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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.01.2021

PRONOUNCED ON : 22.01.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1128 of 2008

and

M.P.No.1 of 2008

S.Ganapathy Chettiyar,
Proprietor,
Karkaliyar Plastic Works,
No.27/14, Periya Thambu St,
Choolai,
Chennai - 600 112.

... Appellant

Vs.

1. The Tamil Nadu Electricity Board,
Rep. By its Chairman,
No.800, Anna Salai,
Chennai-600 002.

2. The Superintending Engineer,
T.N.E.B. C.E.D.C./Central
Nungambakkam,
Chennai - 600 034.

3. The Executive Engineer/O&M,
T.N.E.B., C.E.D.C./Central,
123, Brickkiln Road,
Egmore,
Chennai - 600 008.

... Respondents

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 16.04.2008 of the VI Additional Judge (i/c of V Additional Judge) City Civil Court At Chennai in A.S.No.18 of 2007 confirming the Judgment and Decree dated 28.07.2006 of the III Assistant Judge, City Civil Court At Chennai in O.S.No.919 of 2003.

For Appellant : Mr.D.Nellaiappan

For Respondents : Mr.V.Viswanathan



J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 16.04.2008 passed in A.S.No.18 of 2007 on the file of the VI Additional Judge, City Civil Court, Chennai confirming the Judgment and decree dated 28.07.2006 passed in O.S.No.919 of 2003 on the file of the III Assistant Judge, City Civil Court, Chennai.

2. The plaintiff in O.S.No.919 of 2003 is the appellant.

3. Suit for declaration and permanent injunction.

4. Briefly stated, according to the plaintiff's case, the electricity service connection No.141-24-16 at No.27/14, Periya Thambi Street, Choolai, Chennai-112 stands in the name of the plaintiff and the plaintiff has been regularly paying the electricity charges without any default. On 19.04.2002, the officials of the Tamil Nadu Electricity Board came to the plaintiff's place and inspected the service connection and after inspection alleging that there was a theft of energy by replacing the original security seals provided by the defendant Board in both sides of the Electricity meter by bogus seals and thereby the plaintiff had dishonestly abstracted the electricity energy and committed the offences punishable under section 39(1) and 44(1)(c) of the Electricity Supply Act, 1910. The officials of the Electricity Board did not follow any procedures or rules before proceeding to inspect the meter. The plaintiff has not done any violation much less theft of energy. The Assistant Executive Engineer/O&M/Pulianthope issued a show cause notice dated 22.04.2002 alleging that there was a illegal abstraction of electricity by the plaintiff by tampering with the MRT seals and replacing the same by bogus seals and the loss said to have been caused to the Electricity Board was quantified at Rs.1,52,722/- and the plaintiff was called upon to show cause as to why action should not be taken against him to recover the loss sustained by the Board. The abovesaid show cause notice has been issued without properly following the terms and conditions of the Electricity Supply Act and the Assistant Executive Engineer, has no authority to asses the loss and only the Executive Engineer of the Board has to asses the loss in these type of matters. The plaintiff submitted his reply to the Executive Engineer/O&M/ Pulianthope and an enquiry was conducted by the third defendant i.e, the Executive Engineer, O&M, Egmore and the plaintiff has also submitted the written statement in support of his case that the plaintiff had not been provided with an opportunity to peruse the statements given by the officers of the Electricity Board and also the Mahazar said to have been prepared. None of the copies of the document relied upon by the Electricity Board had been furnished to the



