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S.A.No.688 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.03.2024

CORAM

THE HON'BLE MR. JUSTICE **G.ARUL MURUGAN**

S.A.No.688 of 2012

L.Premchandran

... Appellant

Vs.

1.Tamil Nadu Electricity Board
Rep. by the Superintending Engineer,
Cuddalore.

2.Junior Engineer,
Tamil Nadu Electricity Board,
Tiruppapuliur, Cuddalore.

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 04.11.2011 passed in AS.No.57 of 2011 on the file of the II Additional Sub Court, Cuddalore, confirming the judgment and decree dated 14.02.2011 passed in OS.No.117 of 2009 on the file of Principal District Munsif Court, Cuddalore.

For Appellant : Mrs.R.Meenal

For Respondents : M/s.J.Hemalatha Gajapathy

JUDGMENT



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The unsuccessful plaintiff in the suit challenging the demand of the defendant / Tamil Nadu Electricity Board is before this Court on the above appeal. The Second Appeal is filed against the judgment and decree dated 04.11.2011 passed in AS.No.57 of 2011 on the file of II Additional Sub Court, Cuddalore, confirming the judgment and decree dated 14.02.2011 passed in OS.No.117 of 2009 on the file of Principal District Munsif Court, Cuddalore.

2. For the sake of convenience, the parties are referred to as per their ranking before the Trial Court.

3. According to the plaintiff, he had an Hotel under the name and style “Hotel KTR” in Thiruppapuliur, Cuddalore-2. When he was running the hotel, on 15.10.2007, the defendant / Electricity Department issued a communication stating low power factor. The defendant issued a letter dated 01.02.2009 for a sum of Rs.1,16,639/- payable for the low power factor and since it is illegal, has come up with the suit to declare the demand as illegal and for injunction.



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4. The defendant resisted the suit by filing the written statement that the suit is not maintainable under the provisions of the Electricity Act, 2003. The Civil Court has no jurisdiction to maintain the suit questioning the assessment.

5. The plaintiff, without exhausting the remedies available in that Act, cannot maintain the suit. Further, the omission of the demand and collection of the said sum of Rs.1,16,639/- was also pointed out in the audit, based on which the demand notice was issued.

6. During trial, on the side of the plaintiff, PW.1 was examined and Exs.A1 to A.10 were marked. On the side of the defendants, D.W.1 was examined and Ex.B.1 to Ex.B.7 were marked.

7. The Trial court after appreciating the evidence and documents by judgment and decree dated 14.02.2011, dismissed the suit holding that the suit filed by the plaintiff is not maintainable, in view of the specific bar under the Electricity Act, 2003 (hereinafter referred, as 'the said Act'.) The plaintiff being aggrieved filed AS.57 of 2011 and the Lower



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Appellate Court after reappraising the evidence dismissed the appeal.

Aggrieved by the concurrent findings, the plaintiff is before this Court on appeal.

8. This Court by order dated 02.07.2012, ordered notice regarding admission.

9. The learned counsel for the appellant argued that since the demand made by the defendants/Tamil Nadu Electricity Board was illegal and they have rightly approached the Civil Court challenging the demand whereby, the plaintiff will have an opportunity to let in evidence and establish his claim.

10. The learned counsel vehemently contended that further the demand made by the Electricity Board is beyond the period of limitation and therefore is not maintainable. The Courts below have rightly come to the conclusion that the suit is not maintainable when the demand is not based on the theft of electricity.



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11. Per contra, the learned counsel for the respondent argued that the short levy of energy was deducted, based on which the demand was issued. The learned counsel further argued that after assessing the



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correct consumption, the demand for a sum of Rs.1,16,639/- was issued towards the short billed amount.

12. The learned counsel further contended that the suit filed by the plaintiff is barred under Section 145 of the said Act. No Civil Court shall have jurisdiction to entertain any suit for proceeding in respect of the assessment. The learned counsel further contended that when the assessment is made under Section 126 of the said Act, the Civil Court has no jurisdiction to entertain the suit in view of the specific bar under the Act, and both the courts below have rightly found that the suit is not maintainable and dismissed the suit which needs no interference and sought for dismissal of the appeal.

13. Heard the learned counsel on both sides and perused the materials available on record.

14. As per Section 9 of Civil Procedure Code, in a Civil suit, the Courts shall have jurisdiction to try all suits except whether the cognizance is expressly or impliedly barred.



