

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.11.2019

PRONOUNCED ON : 12.12.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.1251 of 2005

1. Tamil Nadu Electricity Board
rep.by the Superintending Engineer,
Villupuram Electricity Distribution
Circle/Villupuram.

2. The Divisional Engineer (O & M)
Tamil Naud Electricity Board,
Tindivanam.

3. The Junior Engineer (Town)
Tamil Naud Electricity Board,
Tindivanam.

... Appellants/Defendants

Vs.

A.Yousuff Ali

...Respondent/Plaintiff

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 07.06.2002 passed by the Additional District and Sessions Judge, Fast Track Court.No.II, Tindivanam in A.S.No.78 of 1999 reversing the judgment and decree dated 24.08.1999 passed by the Principal District Munsif's Court, Tindivanam in O.S.No.160 of 1996.

For Appellants : Mr.V.Viswanathan

For Respondent : Mr.J.Jayan

for Mr.D.Ravichander

JUDGMENT

This second appeal has been filed by the defendants against the judgment and decree passed by the Additional District and Sessions Judge(Fast Track Court No.II), Tindivanam in A.S.No.42 of 2002 dated 07.06.2002 reversing the judgment and decree passed by the Principal District Munsif, Tindivanam in O.S.No.160 of 1996 dated 24.08.1999.

2. The respondent herein had filed a suit in O.S.No.160 of 1996 on the file of the Principal District Munsif, Tindivanam to declare that the entry made in the meter card for the month

of March 1996 as exorbitant, illegal and inoperative and consequently restrain the defendants by means of permanent injunction from disconnecting the service connection in S.C.No:1175 Tindivanam at Door No.114-D Gingee Road for non payment of the amount entered in the said meter card. The learned Principal District Munsif by the Judgment dated 24.08.1999 had dismissed the said suit with costs. Aggrieved by the same, the plaintiff had filed an appeal in A.S.No.78 of 1999 on the file of the Sub Court, Tindivanam. Subsequently the said appeal was transferred to the Court of Additional District and Sessions Judge, (Fast Track Court No.II), Tindivanam and re-numbered as A.S.No.42 of 2002. The learned Additional District and Sessions Judge, (Fast Track Court No.II) by the judgment and decree dated 07.06.2002 had allowed the said appeal with costs and set aside the judgment and decree passed by the trial court and decreed the suit as prayed for with costs. Feeling aggrieved, the defendants have filed the present second appeal.

3. For the sake of convenience, the parties are referred to as described before the trial court.

4. The averments made in the plaint are in brief as follows:

a) The plaintiff is running a rice mill at 77-A, Gingee Road, Tindivanam. He obtained a service connection in S.C.No.1175 of Gingee Road, Tindivanam for the said rice mill twelve years ago. The plaintiff was sanctioned with a load of 27 HP. The plaintiff is regular in paying the consumption charges without any default. The average consumption of the plaintiff for the past two years was Rs.4,500/- only. The business of the plaintiff is not always constant. It varies from season to season. Only during paddy harvest season, the plaintiff consumes maximum energy. Even if the mill was utilized at its maximum by the plaintiff, the consumption for two months would be around 2000 to 2100 units. The average consumption of electricity for the previous two years can be found from the meter card issued to the plaintiff. At no point of time during previous two years the consumption charges exceeded Rs.7,240/-. While so, the meter installed in the plaintiff's premises went wrong and was running even when the mill was not operated. The plaintiff noticed the same and has immediately reported the same with the third defendant on 22.09.1996. The plaintiff thereafter made several representations to the third defendant and requested him to look in to the matter, test the meter by removing the same from the premises, but, the third defendant did not pay any heed to the plaintiff's request. Lastly, the plaintiff sent a representation requesting the defendants 1 and 3 and consider his oral requests already made through a letter dated 08.03.1996. Even thereafter, the defendants did not care to inspect the meter.