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plaintiff. Even assuming, without admitting, that there is theft of energy or tampering of the seals, it would have been only after 12.03.2002 to 19.04.2002 ie., for 37 days. The third defendant by an order dated 27.07.2002 without any application of mind, directed the plaintiff to pay a sum of Rs.1,55,063/- as compensation charges and the abovesaid order has been passed in an arbitrary and mechanical manner and also without following the principles of natural justice. The plaintiff preferred the appeal to the appellate authority namely the second defendant. The compensation has been arrived exorbitantly without following the rules of the Electricity Board. Even in the enquiry conducted by the second defendant, the documents relied upon by the Electricity Board had not been submitted to the plaintiff. The second defendant by an order dated 04.02.2003 confirmed the assessment order passed by the third defendant. He has failed to consider the various contentions put forth by the plaintiff and directed the plaintiff to pay the balance amount of Rs.93,036/- in six installments. Hence, left with no other alternative, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The defendant resisted the plaintiff's suit contending that on suspicion, the independent theft detecting Squad viz., Anti Power Theft Squad inspected the premises of the plaintiff on 19.04.2002 and found that the plaintiff has tampered with the security seals of the energy meter provided to him and installed counterfeited security seals in the place of the original security seals appended by the MRT Lab and in connection with the inspection, served the notice to the plaintiff on 19.04.2002 and the plaintiff had admitted the commission of theft and the police complaint has been laid against the plaintiff in Crime No.508/2002 on the file of the G2 Perimet Police Station. Before passing the assessment order, the third defendant had issued the notice to the plaintiff and called for the enquiry and the same was conducted by duly complying with the principles of natural justice and finally passed the assessment order on 27.07.2002 and impugning the same, the plaintiff has preferred the appeal before the appellate authority ie., the second defendant and the appellate authority also by an order dated 04.02.2003, confirmed the assessment order passed by this third defendant and directed the plaintiff to pay the remaining sum due ie., Rs.93,036/- in six monthly installments. Instead of complying with the abovesaid order, the plaintiff has levied the suit and hence the suit is not maintainable. The officials of the defendant Board did not violate the principles of natural justice and rules and therefore the contentions raised by the plaintiff that the assessment order had come to be passed without noncompliance of the procedures is denied. The assessment amount was arrived based on the systematic and scientific formula and not on mere surmises. The plaintiff has



no cause of action to institute the suit and the suit is liable to be dismissed.

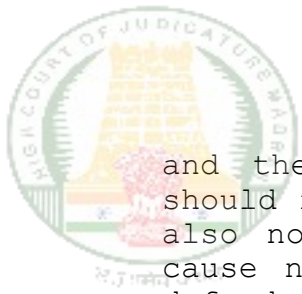
6. In support of the plaintiff's case, P.W.1 was examined. Exs.A1 to A7 were marked. On the side of the defendants, D.W.1 was examined. No document has been marked.

7. On a consideration of the materials placed on record, both oral and documentary and the submissions put forth by the respective parties, the Courts below were pleased to dismiss the plaintiff's suit. Impugning the judgment and decree of the Courts below, the second appeal has been preferred by the plaintiff.

8. At the time of admission of the second appeal, the following substantial question of law was formulated for consideration.

Whether the Courts below erred in dismissing the suit ignoring the facts that the defendants are estopped from assessing the loss of Electrical energy for 300 days in view of Ex.A4, namely, the Inspection Report of the mass raid on 12.03.2002.

9. The plaintiff is the consumer of the Tamil Nadu Electricity Board and possess the electricity service connection No.141-24-16 at No.27/14, Periya Thambi Street, Choolai, Chennai-112 which stands in the name of the plaintiff. From the materials placed on record, it is seen that the officials of the TamilNadu Electricity Board on suspicion, inspected the abovesaid premises of the plaintiff on 19.04.2002 and found that the plaintiff has tampered with the security seals of the energy meter abovestated and fitted counterfeited security seals in the place of original security seals appended by the MRT Lab and accordingly it is noted that the abovesaid inspection has been conducted by the officials of the TamilNadu Electricity Board, after giving proper notice to the plaintiff on 19.04.2002 and thereby the officials of the TamilNadu Electricity Board has come to the conclusion that the plaintiff has dishonestly abstracted the electricity energy by tampering with the seals of the meter and thereby committed the offences punishable under sections 39(1) and 44(1)(c) of the Electricity Supply Act, 1910. Accordingly, it is seen that the show cause notice has been issued to the plaintiff on 22.04.2002 with reference to the abovesaid tampering of the MRT Lab seals and the replacing of the same by bogus seals on the part of the plaintiff and the loss sustained by the Board has been quantified at Rs.1,52,722/-