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15. The only issue that arises for consideration is whether the suit filed by the plaintiff challenging the demand issued by the defendants/Electricity Board is maintainable and the Civil Court has jurisdiction to entertain the dispute. Section 145 of the said Act 2003 is usefully extracted under:

“No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in Section 126 or an appellate authority referred to in Section 127 or the adjudicating officer appointed under this act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act”.

16. Therefore when there is an express provision barring the jurisdiction of the Civil Court from entertaining any suit or proceedings, the suit filed is not maintainable, and the Court will not have jurisdiction to try the suit. Under Section 145 of the said Act, when the assessment is made by an assessing officer referred to under Section 126 where the



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assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of the judgment the electricity charges payable by such person. No Civil Court will have jurisdiction to entertain the suit or proceedings in respect of the demand made pursuant to the assessment made by the assessing officer.

17. It has been settled by a catena of decisions that the jurisdiction of the Civil Court is barred from entertaining any dispute in respect of the demand made by the Electricity Board in pursuance of the assessment made by the assessing officer under Section 126 or the Appellate authority under Section 127 of the said Act. In the Judgment of the Hon'ble Supreme Court in **Punjab State Electricity Board and others Vs Ashwani Kumar** reported in (1997) 5 SCC 120, it is held that “*the Civil Court shall not be justified in entertaining this suit and giving the declaration without directing the party to avail of the remedy provided under the Indian Electricity Act*”. Para 9 of the judgment is usefully extracted hereunder:

“The question then arises: whether the Civil



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Court would be justified in entertaining the suit and issue injunction as prayed for? It is true, as contended by Shri Goyal, learned Senior Counsel, that the objections were raised in the written statement as to the maintainability of the suit but the same given up Section 9 of C.P.C. provides that Civil Court shall try all suits of Civil nature, subject to peculiar jurisdiction, unless their cognizance is expressly or by necessary implication is barred. Such suit would not be maintainable. It is true that ordinarily, the Civil Court has jurisdiction to go into and try the disputed questions of civil nature, where the fundamental fairness of procedure has been violated. The statutory circulars adumbrated above do indicate that a fundamental fairness of the procedure has been prescribed in the rules and is being followed. By necessary implications, the cognizance of the civil cause has been excluded. As a consequence, the Civil Court shall not be justified in entertaining this suit and giving the declaration without directing the party to avail of the remedy provided under the Indian Electricity Act and the Indian Electricity (Supply) Act and the Instructions issued by the Board in that behalf from time to time as stated above.”



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18. This Court by relying on the Ashwanikumar's judgment in **The Tamil Nadu Electricity, Thanjavur Electricity System, rep. by Superintending Engineer Vs. Chandra Chakrapani** reported in (1999) **3 CTC 443**, held that the suit filed as against the assessment without exhausting the alternative remedy provided under the Indian Electricity Act is not maintainable. Para – 10 of the Judgment is usefully extracted hereunder:

“10. The defendant also relied upon the decision reported in Punjab State Electricity Board and another v. Ashwanikumar, 1997 (5) S.C.C. 120, wherein it is stated that by necessary implication the cognizance of civil cause has been excluded. As a consequence, the civil court shall not be justified in entertaining this suit and giving the declaration injunction without directing the party to avail of the remedy provided under the Indian Electricity Act and the Indian Electricity (Supply) Act and the Instructions issued by the Board in that behalf from time to time. This decision is applicable to the case on hand. It is, therefore, clear that the plaintiff, if aggrieved, would avail the remedy provided under the Electricity Act



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and the instructions issued by the Board without resorting to Civil Court and only after exhausting the remedies, the plaintiff has got right to file a suit and under the circumstances, the suit is also not maintainable under law. Since there is wrong approach relating to the question of law also by the lower appellate Court, I am of the view that it is just and necessary to interfere with the findings and as such it is liable to be set aside.”

19. This Court also in **Nahar Enterprises, Represented by its partner J.Bherulal Nahar vs. 1. The Chairman, Tamil Nadu Electricity Board, Anna Salai, Chennai and others**, reported in (2007) **3 LW 136**, has held that the Civil Court's jurisdiction is impliedly barred when the plaintiff has not filed the statutory appeal as against the demand.

Para 16 and 17 is usefully extracted hereunder:

“16. It will be noticed from the provisions contained in Section 9 of the Code of Civil Procedure that a bar to file a Civil Suit may be express or implied. An express bar is where a Statute itself contains a provision that the jurisdiction of a Civil Court is barred. An implied bar may arise when a Statute provide a special remedy to an aggrieved party.