b) In the meanwhile, during the month of March 1996, the defendants made an entry in the meter card directing the plaintiff to pay Rs.25,186/- towards consumption charges for the period from 15th day of January to 15th day of March 1996. The plaintiff was astonished and surprised on seeing the said demand. Hence, the plaintiff approached the third defendant and enquired him about the action take by him on the representation made by him in respect of malfunctioning of the meter installed in the premises. As per Rule 46 of the Electricity Rules and the BPMS 61 the defendants are bound to take action soon after in receipt of any complaint in respect of the malfunctioning, but, in this case, the defendants failed to take any action on the representations submitted by the plaintiff. Because of negligence of the defendants in not repairing a malfunctioning meter, a wrong entry was recorded in the meter. Taking advantage of their official capacity the defendants threatened the plaintiff that if fails to comply with the un-lawful demand of the defendants, they will disconnect the service connection. Hence the suit.

5. The averments made in the written statement filed by the first defendant and adopted by the defendants 2 and 3 are in brief as follows:

It is true that the plaintiff's Rice Mill was given electricity service connection with sanctioned load of 27 HP. But, it is false to say that at no point of time he paid more than Rs.7,240/- as consumption charges. It is false to state that on 22.09.1996, the meter which was installed in the premises of the plaintiff shown wrong entry. It is also false to state that the plaintiff informed the third defendant that the meter went wrongly. It is also false to state that on 08.03.1996 the plaintiff has sent any letter to the third defendant complaining that the meter was not recording properly. The meter which was installed in the premises has recorded the correct consumption of energy. As per the rules of the Board, the meter will be sent for investigation once in two years and that the plaintiff's meter was also subjected to the said test, but , in the said meter no defects found. If any complaint was made by the plaintiff, the electricity Inspector would have tested the meter, but, in this case, the plaintiff did not make any complaint. As per the meter reading, for the months of January and February 1996, the plaintiff was liable to pay a sum of Rs.25,186/- towards consumption charges and hence, a necessary entry was made in the meter card. Only to avoid to pay the said amount, the plaintiff has filed the suit with false averments. After receipt of the summons, on 15.05.1996, the defendants inspected the meter installed in the plaintiff's premises and found that the said meter was working properly. No defect was found. At the time of inspection, the plaintiff was also present

and signed in the Mahazar which was prepared at that time. Therefore, the contentions of the plaintiff that the amount mentioned in the meter card is exorbitant and illegal is false. Only with a view to cause loss to the Electricity Board, the plaintiff has filed a vexatious suit. Therefore, the defendant prayed to dismiss the suit.

6. Based on the aforesaid pleadings, the learned Principal District Munsif had framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined himself as PW1 and marked Exs.A1 to A6. On the side of the defendants, one witness was examined as D.W.1 and Exs.B1 to B4 were marked as exhibits.

7. The learned Principal District Munsif, Tindivanam after considering the materials placed before him found that the plaintiff failed to prove that he made complaints orally before the third defendant as the meter has not recorded the entry properly and also failed to prove that he sent any complaint to the third defendant in writing on 08.03.1996. He further found that after receipt of the summons, the defendants made inspection of the meter installed in the plaintiff's rice Mill in the presence of the plaintiff and at that time it was found that there was no defect in the said meter and hence, the plaintiff is liable to pay the amount which is mentioned in the meter card, but only with a view to avoid such payment, he filed the suit. Accordingly, he dismissed the suit with costs. Aggrieved by the same, the plaintiff had filed an appeal in A.S.No.78 of 1999 on the file of the Sub Court, Tindivanam and subsequently, the said appeal was transferred to the court of Additional District and Sessions Judge, (Fast Track Court No.II), Tindivanam and re-numbered as A.S.No.42 of 2002. The learned Additional District and Sessions Judge, (Fast Track Court No.II), Tindivanam had allowed the said appeal with costs and set aside the judgment and decree passed by the trial court and decreed the suit as prayed for with costs. Feeling aggrieved, the defendants have filed the present second appeal.

8. This Court at the time of admitting the second appeal has formulated the following substantial question of law:

" Whether the lower appellate court was justified in granting the relief based on defective meter in the absence of necessary pleading and proof?"