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and the plaintiff was called upon to show cause why action should not be taken against him to recover the said loss. It is also noted that the plaintiff responded to the abovesaid show cause notice before the appropriate authority namely the third defendant and the third defendant after conducting enquiry with reference to the same, ie., after providing due opportunity to the plaintiff to putforth his case, finally passed the assessment order dated 27.07.2002 marked as Ex.A3 whereunder, the third defendant had held that the plaintiff has removed the seals provided by the MRT lab and fitted the bogus seals and thereby tampered with the meter to show that only less quantity of energy has been consumed and thereby held that the plaintiff has committed the offences punishable under section 39(1) and 44 (1) of the Electricity Supply Act, 1910 and accordingly fixed the compensation charges payable by the plaintiff at Rs.1,55,063/- and directed the plaintiff to pay the abovesaid sum in 10 monthly installments. By way of the abovesaid assessment order, the third defendant has also held that the contention putforthby the plaintiff that the meter in question was inspected by MRT on 12.03.2002 and no theft was detected at that point of time is untenable and held that only the section officer during the mass raid inspection inspected the meter in question on 12.03.2002 and he is not the competent authority to determine the genuineness of the security seals and accordingly held that the contention of the plaintiff that the loss should be quantified only after 12.03.2002 to 19.04.2002, i.e the date of inspection is unacceptable and accordingly passed the assessment order aforestated. Aggrieved over the assessment order passed by the third defendant, the appeal had been preferred by the plaintiff to the second defendant and the appellate authority by an order dated 04.02.2003 had confirmed the assessment order passed by the third defendant. The appellate authority has also held that the materials placed on record discloses the replacement of the original seals by bogus seals on the part of the plaintiff and the inspection report dated 12.03.2002 said to have been conducted by MRT officials is not clear and only on that premise, the energy meter in question belonging to the plaintiff had been inspected on 19.04.2002 and theft of energy had been consumed by the plaintiff by tampering with the seals of the meter by fixing the bogus seals and thereby held that the plaintiff has committed the criminal offenses and hence caused loss to the Electricity Board and quantified the loss at Rs.1,55,063/- and directed the plaintiff to pay the remaining sum of Rs.93,036/- after detecting the amount of compensation of a sum of Rs.62,027/- already paid by the plaintiff.

10. Impugning the abovesaid orders passed by the third defendant and confirmed by the second defendant, the suit has



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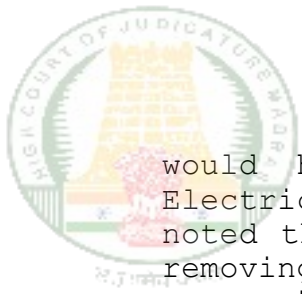
come to be laid by the plaintiff. As rightly held by the Courts below, the documents involved in the matter and available with the defendants, had been placed by the plaintiff himself for consideration and marked as Exs.A1 to A7. Therefore, the arguments put forth by the plaintiff that the defendants have not substantiated their defence version by producing the documents in their custody, as such, cannot be countenanced in any manner. From the materials available on record, it is evident that the plaintiff's meter had been tampered with by removing the original seals and replacing the same with the bogus seals and thereby it is seen that the officials of the Electricity Board had noted the commission of the theft of energy by the plaintiff and accordingly issued the show cause notice dated 22.04.2002 marked as Ex.A1, calling upon him to explain as to why action should not be initiated against him for the recovery of the loss sustained by them. The enquiry had been conducted with reference to the same by the third defendant and it is seen that the plaintiff has participated in the enquiry and after giving due opportunity to the plaintiff to put forth his version, the third defendant had passed the assessment order dated 22.07.2002 holding that the plaintiff has tampered with the seals of the meter in question by fitting the bogus seals in the place of the original seals of the MRT Lab and by way of the same, further held that the consumer/plaintiff can open for the meter as and when required by him and the recorded consumption of energy could be made much less than the actual consumption and thereby held that the plaintiff has committed the offences punishable under section 39(1) and 44(1)(c) of the Electricity Supply Act, 1910. The third defendant has also further held that the inspection said to have been conducted on 12.03.2002 qua the meter in question has not been done by the MRT officials, it has done only by the section officer who is not competent to determine the genuineness of the seals in the meter concerned. Further it is seen that, as rightly determined by the official of the Electricity Board namely the third defendant, the plaintiff cannot take shelter under the white card issued to him during the mass raid conducted on 12.03.2002 and urge that the meter test last taken is not clear and the plaintiff has not committed the theft of energy and only based on the said raid, raising suspicion over the same, it is found that the officials of the MRT along with other officials, inspected the meter in question on 19.04.2002 and found that tampering of the seals had been by the plaintiff and committed the theft of energy. Therefore the third defendant has rightly held that the recorded reading during the mass raid on 12.03.2002 cannot be the factor for holding with the plaintiff has not caused the tampering of the seals as the same had been done only by the section officer, who may not be competent to determine the genuineness of the seals. The genuineness of the seals could be decided only by the officials of the MRT lab and accordingly, it is noted that when



the officials of the MRT Lab along with other officials inspected the meter on 19.04.2002, noted the tampering of the seals by the plaintiff and the theft of energy committed by him by way of the same. Therefore, the contention raised by the plaintiff that the third defendant has passed the assessment order without any basis and also without providing necessary opportunity to him, as such, cannot be countenanced. When the plaintiff has not placed any material worth acceptance to show that the enquiry conducted by the third defendant is against the principles of natural justice, considering the materials available on record, it is seen that the assessment order had been passed by the third defendant properly by fixing the compensation charges to be paid to the Electricity Board, by way of tampering the seals on the part of the plaintiff. The third defendant is found to have taken into consideration the various defence versions putforth by the plaintiff and after rejecting the same, finally held that it is only the plaintiff who has tampered with the seals and caused the loss to the Electricity Board.