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17. Now it has to be considered whether the Indian Electricity Act and the Terms and Conditions of Supply of Electricity of Tamil Nadu Electricity Board expressly bar the filing of the suit in such matters or whether they intend any implied bar. A perusal of the provisions of the Indian Electricity Act and the Terms and Conditions of Supply of Electricity of Tamil Nadu Electricity Board clearly show that there is no express bar for filing of a suit in such matters. Clause 37 of the Terms and Conditions contains a Schedule and Part I of the same contains Clause 8.00, which lays down the procedure to be followed for extra levy in case of theft of electrical energy. Clause 8.03 of the Terms and Conditions provides the procedure to be followed for making as to how the extra levy will be assessed in case of Low Tension Electricity Service Connections and High Tension Electricity Service Connections. A tabular column contained in Clause 10.01 of the Terms and Conditions enumerates the Officers Authorised to Inspect electricity Service connection, issue show cause notice, make assessment and function as an Appellate Authority. In cases of violation or theft of electrical energy in case of Low Tension Electricity Service Connection any Officer not below the rank of Junior Engineer Grade II is authorised to inspect the service connection, the Assistant Executive Engineer is the competent authority to issue the show cause notice, the Executive Engineer is the competent authority to make the assessment. As against the order of assessment an appeal is provided for to the Superintending Engineer. In case of High Tension Electricity Service Connection, any Officer not below the rank of Junior Engineer, Grade II, can inspect the service connection and the Executive Engineer is authorised to issue the show cause notice, the Superintending Engineer is the competent authority to make the assessment and as



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against the order of assessment an appeal is provided for to the Chief Engineer. Clause 11.01 of the Terms and Conditions provides as to how the appeal should be filed. Clause 12.00 of the Terms and Conditions lays down the procedure for disposal of such appeals and Clause 12.02 of the Terms and Conditions empowers the Appellate Authority to stay disconnection of electricity service connection. Clause 13.01 of the Terms and Conditions provides for the suo moto powers of the Chairman and it also provides that such order will be final. The above said provisions do indicate that the fundamental fairness of procedure has been prescribed. Therefore, by necessary implications, the cognizance of the civil cause has been excluded, as a result, the Civil Court will not entertain the suit and give the declaration without directing the party to avail the remedy provided under the Indian Electricity Act, Indian Electricity (Supply) Act and the Terms and Conditions of Supply of Electricity of Tamil Nadu Electricity Board.

20. The Division Bench of the Hon'ble Delhi High Court in **B.L. Kantroo vs. BSES Rajdhani Power Ltd**, reported in (2008) SCC Online Del 1097 held that the Civil Court has no jurisdiction by necessary implication to entertain suit for declaration and injunction, in view of the specific bar under the Electricity Act. Para 30 of the judgment is usefully extracted hereunder.

“30. Although there is no specific provision in Section 145 of the Act for exclusion of jurisdiction of



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Civil Court to entertain any proceeding in respect of any matter which the Special Court is empowered by or under the Act to determine, we are of the view that any dispute about civil liability in theft cases is impliedly excluded from the jurisdiction of civil court in view of the provisions of Section 153 and 154 of the Act wherein special court has got the jurisdiction to determine any dispute regarding the quantum of civil liability specifically in theft cases and the said court can act as civil court as well as criminal court while conducting the cases before it.”

21.Further in the decision of this Hon'ble High Court in **The Superintending Engineer-Distribution, Tamil Nadu Electricity Board and Ors. Vs. S.Sheik Dawood** reported in (2009) SCC Online Mad 554 after referring to several judgments, this aspect, held that the suit filed challenging the demand made by the Electricity Board is impliedly barred under Section 9 of the CPC, therefore, the suit filed is not maintainable.

22.From the above decisions, it is clear that the suit challenging the demand made pursuant to the assessment by the assessing officer under



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Section 126 of the Electricity Act cannot be challenged, and the jurisdiction of the Civil Court is barred under Section 145 of the Electricity Act 2003. When there is a bar under the Act, the Civil Court cannot entertain the suit in view of the bar under Section 9 of CPC.

23. In the facts of the instant case, admittedly, the original demand enumerated from the short levy of electricity and since the plaintiff has challenged the demand, the suit filed is not maintainable.



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24. In view of the above findings, the courts below have rightly found that the suit is not maintainable which does not require any interference. Therefore the second appeal is dismissed. However reserving liberty of the plaintiff to approach the Appellate authority of the respondent / Electricity Board. However there is no order as to costs.

06.03.2024

drl

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

To

1.The II Additional Sub Court, Cuddalore.

2.The Additional District Munsif Court, Cuddalore.



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G.ARUL MURUGAN.,J.

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