9. Heard Mr.V.Viswanathan, the learned Standing Counsel for the appellants and Mr.J.Jayan for Mr.D.Ravichander, the learned counsel for the respondent.

10.Substantial Question of Law:

The learned Standing Counsel for the appellants/defendants has submitted that the First Appellate Court erred in reversing the well considered judgment and decree of the trial court. He further submitted that the First Appellate Court failed to see that the plaintiff has falsely created Exs.A3 and A4. He further submitted that even assuming that the plaintiff has sent Ex.A3 complaint by Certificate of Post vide Ex.A4 no presumption will arise that Ex.A3 complaint was received by the third defendant. He further submitted that only after receipt of the summons, the defendants came to know that the plaintiff is having grievance that the meter has not recorded the entries properly and hence, immediately on 15.05.1996, the defendants made an inspection of the meter which was installed in the plaintiff's rice mill and at that time, the plaintiff was also present and found that there was no defect in the said meter and the said meter was recording the correct consumptions. He further submitted that if the plaintiff was aggrieved with the said report, he should have filed an appeal before the Electrical Inspector, but, he has not followed the said procedure. On the contrary, he approached the Civil Court. He further submitted that since adequate remedy has been provided under Electricity Act, the Civil Courts jurisdiction is impliedly barred. He further submitted that taking into consideration of the aforesaid facts, the trial court has rightly dismissed the suit, but the First Appellate Court erroneously reversed the findings of the trial court and decreed the suit and therefore he prayed to allow the second appeal and set aside the judgment and decree passed by the First Appellate Court and restored the judgment and decree passed by the trial court.

11. Per contra, the learned counsel for the respondent/plaintiff has submitted that as per Section 114 of the Evidence Act, it has to be presumed that the official acts have been regularly performed. In this case, Ex.A.4 would clearly show that the plaintiff has sent a complaint on 08.03.1996 to the defendants 1 and 2 by certificate of post. He further submitted that the defendants did not produce the complaint register and discharge their burden as they did not receive any complaint and hence, an adverse inference has to be drawn against the defendants. He further submitted that since the defendants have not taken any action on Ex.A.3 Complaint, the plaintiff has filed the suit and only thereafter, the defendants inspected the meter which was installed in the plaintiff's rice mill and therefore, the Civil Court's jurisdiction is not barred. He further submitted that the meter card (Ex.A6) would show that at no point of time, the plaintiff has paid more than RS.7,240/-, but, for the months of January

and February 1996, the defendants made an entry in the meter card as the plaintiff has to pay a sum of Rs.25,186/- towards consumption charges and the said act of the defendants is arbitrary and illegal. He further submitted that as per Section 5 of Tamil Nadu Electricity Board (Recovery of Dues) Act, 1978, the Consumer is entitled to file a suit if he denies his liability to pay the dues, penalty or cost or any part of any of them. He further submitted that since the plaintiff raised a plea that the meter has not functioned properly and disputing the entry in meter card, the defendants threaten that if the plaintiff failed to pay the said exorbitant amount, the plaintiff has to face disconnection of service connection and hence, the plaintiff was compelled to file a suit for declaration and injunction. He further submitted that Electrical Inspector cannot grant injunction and the Civil Court alone can grant injunction and on that ground also the Civil Court's jurisdiction is not barred. He further submitted that the trial court without taking into consideration of the aforesaid facts in a proper perspective, had mechanically dismissed the plaintiff's suit, but the First Appellate Court by considering the facts and evidence in a proper perspective had rightly reversed the judgment and decree of the trial court and decreed the suit and in the said factual findings, this court cannot interfere and hence he prayed to dismiss the second appeal.

12.The learned counsel for the respondent/plaintiff in support of the aforesaid contentions relied upon the following decisions:

- i) Harish Minerals Supply Company Vs. M.P.Electricity Board Electricity Board, 2002 (4) MPHT 530.
- ii) Rajasthan State Electricity Board Vs. P.P Industries, Bikaner, 2006 AIR (Raj) 168.
- iii) M/s.Sree Rajeswari Mills Ltd., Vs. Union of India and others [A.S.No. 995 of 09 on the file of this Court dated 19.03.2019].

