultural Producers Co-op. Marketing Society Ltd. v. The Superintending Engineer, Madurai Electricity Distribution Circle, Tamil Nadu Electricity Board (MANU/TN/5268/2011)

(iv) B.L.Kantroo v. BSES Rajdhani Power Ltd. (2018 ILR 12 Delhi 141)

(v) The Tamil Nadu Electricity, Thanjavur Electricity System, rep. by Superintending Engineer v. Chandra Chakrapani (1999 3 CTC 443).

18. Her plea is that on a perusal of all these judgments, this Court should come to a conclusion that the suit is not maintainable. In addition, she submits that Ex.A1 is not a final order as concluded by the Courts below, but only a show cause notice. She relies upon paragraph Nos.5



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and 6 of the show cause notice in order to press her submissions.

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19.Per contra, Mr.Venkatajalapathi states that the suit is perfectly maintainable, because the civil right of the plaintiff has been infringed. He pleads that the jurisdiction of the Civil Code is plenary in nature, and it is always available for a party to knock on its door whenever a civil right is infringed. He adds that the Supreme Court in ***M.P. Electricity Board, Jabalpur v. Vijaya Timber Co. (1997 AIR S.C. 2364)*** has held that a suit is maintainable and, therefore, pointed out that being a concurrent finding of the Courts below, this Court should not interfere in the Second Appeal. Hence he pleads for dismissal of the Second Appeal.

20.I have carefully considered the submissions of both sides. I have gone through the records.

21.It is a settled position of law that the jurisdiction of Civil Court is plenary unless and until it is expressly or impliedly barred. The Indian Electricity Act, 1910 (hereinafter referred to as the erstwhile Act as it has been repealed in 2003) governs the present proceedings. This is because the proceedings were initiated prior to 2003 when the country was governed by the previous legislation. The Tamil Nadu Electricity Board gives electricity connection pursuant to the agreement that has reached between the parties, and such supply is governed by a separate manual,



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titled 'Terms and Conditions of supply of Electricity'.

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22. According to the 4th defendant, an inspection was conducted on 04.06.1999 at the premises of the plaintiff. It is not in dispute that the connection which the plaintiff is entitled to consume, has a maximum limit of 150 HP. In case, the plaintiff uses a motor of capacity more than 150 HP, the terms and conditions of supply would deem it to be an unauthorised consumption of electricity and, therefore, they are entitled to proceed against the plaintiff.

23. Though the plaintiff pleaded that the name plate that is fixed on the motor should not be utilised, in order to come to a conclusion that the power which has been used, is in excess of 150 HP - these are all matters which the plaintiff should have agitated before the 3rd defendant. All that the 3rd defendant has done is, based on the report of the 4th defendant, to issue a show cause notice.

24. As rightly contended by Ms. Hemalatha Gajapathy, a casual perusal of clause 5 and 6 of Ex.A1 leads me to the conclusion that it is only a notice calling upon the plaintiff to give reasons as to why they should not be proceeded against. The clause referred to by Mr. Venkatajalapathy is one which states that the plaintiff shall not use any engine in excess of the approved load. This cannot be treated by this



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Court, as if the 3rd defendant had come to the conclusion that the plaintiff had violated the terms and conditions.

25. One judgment of the Supreme Court is sufficient and binding on this Court. Therefore, I will refer to the judgment of the Hon'ble Mr. Justice K. Ramaswamy in ***Punjab State Electricity Board and Another v. Ashwani Kumar (1997 5 SCC 120)***. The learned Judge in paragraph No. 8 held as follows:

'8. The question then arises: whether the Civil Court would be justified in entertaining the suit and issue injunction as prayed for? It is true, as contended by Shri Goyal, learned Senior Counsel, that the objections were raised in the written statement as to the maintainability of the suit but the same given up. Section 9 of C.P.C. Provides that Civil nature, subject to pecuniary jurisdiction, unless their cognizance is expressly or by necessary implication is barred. 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, there the fundamental fairness of procedure has been violated. The statutory circulars adumbrated above do indicate that a fundamental fairness of the procedure has been prescribed in the rules and is being followed. By necessary implications, 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) Act and the instructions issued by the Board in that behalf from time to time as stated above.'

26. This paragraph shows that unless and until a party has availed



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the alternate remedy provided under the Indian Electricity (Supply) Act and the conditions issued thereunder, from time to time, a civil suit is not maintainable. It is here that Mr.Venkatachalapathy would point out that the Supreme Court in *Vijaya Timber* had held that a suit is maintainable.

27.A perusal of the judgment of *Vijaya Timber* shows that it was a suit for damages filed by the defendant, seeking to pay a sum of Rs.1,770/- towards past damages and future damages of Rs.5/- per day from the day of institution of the suit, till the removal of electrical lines. That was not a case which related to unauthorised use of electricity power. That appeal arose out of a suit where the plaintiff had alleged that the defendant Electricity Board had, without consent of the plaintiff, drawn a 33KW high tension transmission line and completed the construction over the plaintiff's land without his consent and consequently, pleaded for removal of the lines and for damages.

28.I have to point out here that for such a suit for damages, there is no remedy under the Indian Electricity Act, 1910, or the Indian Electricity (Supply) Act, or the terms and conditions of supply. It was only in those circumstances that the Supreme Court held that the suit is maintainable.

29.As the Supreme Court has clearly held in **Punjab State**



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Electricity Board's case that a suit is not maintainable on account of there existing an alternative remedy, all that I have to do is to apply that judgment to the facts of this case, and come to a conclusion as set forth above.

30.In the light of the above discussion, the Second Appeal succeeds. The judgment and decree in A.S.No.138 of 2006 dated 23.01.2007 on the file of the learned I Additional Subordinate Judge, Coimbatore, in confirming the judgment and decree in O.S.No.113 of 1999 dated 02.11.2005 on the file of the learned District Munsif Court, Mettupalayam are set aside. The suit shall stand dismissed with costs.

31.Needless to add, as I have treated Ex.A1 as a show cause notice, the plaintiff is granted two weeks time from the date of receipt of notice to respond to the same. At the time of sending the reply, the plaintiff would be at liberty to enclose the report that had been submitted by M/s.Tekniic Associates, which had been filed by the learned Advocate Commissioner as Ex.C2 along with their reply. It is upto the 3rd defendant to peruse the report and the reply that is given by the plaintiff and pass a speaking order and communicate the same to the plaintiff.

32.The Second Appeal is allowed with costs, with the above directions. Consequently, connected Miscellaneous Petition is closed.



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Index: Yes/No
Speaking order/Non-speaking order
Neutral Citation: Yes/No
vs

To

1.I Additional Subordinate Judge,
Coimbatore.

2.The District Munsif Court,
Mettupalayam.



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V.LAKSHMINARAYANAN, J.

VS

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and M.P.No.1 of 2008

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