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SA.No.369 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2023

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.No.369 of 2007
and
Cros.Obj.No.51 of 2007

S.A.No.369 of 2007

1. The Assistant Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Board,
Sankari.
2. The Assistant Executive Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Board,
Sankari.
3. The Executive Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Board,
Sankari.
4. The Superintending Engineer,
Tamil Nadu Electricity Board,
Mettur Electricity Distribution Circle,
Mettur Dam.

... Appellants

- Vs -

1. S.P.Palaniappan (Died)
 2. Mrs.Palaniyammal
 3. Mr.Venkatachalam
- (RR2 & 3 are brought on record as LR's of the
Deceased R1 vide Court order dated 22.06.2023
made in CMP.Nos.7155, 7159 & 7168/2023)

... Respondents



SA.No.369 of 2007

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 22.12.2006 made in A.S.No.7 of 2006 on the file of Sub-Court, Sankari reversing the judgment confirming the judgment and decree dated 29.09.2006 made in O.S.No.47/2003 on the file of the District Munsif Court at Sankari.

For Appellants : M/s.Hemalatha Gajapathy

For Respondent : Mr.B.Singaravelu

Cros.Obj.No.51 of 2007

1. S.P.Palaniappan (Died)
2. Mrs.Palaniyammal
3. Mr.Venkatachalam
(A2 & A3 are brought on record as LR's of the
Deceased A1 vide Court order dated 22.06.2023
made in CMP.Nos.8084, 8087 & 8088/2023)

... Cross Objectors

-Vs-

1. The Assistant Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Board,
Sankari.
2. The Assistant Executive Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Board,
Sankari.
3. The Executive Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Board,
Sankari.
4. The Superintending Engineer,
Tamil Nadu Electricity Board,
Mettur Electricity Distribution Circle,
Mettur Dam.

... Respondents



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Cross Objection in S.A.No.369/2007 is filed under Order 41 Rule 22 of the Civil Procedure Code against the judgment and decree dated 22.12.2006 made in A.S.No.7 of 2006 on the file of Sub-Court, Sankari confirming the judgment confirming the judgment and decree dated 29.09.2006 made in O.S.No.47/2003 on the file of the District Munsif Court at Sankari.

For Cross Objectors : Mr.B.Singaravelu

For Respondents : M/s.Hemalatha Gajapathy

JUDGMENT

The appellants are the defendants before the Court below and the respondent herein is the plaintiff.

2. For the sake of convenience, parties will be referred according to their litigative status before the Trial Court.

3. The plaint averments in brief:-

The plaintiff submits that he was having a service connection in S.C.No.206 under Tariff IIIA of Sankari R.S.Distribution. It is the submission of the plaintiff that he has installed a 10 HP electric motor and twenty power-looms and he has also got one tar machine. The plaintiff was



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served with the notice dated 22.02.2003 issued by the first defendant, wherein he was called upon to pay a sum of Rs.52,696/- within 15 days, for the loss suffered by the 1st defendant as Auditing difference. This plaintiff submits that his service connection has been periodically inspected by the various officials of the 1st defendant including the 3rd and 4th defendants, but there has never been any complaint of any malpractice. It is the further submission of the plaintiff that, they themselves finding it difficult to run the factory due to various factors like labour shortage, lack of availability of yarn, lack of orders and mostly due to frequent and prolonged power cuts. The plaintiff further submits that the meter dial was fault on 14.06.2002. However, on the same day, the 1st defendant installed new meter and subsequently, as usual current consumption amount was paid for the past 9 months. The impugned letter dated 22.02.2003 do not reflect any reasoning as to how they arrived at a figure of Rs.52,696/-. According to the plaintiff, the letter dated 22.02.2003 is arbitrary, capricious, illegal and cannot be enforced. Hence, he preferred an appeal by way of reply notice and the same received by the 2nd defendant on 04.03.2003 and the 1st defendant received the notice on 06.03.2003. However, none of the respondents has given any reply. Therefore, this plaintiff submits that the very notice dated 22.02.2003



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is illegal, arbitrary, unenforceable. Hence, he prayed for a declaration to the said effect and also prayed to set aside the same.

4. The Written statement in brief:-

These defendants admits the meter dial fault on 14.06.2002. The audit arrear amount has been levied due to incorrect adoption of average consumption charges for the meter defective period from 13.08.2001 to 14.06.2002. The consumption pattern shows that the meter has recorded more than 7200 units adding with the consumption of lighting load meter. It is submitted that the High Quality meter was initially defective from 13.08.2001 onwards. Hence according to the defendant the period from 14.08.2001 to 14.06.2002 is requires revision based on the consumption recorded for April 2001 and June 2001 vide Clause 17.10 of Terms and Conditions of Supply approved in BP.MS(FB) No.61 (Adm.Br) dated 24.12.1988. These defendants have also given calculation in the Written statement. They submitted that they are entitled to collect such amount within a period of three years. Hence, the defendants submit that the plaintiff is not entitled for a declaration as prayed for.