13.According to the plaintiff, he noticed that the meter installed in his rice mill went wrong and was running even when the mill was not operated and hence he immediately reported the same with the third defendant on 22.02.1996. His further case is that thereafter he made several representations to the third defendant and requested him to look into the matter and test the meter by removing the same from the premises, but, the third defendant did not consider his requests and hence lastly he sent a representation to the defendants 1 and 2 through a letter dated 08.03.1996 and even thereafter, the defendants did not come forward to inspect the meter. In support of the aforesaid contentions, the plaintiff has produced Ex.A.3 and A4. Ex.A3 is a copy of the letter dated 08.03.1996 said to have been sent by

the plaintiff to the defendants 1 and 2. Ex.A.4 is the receipt showing that two letters were sent by the plaintiff by certificate of post on 08.03.1996.

14. The learned counsel for the plaintiff by referring to the illustration (e) of Section 114 of the Indian Evidence Act contended that the Court may presume that judicial and official acts have been regularly performed. He further contended that since Ex.A.4 shows that on 08.03.1996, the plaintiff has sent two letters to the defendants 1 and 2 by certificate of post with regard to the running of the meter even during when the mill was not operated, but, the defendants did not take any steps to inspect the meter. Ex.A.4 may be taken as a proof for sending Ex.A3 letter to the defendants 1 and 2, but, it cannot be presumed that the said letters were received by the defendants 1 and 2. Section 27 of the General Clauses Act says that if a letter is sent by registered post by mentioning the correct address, then, it can be presumed that the said letter was delivered to the addressee, but, no such presumption is available for the letters said to have been sent by certificate of post. Therefore, based on Ex.A4, it cannot be presumed that Ex.A3 letter was received by the defendants 1 and 2.

15. The learned counsel for the plaintiff also contended that the defendants have not produced the 'Complaint Register' and if they produced the said register that would show whether any complaint was received from the plaintiff and since the defendants did not produce the said register an adverse inference has to be drawn against the defendants. DW1 has produced ' Letters receiving Register ' and marked as Ex.B4. He further deposed that all the letters and complaints would be entered first in the said register and only thereafter the complaints would be segregated and entered in the 'Complaints Register' . He further deposed that if any complaint was sent by the plaintiff, that would have been entered in Ex.B4 itself. So, it is clear that if any complaint was received by the defendants, they would have made an entry to that effect in Ex.B4 itself. Therefore, merely because ' Complaint Register' not produced, no adverse inference can be drawn against the defendants.

16. It is also to be pointed out that it is not the case of the plaintiff that the defendants not at all inspected the meter which was installed in his rice mill. In this case, admittedly after receipt of the suit summons, the defendants inspected the said meter on 15.05.1996 in the presence of the plaintiff. The defendants also prepared an observation Mahazar in the spot itself and produced before the Court and marked as Ex.B.1. A perusal of Ex.B1 shows that the plaintiff was present during inspection made by the defendants and Ex.B1 observation mahazar was prepared in his presence and he also signed in the

said document. The plaintiff while examining himself as PW1 also admitted in his cross-examination that in his presence, the defendants inspected the meter and prepared Ex.B1 Observation Mahazar. At the time of inspection, the plaintiff has not raised any objection. Subsequently, on 15.05.1996 itself, the third defendant had issued a letter to the plaintiff seeking to give his consent for sending the meter to the Electrical Inspector for checking. Ex.B3 shows that the plaintiff has received the said letter. But he has not given any consent or sent any reply to Ex.B2 for sending the meter to the Electrical Inspector.

