



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.792 of 2014

Tamil Nadu Electricity Board,
Karur Electricity Distribution Circle,
Represented by Executive Engineer,
(O & M) (Rural), Karur ... Appellant/Respondent/Plaintiff
Vs.
M.Veerappan ... Respondent/Appellant/Defendant

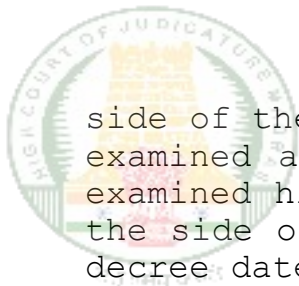
Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.61 of 2008 on the file of the District Court, Karur dated 20.07.2010, reversing the judgment and decree passed in O.S.No.190 of 2005 on the file of the Sub Court, Karur dated 21.02.2008.

For Appellant : Mrs.M.Parameshwari,
For Mr.S.M.S.Johnny Basha
For Respondent : Mr.R.Mathiyalagan

JUDGEMENT

The plaintiff in O.S.No.190 of 2005 on the file of the Sub Court, Karur, is the appellant in this second appeal. The case of the plaintiff is that the defendant/respondent herein namely., M.Veerappan had taken the suit electricity connection on 12.01.2001. On 28.07.2003, the Anti-Theft Squad of TNEB detected energy theft from the said connection. The respondent was called upon to show cause vide Ex.A.3 dated 29.07.2003. It was made clear that the respondent will be levied with assessment charges for the energy theft committed by him, if his explanation was not found satisfactory.

2.The respondent is said to have given his explanation dated 11.08.2003. Not satisfied with the same, Ex.A.4/assessment order dated 20.08.2003 was passed and the extra levy payable by the respondent was quantified at Rs.1,79,786/-. The respondent was called upon to pay the same in ten installments of Rs.17,979/-. A detailed worksheet was also enclosed along with Ex.A.4/assessment order. Thereafter, several communications were issued to the respondent calling upon him to pay the levied amount. Exs.A6 and A7 are the demands issued by the plaintiff. Exs.A.8, A.9 and A.10 are the acknowledgement cards signed by the defendant. Since the assessed amount was not paid by the defendant, the aforesaid suit came to be filed. The respondent filed his written statement denying the suit claim. The learned Trial Judge framed the issue as to whether the defendant was obliged to pay the suit claim. On the



side of the plaintiff, an assistant engineer by name Jegatheesan was examined as P.W.1 and Exs.A.1 to A.10 were marked. The defendant examined himself as D.W.1 and no documentary evidence was marked on the side of the defendant. The learned Trial Judge by judgment and decree dated 21.02.2008 decreed the suit as prayed for.

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3.Questioning the same, the defendant filed A.S.No.61 of 2008 before the District Court, Karur. The first appellate court by judgment and decree dated 20.07.2010 allowed the appeal and set aside the judgment and decree passed by the Trial Court. Challenging the same, this second appeal came to be filed.

4.The second appeal was admitted on the following substantial questions of law:-

"(a) Whether the Courts below right in holding that the civil court have jurisdiction to entertain the energy theft case?

(b) Whether the Courts below ought to have given proper inference to Ex.B.1?

(c) Whether the Courts below ought to have given proper inference to Ex.B.2?

(d) Whether the Courts below perverse the decreed suit without giving proper reason to Exs.B.1 and B.2?

(e) Whether in law the judgment and decree of the Lower Court is sustainable in reversing the well consider judgment of the Trial Court without rendering any specific findings?

(f) Whether the finding of Lower Appellate Court that the appellant has not proved the theft of energy is sustainable in view of Exs.A.6 and A.7, which are not disputed by the defendant? and

(g) Whether the finding of Lower Appellate Court that the Board has not proved theft of energy is sustainable when the defendant admittedly not questioned the final assessment order of the Board in a manner known to law?"

5.Heard the learned counsel on either side.

6.The learned counsel for the appellant reiterated all the contentions set out in the memorandum of grounds and took me through the evidence on record and also the judgments of the Courts below and submitted that the substantial questions of law deserve to be answered in favour of the appellant. She called for setting aside the judgment and decree passed by the first appellate court and restoring the judgment and decree passed by the trial court.

7.Per contra, the learned counsel for the respondent submitted that the defendant was prosecuted but the prosecution ended in acquittal. He would point out that the acquittal of the defendant was not challenged by the State. The plaintiff also did not file



any criminal revision questioning the acquittal. He submitted that the first appellate court has given strong, cogent and convincing reasons for setting the judgment and decree passed by the trial court. He pressed for dismissal of the second appeal.

8.I carefully considered the rival contentions and went through the evidence on record. It is well settled that where the consumer of electricity has been levied with an order of assessment in cases of energy theft, the consumer or the noticee must necessarily avail the remedy provided under the statute namely., the Electricity Act, 2003 and a civil suit questioning the assessment order will not be maintainable.

9.The learned standing counsel drew my attention to a recent judgment passed by the Madras High Court in S.A.No.114 of 2000 (The Assistant Engineer Distribution, Madras (North)/Tiruvottiyur, Chennai-19 and Others Vs. Raja Metal Corporation, Rep. by its Managing Partner, Selvaraj Nadar), dated 31.01.2019 in this regard. This being the legal position, the first appellate court could not have called upon TNEB to establish the factum of energy theft in these proceedings.

10.More than anything else, the fact remains that the defendant/Veerappan did not choose to challenge the validity of Ex.A.4/levy of assessment. When Ex.A.4 remains unchallenged, TNEB was very much entitled to institute the instant suit for recovery of the sum covered under Ex.A4.

11.I wanted to know if Ex.A.4 was served on the appellant. The learned standing counsel drew my attention to Exs.A.8, A.9 and A.10/acknowledgment cards in which the signatures of the defendant are found. When the defendant was confronted in the box, he denied his signatures found in Exs.A.8, A.9 and A.10. When the trial court wanted to compare the same with the signatures found in vakalat and the written statement, the defendant went to the extent of denying his signatures found in those documents!

12.The plaintiff can only be expected to send the communication by RPAD. In the case on hand, the communications were sent by RPAD. Therefore, the presumption under Section 27 of the General Clauses Act,1897 will come to the rescue of the plaintiff. The defendant had not let in any evidence to show that Ex.A.4 has been set aside or stayed in any proceeding instituted by him. So long as Ex.A.4 stands, the right to recover the amount covered thereunder is very much available to the plaintiff. The trial court correctly appreciated the facts and the legal aspects involved and decreed the suit. The first appellate court totally misdirected itself and by a faulty reasoning set aside the well considered decision of the trial court. The seventh substantial question of law is answered in favour of the appellant and in view of the same, it is not necessary to go into other substantial questions of law



framed by this Court. The second appeal is allowed and the judgment and decree passed by the first appellate court is set aside and the judgment and decree passed by the trial court is restored. No costs.

Sd/-

Assistant Registrar ()

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// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

- 1.The District Judge,
Karur.
- 2.The Sub Judge,
Karur.
- 3.The Record Keeper, (2C)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

S.A. (MD) No.792 of 2014
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KB(09.06.2021) 4P 5C