



S.A.No.1850 of 2002

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.04.2023

PRONOUNCED ON : 07.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

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1.Tamil Nadu Electricity Board
Rep.by its
Superintending Engineer,
Kamarajar Electricity Distribution Circle,
Virudhunagar.

2.The Chairman,
Tamil Nadu Electricity Board,
801, Anna Salai,
Chennai-2.

...Appellants/Respondents/Defendants

-Vs-

M/s.Pandian Pottash Private Limited
its Director V.Sooriyan,
Door No.28-A, West Ratha Street,
Aruppukottai Taluk,
Kamaraja District.

...Respondent/Appellant/Plaintiff



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PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 05.11.2001 made in A.S.No.166 of 2001 on the file of the Sub Court, Aruppukottai, reversing the judgment and decree dated 22.06.2000 made in O.S.No.32 of 1997 on the file of the District Munsif Court, Aruppukottai.

For Appellants : Mr.B.Ramanathan

For Respondent :Mr.G.Prabhu Rajadurai

J U D G M E N T

The respondent herein is the plaintiff in O.S.No.32 of 1997 on the file of the District Munsif Court, Aruppukottai and has filed the said suit against the appellants herein/defendants for the relief of declaration that notice issued by the Electricity Board on 24.01.1997 is illegal, null and void and for consequential relief of injunction restraining the defendants and their men from disconnecting the service connection of the plaintiff. After trial, the trial Court dismissed the suit and aggrieved by the said judgment and decree passed by the trial Court, the plaintiff/respondent herein has filed an appeal before the Sub Court, Aruppukottai in A.S.No.166 of 2001. After hearing the appeal, the lower Appellate Court allowed the appeal and decreed the suit as prayed for. Aggrieved by the said



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judgment and decree passed by the Appellate Court, the Electricity Board has filed the present second appeal. While admitting the second appeal, this Court has framed the following substantial questions of law:

“1. Whether the lower appellate court has not committed serious irregularity in interpreting the definition 'consumer'?

2. Whether the impugned notice exhibit 13 is valid in law or not?

3. Whether or not the lower appellate Court committed grave illegality in not considering the provisions of terms and conditions of supply in the proper perspective?

4. Whether the reasoning of the lower appellate Court that the arrears of the company cannot be collected from the service connection belonging to the Director is sustainable in law?

5. Whether the suit is maintainable by the consumer /respondent without filing an appeal as laid down by the Hon'ble Supreme Court?

6. In any event the judgment and decree of lower Appellate Court unsustainable both on law and facts?”



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2. The specific case of the plaintiff is that the plaintiff is one among the ten Directors of M/s.Pandian Potash (P) Limited, Aruppukottai. The Company obtained H.T. Service connection in H.T.S.C.No.103 for a sanctioned load of 300 K.V.A. from 13.11.1989. As per column 11 of the agreement with the Tamil Nadu Electricity Board, it is terminable as per the terms and conditions of supply of electricity and there is no specific period. The company was manufacturing potassium chlorate upto December 1992. The company became a sick unit from January 1993. Earlier, service connection was disconnected from October 1990 to April 1991 for non-payment of current consumption charges. The first defendant has sent a notice for termination of agreement on 15.02.1994. Though the said notice was personally received on 03.03.1994, the Company was not able to pay a sum of Rs.1,35,883.60/- (Rupees One Lakh Thirty Five Thousand Eight Hundred and Eighty Three and Sixty Paise only) as demanded by the first defendant. Hence, the agreement was terminated on 03.06.1994. From 03.06.1994, there was no contractual relationship between the company and the defendants regarding the supply of electricity. The first defendant has no right to demand monthly minimum charges from 03.06.1994 as per the terms and conditions of supply of electricity.



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3. To rectify the defects in the machinery, the Company requested the first defendant for restoration of supply of electricity on humanitarian grounds. The first defendant refused to restore service connection and directed the company to get new service connection. Contrary to the termination of the agreement, the first defendant has sent a notice under Section 3(1) of TNEB (Recovery Dues) Act, 1978, demanding belated payment surcharges for a period from October 1993 to September 1996. The company has deposited a sum of Rs.92,250/- (Rupees Ninety Two Thousand Two Hundred and Fifty only) as security deposit for supply of electricity. The first defendant ought to have refunded the security deposit after deducting the arrears on 03.06.1994. With the aim to get gain to Electricity Board and cause loss to the consumer, the first defendant has calculated the belated payment surcharges at the rate of 24% from October 1993 to September 1996 and threatened to disconnect the service connection of the plaintiff for the arrears of consumption charges of the Company. It is illegal to disconnect the service connection of an individual for the arrears of the Company which is a separate legal entity. The plaintiff has not executed any agreement with Electricity Board as Consumer of H.T.Service connection No.103. The plaintiff along with other nine Directors of the Company



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had consented for the agreement on behalf of the Company only. At present, the Managing Director of the company is one S.Muthuvel Babu. The same was also intimated to the Registrar of Companies. The plaintiff is not a Managing Director. Therefore, as an individual, he is not liable to pay any arrears and he cannot be singled out to pay the arrears in his individual capacity. Therefore, he has filed the suit stating Ex.A13, notice is illegal and seeking to restrain the defendants from disconnecting the service connection.