17. At this juncture, it would be relevant to refer to the decision in M.P,E.B and others Vs. Basanthi Bai AIR 1988 SC 71 wherein the Hon'ble Supreme Court in Paragraph Nos.8 to 10 has observed as follows;

"8. In order to decide the question whether the impugned notice dated 4-3-1983 can be issued by appellant calling upon her to pay the amount of supplementary bill as well as whether supplementary bill can be prepared by the Board when there is a dispute relating to question whether the meter is a correct meter or not, it is necessary to consider the relevant provisions of sub secs.(1) and (6) of S.26 of the said Act. The said provisions are set out hereunder:-

26(1): In the absence of an agreement to the contrary, the amount of energy supplied to a consumer or the electrical quantity contained in the supply shall be ascertained by means of a correct meter, and the licensee shall, if required by the consumer, cause the consumer to be supplied with such a meter:

Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter".

26(6) : Where any difference or dispute arises as to whether any meter referred to in sub-sec (1) is or is not correct, the matter shall be decided upon the application of the either party, by an Electrical Inspector: and 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 been correct; but save as aforesaid, the register of 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' notice of his intention so to do."

9. It is evident from the provisions of this section that a dispute as to whether any meter referred to in sub-sec.(1) is or is not correct has to be decided by the Electrical Inspector upon application made by either of the parties. It is for the Inspector to determine whether the meter is correct or not and in case the Inspector is of the opinion that the meter is not correct he shall estimate the amount of energy supplied to consumer or the electrical quantity contained in the supply during a period not exceeding six months and direct the consumer to pay the same. If there is an allegation of fraud committed by the consumer in tampering with the meter or manipulating the supply line or breaking the body seal of the meter resulting in not registering the amount of energy supplied to the consumer or the electrical quantity contained in the supply, such a dispute does not fall within the purview of sub-sec(6) of S.26. Such a dispute regarding the commission of fraud in tampering with the meter and breaking the body seal is outside the ambit of S.26(6) of the said Act. An Electrical Inspector has, therefore, no jurisdiction to decide such cases of fraud. It is only the dispute as to whether the meter is/is not correct or it is inherently defective or faulty not recording correctly the electricity consumed, can be decided by the Electrical Inspector under the provisions of the said Act.

10. In the instant case it appears from the report of the Assistant Engineer of the State Electricity Board that one phase of the meter was not working at all, so there is undoubtedly a dispute as to whether the meter in question is a correct one or a faulty meter and this dispute has to be decided by the Electrical Inspector whose decision will be final. It is also evident from the said provision that till the decision is made no supplementary bill can be prepared by the Board estimating the energy supplied to the consumer, as the Board is not empowered to do so by the said Act".

18. From the aforesaid decision, it is clear that in view of the provisions of Sub-Sections(1) and (6) of Section 26 of the Indian Electricity Act 1910 that a dispute as to whether any meter referred to in sub-sec.(1) is or is not correct has to be decided by the Electrical Inspector based upon application made by either of the parties. It is for the Inspector to determine whether the meter is correct or not and in case the Inspector is of the opinion that the meter is not correct he shall estimate the amount of energy supplied to consumer. In this case, the plaintiff has not submitted any application before the Electrical Inspector to test the meter. Further, inspite of the letter sent by the third defendant vide Ex.B2, the plaintiff has not given any consent for sending the meter to the electrical inspector for checking the same. Therefore, it is not open to the plaintiff to make a complaint that the defendants have not tested the meter inspite of the repeated requests made by him.

19. In Rajasthan State Electricity Vs. PP Industries (cited supra), the case of the plaintiff was that the Officers of the Electricity Board unexpectedly inspected the premises of the plaintiff on 8-8-1997 without giving any information and found the seals of meter and the meter itself in good running condition even then the officers of the Electricity Board made illegal demands to which the plaintiff did not agree, then, the officers told the plaintiff that the meter was running slow to which the plaintiff objected but they did not pay any heed to it. It was also averred that after a silence of about two months the officers of the Electricity Board sent a letter dated 22.10.1997 demanded a sum of Rs.1,10,297/- to which the plaintiff replied. In view of the facts and circumstances of the particular case the High Court of Rajasthan has held that the suit is maintainable before the Civil Courts, but in this case, it is the case of the plaintiff that the meter was running even when the mill was not operated and hence the demand made by the defendants in the meter card is arbitrary. As already stated that in view of the decision of the Hon'ble Supreme Court in M.P.E.B and others Vs. Basanthi Bai AIR 1988 SC 71 (cited supra) the Electrical Inspector is the competent person to say whether the meter is properly working or not and his decision will be final. Therefore the aforesaid decision will not help the plaintiff.