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5. Evidence and Documents:-

Before the Court below, on behalf of the plaintiff, he himself was examined as PW1 and 6 documents have been marked as Exs.A1 to A6. On behalf of the defendants, 2 witnesses were examined as DW1 and DW2 and 6 documents have been marked as Exs.B1 to B6.

6. Findings of the Court below:-

After considering either side submissions, the trial Court has dismissed the suit with the finding that the plaintiff did not opt for the alternative efficacious relief and ultimately dismissed the suit. Further the first appellate court reversed the finding and found that the Civil Court has jurisdiction, and also held that in view of not following the provisions under Section 20 Sub Clause(6) of the Tamil Nadu Electricity Act the very impugned assessment is liable to be declared as null and void. Aggrieved by the said findings the defendants are before this Court.

7. Substantial Question of Law:-

When the Second Appeal was admitted before this Court, this Court has framed the following substantial question of law:-



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“(i) Whether the suit filed is maintainable without exhausting the appellate remedy available in the Terms and conditions of supply of Electricity?

(ii) Whether Ex.P4 could be treated as an appeal filed under the Terms and conditions of supply of Electricity, which was sent without following the conditions prescribed in the terms and conditions of supply of Electricity?”

Submissions of either side counsels:

8. The learned counsel for the appellant/defendant would submit that the dismissal order was in pursuance of the audit slip issued as per the terms and conditions of the Tamil Nadu Electricity Act, 2003 . The learned counsel would also contend that when the plaintiff did not object the working condition of the meter while replacing meter, then the objection against the demand amount for the consumption of energy, is in violation of terms and conditions.

9. The learned counsel for the defendant would further vehemently submits that, in the place of the alternative relief, the suit is liable to be dismissed. It is also the submission of the learned counsel for the appellant that the non-adherence to the Terms And Conditions Of The Supply of



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electricity, would entail the dismissal of the suit. It is the yet another submission of the learned counsel for the appellant/defendant that the applicability of Section 26 of the Tamil Nadu Electricity Act, is not applicable to the present set of facts of the case. The defendant has also relied upon certain judgments to substantiate their ground that bar of the Civil Court jurisdiction in the place of alternative remedy. The learned counsel for the appellant relied the following judgments to support their case:-

1. Punjab State Electricity Board and Ors. Vs. Ashwani Kumar reported in *MANU/SC/1170/1997*;

2. M.Prem Selvi Vs. The Executive Engineer, (Distribution) and Ors reported in *MANU/TN/1882/2007*;

3. Tamil Nadu Electricity Board Vs. M/s.Krishna Mines reported in *Indian Kanoon/172946*;

4. The Superintending Engineer-Distribution, Tamil Nadu Electricity Board and Ors. Vs. S.Sheik Dawood reported in *MANU/TN/0366/2009*;

5. Thirumangalam Agricultural Producers Co-op. Marketing Society Ltd., Vs. The Superintending Engineer, Madurai Electricity Distribution Circle, Tamil Nadu Electricity Board reported in *MANU/TN/5268/2011*;

6. Emkay Alloys (P) Ltd., Vs. The Executive Engineer, Tamil Nadu Electricity Board (O & M) and Ors. Reported in *MANU/TN/1727/2019*.



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10. Per contra the learned counsel for the respondent/plaintiff would contend that the suit is maintainable in view of absence of any appeal remedy against the issuance of audit slip. The learned counsel for the respondent/plaintiff would further submit that there was no consumption of energy in contravention to the terms and conditions of the Electricity Act. He would further submit that the reduction of consumption of energy, was only due to labour shortage and lack of supply of uninterrupted electricity. Hence prays to dismiss the second appeal. The learned counsel for the defendant also relied upon the full bench Judgment of the Supreme Court held reported in (1964) 1 SCR 752 in the case of *Firm of Illuri Subhayya and Chetty Sons Vs State of Andhra Pradesh*, and another judgment reported in (1966) 3 SCR 582 in the case of *State of Kerala Vs Ramaswami Iyer and Sons*, and yet another judgment of the Full Bench of Punjab & Haryana High Court reported in *ILR (2004) (1) P & H 303 Punjab and Haryana* in the case of *M/s.Ranbaxy Laboratories Ltd Vs Punjab State Electricity Board and another*. The learned counsel also relied on the Judgment rendered by this Court on 07.06.2022 in *S.A.No.1419 of 2003* in the case of *Ramanathasamy Devasthanam Vs The Assistant Engineer*.



