

27.07.2021

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ns Ct.04

S.A. 236 of 2010

**West Bengal State Electricity Distribution Company
Limited & anr.**

Vs.

Suresh Chandra Rooj.

Mr. Sumit Ray for appellants.

Mr. Ray, learned advocate appears on behalf of appellants and presses for admission of the second appeal on ground no.IV, to be formulated as the substantial question of law. The ground is reproduced below:-

“IV. For that the Learned Appeal Court failed to appreciate the true meaning and purpose of the schedule appended to the Indian Electricity Act, 1910 under Section 3, Sub-Section (2), Clause (f) whereby the Electrical Inspector was empowered to decide any difference or dispute arises as to the amount of energy to be taken. Therefore it is not correct to hold by the Appeal Court that Electrical Inspector can only decide the issue whether meter is correct or not, and as such the impugned judgement passed by the Learned Appeal Court in Title Appeal No.47 of 2006 dated September 20, 2008 is bad in law and should be set aside.”

The trial Court by judgment dated 10th May, 2006 dismissed the suit on contest against defendant no.2 and ex parte against defendant no.1, without costs. Issues framed by said Court were as follows:-

“1(a) is formulated at the time of Judgment-

1) Is the suit maintainable in its present form?

1.a) Has the plaintiff any cause of action for filing the instant suit?

2) Is the suit barred u/s 34 of S.R. Act?

3) Is the suit barred by law of estoppel, waiver and acquiescence?

4) Whether the plaintiff is bona fide customer of the defendant?

5) Whether any arrear amount is lying due by the plaintiff for consuming electricity?

6) To what other relief, if any, is the plaintiff entitled?”

Plaintiff laid evidence both oral and documentary while defendants did not. Issue nos.1, 1(a) and 4 to 6 were decided against plaintiff and issue nos.2 and 3, in his favour. Plaintiff appealed.

Lower appellate Court by judgment dated 20th September, 2008 set aside the trial Court's judgment. Said Court found that sub-section (6) in section 26, Indian Electricity Act, 1910 was not a bar to maintainability of the suit. Sub-section (6) says 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 the 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’ notice of his intention so to do.”

We have perused both the judgments and sections 24 and 26. Mr. Ray, in moving the appeal relied on clause (3) in paragraph VI in the Schedule to the Act. Said clause is reproduced below:-

“(3) Where any difference or dispute arises as to the amount of energy to be taken or guaranteed as aforesaid, or as to the cost of any service-line or as to the sufficiency of the security, offered by any owner or occupier, [or as to the

position of the meter board] or as to the improper use of energy, or to any alleged defect in any wires, fittings, works or apparatus, or as to the amount of the expenses incurred under the third proviso to sub-clause (1), the matter shall be referred to an [Electrical Inspector] and decided by him.”

We ascertained from Mr. Ray that the Act did not bar or oust jurisdiction of civil Court. He submits, under the new Act there is a bar.

The lower appellate Court found on facts that defence case of non-payment could not be sustained. Positive case of plaintiff by oral and documentary evidence, showing payment of bills raised, was proved. Said Court went on to say that plaintiff had never disputed working of the meter. It also did not go into plaintiff's contention that the bills were incorrect but found plaintiff had paid them. Hence, there was judgment restraining defendants from seeking to recover on the bills. Defendants being aggrieved have come before this Court.

The lower appellate Court having decided on facts, no substantial question of law arises. It is a consequence that appellant cannot discontinue the supply on bills paid. The provision in the schedule, urged on behalf of appellant is clearly inapplicable.

The appeal is dismissed.

(Arindam Sinha, J.)

(Saugata Bhattacharyya, J.)