20. In M/s.Sree Rajeswari Mills Ltd., Vs. Union of India (cited supra), relying upon the decision of the Hon'ble Supreme Court in M.P E.B and others Vs. Basanthi Bai, (cited supra) it was contended that on behalf of the Electricity Board that as per Section 26(6) of the Electricity Act, 1910 the Electrical Inspector alone was empowered to decide the dispute

but, this Court has held that the Section 145 of the new Act i.e., Electricity Act, 2003 contemplates the bar of jurisdiction of the civil court only in cases falling under the provisions of Sections 126 and 127 namely theft of energy. But in this case, the occurrence took place in the year 1996 i.e., prior to the enactment of Electricity Act 2003. During relevant period only old Act i.e., Indian Electricity Act 1910 was in force. Under Section 26 (6) of the old Act, the Electrical Inspector alone was empowered to decide the dispute. Therefore, the aforesaid decision also will not help the plaintiff.

21. The learned counsel for the respondent / plaintiff by referring to Section 5 of the Tamil Nadu Electricity Board (Recovery of Dues) Act, 1978 contended that the Civil Suit is maintainable. As per Section 3 of the Tamil Nadu Electricity Board (Recovery of Dues) Act, 1978, every bill for dues payable to the Board by a debtor shall be in the form prescribed by the Board and shall specify conspicuously the date by which such dues are to be paid and shall be served in such manner as may be prescribed by rules. If a debtor disputes his liability to pay the whole or part of the dues specified in the bill referred to in sub-section (1) he may, within such time as may be prescribed, prefer an appeal to the appellate authority to be specified by the Board. The appellate authority shall pass an appropriate order. As per Section 4 of the said Act, if the debtor has not paid the aforesaid amount as determined by the appellate authority, the prescribed authority may serve the notice of demand in the prescribed form to the debtor. If the debtor feels aggrieved with regard to the said notice, as per Section 5 of the said Act, he may institute a suit within three months from the date of service of notice of demand after depositing with the prescribed authority the aggregate amount specified in the notice of demand under protest in writing that he is not liable to pay the same, but in this case, the plaintiff has not filed any appeal before appellate authority and also not filed a suit after depositing the amount before the prescribed appellate authority. Therefore, the contention of the learned counsel for the plaintiff that the suit is maintainable before the civil court cannot be accepted.

22. In Punjab State Electricity Board and another Vs. Ashwani Kumar (1997) 5 SCC 120, the Hon'ble Supreme Court in Paragraph Nos.8 and 9 has 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.

9. Shri Goyal has contended that the authorities do not hear the parties, nor give reasoned order. Therefore, the parties cannot, nor given reasoned order. Therefore, the parties cannot be precluded to avail of the remedy of suit. we cannot accept such a broad and generalised proposition. When the provisions for appeal by way of review has been provided by the statutory instructions, and the parties are directed to avail of the remedy, the authorities are enjoined to consider all the objections raised by the consumer and to pass, after consideration, the reasoned order in that behalf, so that the aggrieved consumer, if not satisfied with the order passed by the Board/appellate authority, can avail of the remedy available under Article 226 of the Constitution. Therefore, by necessary implication, the appropriate competent authority should here the parties, considers their objections and pass the reasoned order, either accepting or negating the claim. Of course it is not like a judgment of a civil court. It is then contended that the respondent has been subjected to pay huge amount of bill in a short period; hence, it is a case for interference. We find no force in the contention. May be that due to the advice given by the counsel, the respondent obviously has availed of the remedy of the suit,

instead of departmental appeal. In our view, by necessary implication the suit is not maintainable. Therefore, the respondent is at liberty to avail the remedy of appeal within six weeks from today and raise the factual objection before consider and dispose of them as indicated earlier, on merits."

