

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

S.A.No.1290 of 2007

D.Chenchaiah

.. Appellant/Plaintiff

Vs.

The Tamil Nadu Electricity Board,
Rep.by its Assistant Executive Engineer,
CDEC/Central/O&M/T.Nagar,
41, Thanikachalam Road,
T.Nagar,
Chennai-600 017

.. Respondent/Defendant

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree passed in A.S.No.399 of 2005 dated 24.07.2007 on the file of the IV Additional Judge, City Civil Court, Chennai, confirming the judgment and decree in O.S.No.3157 of 1999 dated 11.02.2005 on the file of the VII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.P.Subba Reddy

For Respondent : Mr. V.Viswanathan

J U D G M E N T

(The case has been heard through video conference)

The suit is filed against the Electricity Board challenging the demand notice dated 15.04.1999 issued to the plaintiff's hotel for the alleged theft of energy.

2. It is contended by the plaintiff that a notice was issued by the Assistant Executive Engineer who is not the competent authority to issue the notice.

3. Whereas the suit resisted by the Electricity Board on the ground that during the first week of April 1999, inspection was conducted by the Anti Power Theft Squad (APTS), TNEB and found that the DEE CEE Manor Hotel, at No.87 G.N.Chetty Road, T.Nagar has been tampering the meter and there was a theft of energy. Based on the APTS report, enquiry

was conducted. On receipt of the show cause notice the plaintiff participated in the enquiry conducted on 04.05.1999. Based on the enquiry report, the assessment notice was issued, which was challenged to be null and void in the suit just to delay the recovery proceedings.

4. The Trial Court after framing relevant issues has held that as far as low service connection concerned, the competent authority is the Assistant Executive Engineer to issue show cause notice. Accordingly, in this case the show cause notice was issued by the Assistant Executive Engineer, T.Nagar. After conducting enquiry, the demand notice for Rs.17,18,370/- was issued. Hence dismissed the suit. Aggrieved by that, the plaintiff preferred the first appeal. The first appellate Court confirmed the trial Court judgment and decree as well founded in law and dismissed the appeal. Not satisfied with the concurrent finding, the present second appeal is filed.

5. On perusing the records, this Court finds that at the time of hearing for admission, this Court has not admitted the second appeal but had cause notice to the learned counsel for the Electricity Board to hear his submission and meanwhile directed the plaintiff/appellant to deposit a portion of the assessment amount. Unfortunately, though all this happened in the year 2007, it could not be taken up for final disposal by this Court till today.

6. The learned counsel for the respondent brought to the notice of this Court a circular of the Board proceedings, wherein the Chairman of the Board has conveyed the authorities to settle the disputes through Lok Adalat by offering waiver of Belated Payment Surcharge (BPSC). The effect of the proceedings is still in force.

7. Perusal of the TNEB Chairman proceedings dated 10.04.2002 and 04.10.2006, it is seen that pursuant to the direction of this Court, the Electricity Board has taken a conscious decision to reduce the pendency of litigations by offering settlement to the effect mentioned above. In this case, a working sheet has been circulated by the Electricity Board, which appears that as on date if BPSC charges are added, the plaintiff is liable to pay a sum of Rs.60,69,226/-. However on waiver of BPSC the due is Rs.11,68,370/- after giving credit to the payment of Rs.5,50,000/- by the appellant towards the assessment amount (on 17.07.1999 - Rs.3,00,000/- and on 01.02.2007 - Rs.2,50,000/-), In the light of the circular of the respondent board indicating the policy decision to waive BPSC charges, if the appellant pays Rs.11,68,370/-, the Board shall not demand the BPSC charges from the appellant.

8. Hence, the appellant is directed to pay the balance amount of Rs.11,68,370/- within a period of 60 days

from today failing which, it is open to the Board to proceed against the appellant to collect the assessment amount and BPSC charges as per law.

9. With the above direction, this second appeal is disposed of. No order as to costs.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

rpl

To

1.The IV Additional Judge,
City Civil Court, Chennai.

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

3.The Section Officer,
V.R. Section,
High Court, Madras. +2 Copies

+1cc to Mr.V.Viswanathan, Advocate SR.No.27659

+1cc to Mr.P.Subba Reddy, Advocate SR.No.27610

S.A.No.1290 of 2007

CA (CO)
GMY (30/04/2021)

सत्यमेव जयते

WEB COPY