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Analysis of the submissions:-

11. Coming to the maintainability of the suit, it is specific submission of the learned counsel for the defendant that whenever alternative efficacious remedy is available, then by virtue of the Section 9 of the C.P.C, the remedy before the Civil Court is barred. In this connection the learned counsel for the defendant would invite the attention of this Court in respect of Rule 8 of the Terms And Conditions of Tamil Nadu Electricity Act under schedule 37 Part 1. As per Schedule 37, clause 8.04, against the assessment notice an appeal will lie before the Appellate Authority. The Appellate Authority has been defined under clause 10 of the schedule 37.

12. In our case there is no reference about whether the service connection is high tension or low tension. In respect of the low tension service connection a show cause notice to be issued by the Assistant Executive Engineer, and for the high tension service connection a show cause notice to be issued by the Executive Engineer. For ready reference Clause 10 of the terms and conditions is extracted hereunder:



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S.No	Type of Service Connection	Officers Authorised			
		To inspect	To issue show-cause notice	To make assessment	As appellate Authority
(1)	(2)	(3)	(4)	(5)	(6)
1.	Low Tension Service connection including temporary service connection	Any officer not below the rank of Junior Engineer Grade II	Assistant Executive Engineer	Executive Engineer	Superintending Engineer
2.	High Tension service connection including temporary service connection	Any officer not below the rank of Junior Engineer Grade II	Executive Engineer	superintending Engineer	Chief Engineer

13. Admittedly in our case a notice was issued by the Assistant Engineer. Therefore, this Court is of the view that, when the notice was issued in contravention to the terms and conditions, and not complied by the defendant by virtue of the Judgment reported in (1964) 1 SCR 752 in the case of *Firm of Illuri Subhaya and Chetty Sons Vs State of Andhra Pradesh*, reported in (1966) 3 SCR 582 in *State of Kerala Vs Ramaswami Iyer and Sons*, the Civil Court jurisdiction cannot be held to be ousted.

14. In a similar set of facts, the learned single Judge of this Court in S.A.No.1419 of 2003 (cited supra) held that when there is no specific



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provisions to appeal against the audit slip, then the suit before the Civil Court is the only relief, and maintainable.

15. Here, according to the submissions of the defendant, the impugned notice was issued in pursuance of the audit slip No.76/271/2003. Therefore, this Court hold that the Civil Court has got jurisdiction to adjudicate upon the impugned notice. Thus, the finding recorded by the First Appellate Court as to the maintainability of the suit is liable to be confirmed.

16. Now coming to the next challenge in respect of the correctness of the demand of Rs. 52,696/-, admittedly the said assessment was not made by the competent authority. Even then, it was the finding of the first appellate Court that while verifying the meter, no statutory notice has been given to the plaintiff. Above all the first appellate Court has relied upon the provisions of the Tamil Nadu Electricity Act under Section 26 Sub clause (1). According to the above provision, whenever there is a defect in the meter, this defect has to only be verified by a Electrical Inspector. If the defect is found by the Electrical Inspector, then only a cause of action arise for the defendant to issue the impugned demand notice.



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17. Here such inspection was not done by the Electrical Inspector. Therefore, the impugned demand is absolutely baseless and not based on terms and conditions. Therefore, this Court is of the view that the finding of fact recorded by the First Appellate Court that there is no proof or rational as to the demand made against the plaintiff, and that the further conclusion made by the First Appellate Court, that the suit is maintainable by the Civil Court is perfectly in order.

18. The defendant/appellant did not put forth any ground so as to deviate from the well merited findings of the first Appellate Court. Therefore, the substantial question of law are answered in favour of the respondents.

19. Coming to the cross objection filed by the plaintiff, the same has been filed against the direction given by the First Appellate Court to pay necessary Court fee under Section 40 the Tamil Nadu Court fees act. It is pertinent to mention here that, section 40 of the Court fees act deals about the cancellation of decree. If any suit is instituted to cancel the decree, then it becomes necessary for the plaintiff to compute the Court fee, according to



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value of the subject matter of the suit. In our case, the relief sought was only in respect for the declaration against the notice issued by the Assistant Engineer as null and void. To put it in other words, the suit is not for cancellation of the decree, but only for declaratory relief against the notice issued by the Assistant Engineer.

20. Therefore, this Court is of the view that the direction issued by the first appellate Court to pay the Court fee under Section 40 is not in consonance, and the true spirit of the Section 40 of the Tamil Nadu Court fees Act. Therefore, such direction is liable to be set aside. As a result of which the cross objection is liable to be allowed.

21. In the result, the second appeal is dismissed and the cross objection is allowed. No order as to costs.

11.10.2023

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kmi

To

1. The Subordinate Judge, Sankari.
2. The District Munsif Court,
Sankari.



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C.KUMARAPPAN, J

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