23. From the aforesaid decision, it is clear that when the provision for appeal is provided by the Act, the parties shall exhaust the said remedy before approaching the Civil Court. In this case as already pointed out that the plaintiff has not made any application to the Electrical Inspector as contemplated under Sub-Section(6) Section 26 of the Electricity Act, 1910 to inspect the meter installed in his premises. Even after receipt of Ex.B2 letter, the plaintiff has not come forward to give a consent for sending meter to the Electrical Inspector. Therefore, this court is of the view that the suit filed by the plaintiff is not maintainable. The trial court taking into consideration of the aforesaid facts had rightly dismissed the suit, but the First Appellate court erroneously reversed the findings of the trial court and hence the findings of the first appellate have to be set aside. Accordingly, the substantial question of law is answered in favour of the appellants/defendants.

24. In the result, the second appeal is allowed. The Judgment and decree passed by the First Appellate Court are set aside and the judgment and decree of the trial court are restored. It is open to the plaintiff to file an application before the Electrical Inspector as contemplated under Section 26 (6) of the Electricity Act, 1910 within a month from the date of receipt of a copy of this judgment. If any such application is filed, then the Electrical Inspector has to dispose of the same in accordance with law. Considering the facts and circumstances of the case, the parties are directed to bear their respective costs.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

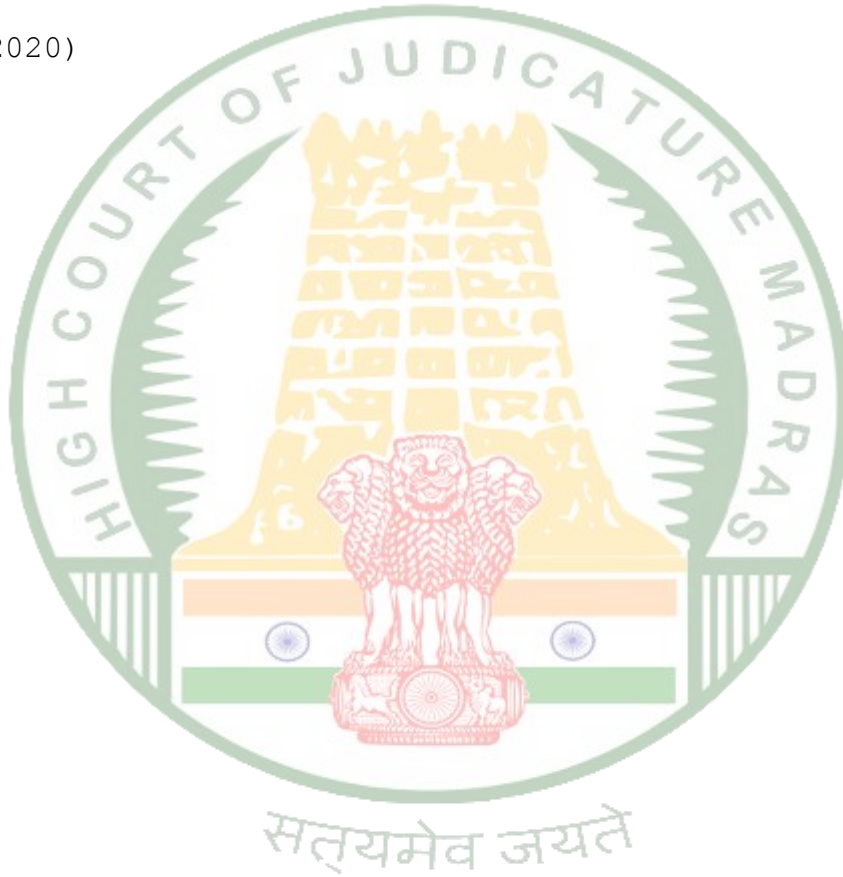
1. The Additional District and Sessions Judge, Tindivanam
2. The Principal District Munsif's Court, Tindivanam.

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

+1 CC to Mr.D.Ravichander, Advocate sr 10416
+1 CC to Mr.V. Viswanathan, Advocate sr 103767.

S.A.No1251 of 2005

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