11. Even the appellate authority namely the third defendant has also properly appreciated the contentions putforth by the plaintiff to hold that the seals in question have been tampered with by the plaintiff manually, so as to record less consumption of energy charges and thus the plaintiff has committed the offences as determined by the third defendant. Resultantly, the second defendant confirmed the assessment order of the third defendant and thereby directed the plaintiff to pay the remaining sum due from him.

12. Considering the plaint averments putforth in the plaint, it is seen that the plaintiff has impliedly admitted the tampering of the seals of the meter and the commission of offences in connection with the same. Hence, the plaintiff would only contend that the loss should have been quantified only after 12.03.2002 to 19.04.2002 and the determination of the loss by the officials of the Electricity Board by assessing the loss of energy for 300 days is incorrect and unacceptable, in view of the mass inspection report dated 12.03.2002. However, the abovesaid contention putforth by the plaintiff is untenable and cannot be accepted. As above discussed, the inspection report of the mass raid on 12.03.2002 has been done only by the section officer and not by the officials of the MRT lab and it is evident that the section officer would not be competent to determine the genuineness of the seals in the meter in dispute. Accordingly, the entry has been made in the inspection report of the mass raid that " the date of last test by MRT is not clear". In such view of the matter, it is seen that based on the said report only, developing suspicion against the plaintiff that he



would have tampered with the seals, the officials of the Electricity Board had conducted the inspection on 19.04.2002 and noted the commission of the theft of energy by the plaintiff by removing the original seals of the MRT lab and replacing the same with the bogus seals to show the less consumption of energy. Therefore the plaintiff cannot be allowed to contend that the loss which has been assessed by fixing the loss of energy for 300 days by the Electricity Board is incorrect. On the other hand, as rightly contended by the counsel appearing for the Electricity Board, it is seen that the plaintiff had committed the theft of energy by tampering the seals of meter in dispute, much prior to 12.03.2002 and accordingly the date of last test by MRT Lab has been written to be not clear during the said inspection. In such view of the matter, the officials of the Electricity Board is found to have quantified the loss sustained by them only on the systematic and scientific formula and not contrary to the rules and procedures of the Electricity Board and improperly and incorrectly, as contended by the plaintiff. The plaintiff has not placed any material worth acceptance to evidence that the determination of the commission of the theft of energy by the officials of the Electricity Board on the part of the plaintiff is resolved illegally without any materials on record or the quantification of the loss sustained by the Electricity Board has been arrived at arbitrarily without any foundation and on the other hand, taking into consideration of the materials on the whole on record, it is seen that the assessment order had been correctly determined by the third defendant by holding that it is only the plaintiff who had committed the theft of energy by tampering with the seals of the meter in question and accordingly quantified the loss by calculating the same for 300 days and thereby rejected the arguments of the plaintiff that the energy loss should be quantified only from 12.03.2002 to 19.04.2002. Accordingly, the appellate authority had also confirmed the assessment order passed by the third defendant.

13. In the light of the abovesaid discussions, in my considered opinion, no substantial question of law is involved in the second appeal. Be that as it may, the substantial question of law formulated in the second appeal, for the reasons aforesaid, is accordingly answered in favour of the defendants and against the plaintiff.

14. For the reasons aforesaid, the judgment and decree dated 16.04.2008 passed in A.S.No.18 of 2007 on the file of the VI Additional Judge, City Civil Court, Chennai confirming the Judgment and decree dated 28.07.2006 passed in O.S.No.919 of 2003 on the file of the III Assistant Judge, City Civil Court,



Chennai are confirmed and consequently, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

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Assistant Registrar (CCC)

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Sub Assistant Registrar

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To

1. The VI Additional Judge (i/c of V Additional Judge),
City Civil Court At Chennai.
2. The III Assistant Judge,
City Civil Court At Chennai.

Copy to

The Section Officer,
VR Section,
High Court.

+1cc to M/s.D.Nellaiappan, Advocate, S.R.No.3529

+1cc to M/s.V.Viswanathan, Advocate, S.R.No.3907

S.A.No.1128 of 2008
and
M.P.No.1 of 2008

CNR (CO)
SU (25/11/2021)