4. The specific case of the defendants/appellants herein is that one V.Sooriyan, the Managing Director, has signed the agreement with the Electricity Board for and on behalf of the Company in an individual capacity. The word “consumer” includes successors, legal representatives and assignees. The agreement dated 21.12.1989 executed by the plaintiff in favour of the Electricity Board was marked as Ex.B1 before the trial Court. As per Section 2 of the Indian Electricity Act, the word 'consumer' includes the owner of premises. The registered office of the Company is situated at 28A, Nadar West Car Street, Aruppukottai, which belongs to V.Sooriyan. Therefore, the plaintiff in his individual capacity is liable to be held as consumer to the Electricity Board. The



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agreement is terminable by one month notice by either side as per the terms and conditions of supply of electricity. The service connection was disconnected on 15.11.1993 for non-payment of 10/93 C.C. charges. The first defendant sent a termination of agreement notice dated 15.02.1994 under 13.06 of terms and conditions of supply of electricity. On 08.04.1994, the plaintiff made a representation to the second defendant for payment of current consumption charges in six monthly installments. The second defendant allowed to pay a sum of Rs.1,09,832/- (Rupees One Lakh Nine Thousand Eight Hundred and Thirty Two only) with surcharge of Rs.15,331.22/- (Rupees Fifteen Thousand Three Hundred and Thirty One and Twenty Two Paise only) in six monthly installments on 16.04.1994. The said fact was suppressed by the plaintiff and he has not come to the Court with clean hands. The plaintiff has not challenged the demand notice. The plaintiff has also received the notice and did not file any appeal within a period of 30 days to the Chief Engineer (Distribution), Tirunelveli. Therefore, the order of the first defendant became final. Even as per Section 5 of Tamil Nadu Electricity Board (Recovery of Dues) Act, 1978, the suit is barred. Notice issued is lawful and there is no merit in the suit. The trial Court, after considering the oral and documentary evidence, came to the conclusion that the respondent did



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not establish the case as to how Ex.A13 notice was illegal or void. Therefore, the suit was dismissed. Thereafter, the respondent has filed the appeal in A.S.No.166 of 2001 and filed an application in I.A.No.174 of 2001 under Order 41 Rule 27 C.P.C to receive Memorandum and Articles of Association of the Company as additional evidence. The First Appellate Court received the additional documents and considered the fact that the service connection stood in the name of the Company and that the respondent is one of the Directors of the Company. However, it has been held that since the Company has not paid the electricity charges, the respondent cannot be individually made liable and allowed the first appeal. Challenging the same, the present second appeal has been filed.

5. The learned counsel appearing for the appellants submitted that originally, a demand notice was issued to the Company on 12.09.1994 marked as Ex.A14 which was not challenged by the respondent/plaintiff. Thereafter, the Electricity Board has sent a notice marked as Ex.A16 under the Recovery of Dues Act, 1978, on 13.11.1996 and the same was also not challenged. On 24.11.1997, the Electricity Board has issued a notice marked as Ex.A13 intending to disconnect other 13 service connections. Thereafter, the suit was filed. Under



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Ex.A15, the service connection No.103 standing in the name of the Company was disconnected for default in payment of the electricity charges. The disconnection order was not challenged. The respondent has only challenged the notice issued under Ex.A13 for disconnection of electricity service connection standing in the name of the company and for disconnection of 13 other electricity service connections. The respondent was the Managing Director of the company and at the time of filing the suit or issuing notice under Ex.A13, the son of the respondent herein was the Managing Director and the administration office was situated in the property of the respondent. The learned counsel for the appellants relied upon 19.18 of the terms and conditions of Tamil Nadu Electricity Board which reads as follows:-

“19.18.where any consumer having more than one service connection, defaults in payment of dues relating to any one of the service connections, the Board may cause other service connections in the name of the consumer to be disconnected till all the arrears due for all the service connections are paid, notwithstanding the fact that the service connections are covered by separate agreements”.



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6. The contention of the respondent is that when the company has defaulted in payment of electricity charges, only the service connection standing in the name of the company could be disconnected and the service connection standing in the name of individual cannot be disconnected, for which, the learned counsel appearing for the appellant relied on the judgment of this Court in ***W.P.(MD)No.12507 of 2011 dated 23.11.2011 in M/s.Vishnuvardhan Paper Mills (P) Ltd., Vs. Tamil Nadu Electricity Board, represented by its Chairman, Chennai.*** The said writ petition was filed by the Company challenging an order passed by the Electricity Board, calling upon the said Company to make payment for three sister concerns of the petitioner's Company. After relying upon the judgment of the Hon'ble Supreme Court reported in ***2006 (7) SCC 756***, this Court has held that the individual cannot attempt to use the personality of the company for furthering their own personal object and held that the doctrine of lifting the corporate veil is applicable. This Court further held in paragraph No.40 of the order, which reads as follows:

“40. Therefore, it is clear that when the same set of persons are found to be operating under different corporate names in the form of different corporate entities, it is possible and sometimes even necessary to life the corporate veil. Once, it is found that there is a



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necessity to lift the corporate veil and once it is found after the lifting of the corporate veil that the same persons are behind all these entities, then there is no escape from the conclusion that the expression “in his name” appearing in the third proviso to Regulation 27(1) of the Distribution Code, would cover all those companies”.

7. The learned counsel appearing for the respondent would further submit that though the respondent did not file any relevant document to show that the service connection stood in the name of the Company, it is to be noted that he was only the Director of the Company and the Company is a separate legal entity. For non-payment of consumption charges, the respondent shall not personally liable. Therefore, the notice issued by the Electricity Board marked as Ex.A.13 is illegal and the personal service connection of the respondent cannot be disconnected for non-payment of electricity consumption charges of the Company. The first Appellate Court found that the said Company is a separate legal entity. Even the respondent herein has signed in the agreement as only the Managing Director and personally, he is not responsible. Further, a reading of Ex.A13 notice would show that the appellant Board intending to disconnect the service connection of the respondent has issued a notice. Therefore, the judgment



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and decree passed by the trial Court was rightly set aside by the first appellate Court and there is no merit in the second appeal. The learned counsel also relied on the judgment of this Court in the case of ***F.Mani and another vs. Tamil Nadu Electricity Board, represented by its Chairman and others*** reported in ***2019 SCC Online Mad 36788***. In that case, though the Electricity Board disconnected the individual connection of the partners, the defaulter is the partnership firm and when the default is on the part of the partnership firm, the individual cannot be held to be liable. In this case also, the respondent is an individual person and he was one of the Directors of the Company. Due to the default on the part of the Company, the respondent cannot be held personally liable and therefore, there is no merit in the present appeal and the judgment and decree passed by the First Appellate Court does not warrant interference.

8. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondent and perused the materials available on record.



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9. Admittedly, the appellants are Electricity Board and the respondent was one of the Director of M/s.Pandian Pottash Private Limited, who has got service connection in H.T.S.C.No.103 and there was an arrear of consumption charges. Therefore, the appellant Board disconnected the service connection and made a demand. Neither the Company nor the respondent has challenged those demand notice. However, when the appellant Board issued a notice marked as Ex.A13, calling for payment of entire arrears of consumption charges, failing which, all those service connection standing in the name of the respondent will be disconnected, the respondent filed the suit challenging the said notice Ex.A13 on the ground that the Company is a legal entity and the respondent cannot personally be held liable for non-payment of consumption charges of the Company and therefore, Ex.A13 notice is illegal. The appellant Board took a stand that at the time of getting service connection, the respondent was one of the Directors of the Company and he has also signed in the agreement on behalf of Company in individual capacity. The respondent is the owner of premises of the Company and has also admitted that the premise of the company was also situated in his property and therefore, the respondent also comes under the definition of consumer.



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10. From the records, it is seen that the present Managing Director of the Company is none other than the son of the respondent. As per 19.18 of the terms and conditions of the Tamil Nadu Electricity Board, the respondent is held to be liable. Further, on facts, the respondent has not challenged the earlier demand notice. All the notices sent by the Electricity Board to the Company and the Directors were marked by the respondent. Considering the facts and circumstances of the case, the definition of the consumer, the terms and conditions of the Electricity Board and also the decision of this Court, by invoking the doctrine of lifting the corporate veil, this Court can easily come to the conclusion that the respondent and the Company are one and the same for the purpose of payment of electricity charges. Notice issued by the appellants Board marked as Ex.A13 is not illegal and there is no illegality in issuing Ex.A13 notice. Further, there is an appeal provision and the respondent should have invoked the appeal provision and without approaching the Appellate Authority, the respondent has straight away filed the suit and therefore, the suit filed by the respondent is not maintainable. Therefore, the contention raised by the learned counsel for the respondent is not acceptable and the citation referred by the



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learned counsel appearing for the appellant Board is squarely applicable to the present case on hand. Hence, the substantial questions of law are answered in favour of the appellants.

11. Accordingly, the judgment and decree passed by the First Appellate Court in A.S.No.166 of 2001 dated 05.11.2001 is set aside and the judgment and decree passed by the trial Court in O.S.No.32 of 1997 dated 22.06.2000 is restored. This Second Appeal is allowed. There shall be no order as to costs.

07.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

- 1.Sub Court, Aruppukottai
- 2.District Munsif Court, Aruppukottai.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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P.VELMURUGAN, J.

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