



A.S(MD)No.117 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

A.S(MD)No.117 of 2016
and
C.M.P(MD)No.7941 of 2016

Raj Carbons Registered Partnership Firm,
Through its Partner,
Gnanaraj,
S/o C.T.Sundarapandian,
Corampallam, Thoothukudi.

.....Appellant

-VS-

- 1.Tamil Nadu Electricity Board (Distribution),
Through its Junior Engineer,
Pudukkottai, Thoothukudi District.
- 2.Executive Engineer, (Rural Section),
Tamil Nadu Electricity Board,
Thoothukudi.
- 3.The Superintending Engineer,
Tamil Nadu Electricity Board,
Thoothukudi.

.... Respondents



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PRAYER: Appeal Suit filed under Section 96 of the Code of Civil Procedure, against the Judgment and Decree dated 07.04.2016 made in O.S.No.11 of 2012 on the file of the Principal District Judge, Thoothukudi.

For Appellant : M/s.K.Shivathini for
Mr.G.Prabhu Rajadurai

For Respondents : Mr.S.Mohan Babu for R1
Mr.B.Ramanathan for R2 and R3

J U D G M E N T

This appeal has been preferred as against the Judgment and Decree dated 07.04.2016 passed in O.S.No.11 of 2012 on the file of the Principal District Judge, Thoothukudi, wherein, the appellant herein filed the suit for declaration declaring that demand notice issued by the first defendant is null and void and consequently, seeking permanent injunction not to take steps to recover the amount based on the sale notice. The Trial Court has dismissed the suit. As against the Judgment and Decree, the plaintiff has filed this appeal.

2. The brief averments made in the plaint are as follows:

The plaintiff concern is the partnership firm and they are producing carbon through electricity service connection No.381-015-541, which is a 3



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phase service connection i.e., Red Phase, Blue Phase and Yellow Phase. While so, on 17.07.2011, the defendants Flying Squad inspected the plaintiff firm and they found that there was no symptom of consumption of electricity through those phases. Hence, the defendants Board demanded Rs.16,00,906/- towards electricity charges and sent notice to that effect on 16.02.2012. The plaintiff is not liable to pay the said amount as mentioned in the notice. When the red phase and blue phase were repaired, there is no scope for consumption of electricity for the above said charges. On 07.07.2011, new seal meter has been put, after inspection by the concerned authorities. Hence, it is not possible to consume the electricity for the above said charges. On 19.07.2011, the plaintiff paid Rs.1,91,349/- and on 16.08.2011, he paid Rs.1,50,074/-. There is no allegation as against the plaintiff for the theft of electricity. All are admitted that only Yellow Phase alone was functioning. Therefore, there is no possibility to consume the electricity for the above said charges. The defendants squad has taken the electricity service connection card and they did not hand over the same to the plaintiff. Hence, the plaintiff sent a notice dated 23.02.2012. The defendants gave a reply with false averments. The defendants are attempting to disconnect the electricity service connection. Therefore, the plaintiff filed the suit.



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3.The brief averments made in the written statement are as follows:

The electricity service connection is LTCT service connection. While so, on 30.06.2011, when the defendant authorities were taking reading in the plaintiff firm, they found that red phase and blue phase are not functioning and the same was informed to the Executive Engineer through a letter dated 07.07.2011 and the same was informed to the higher authorities. Hence, on 17.07.2011, the Assistant Executive Engineer, Flying Squad, Chennai had inspected the plaintiff firm and based on the information that Red phase and Blue Phase were repaired, the defendants authorities changed C.T cold and meter on 18.07.2011. The old meter reading was sent to the Chennai through MRT Section. The error amount has been calculated as Rs.16,00,906/- and the same was informed to the plaintiff on 16.02.2012. The plaintiff after knowing that the red phase and blue phase were damaged, they paid only minimum amount and thereby, caused loss to the Government. Hence, the plaintiff firm are liable to pay amount of Rs.16,00,906/-. Hence, the suit is liable to be dismissed.

4.Based on the evidence, the Trial Court framed the following issues:



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1) Whether the notice dated 16.02.2012 sent by the first defendant is valid or not?

2) Whether, in fact, the plaintiff has not used electricity for a sum of Rs.16,00,906/-?

3) Whether the plaintiff is entitled to get the relief of permanent injunction for not collecting Rs.16,00,906/- for using electricity?

4) To what other relief, the plaintiff is entitled to?

5. Before the Trial Court, on the side of the plaintiff, he himself examined as P.W.1 and marked Exs.P.1 to P.8. On the side of the defendants, one Sudalaimuthu, Junior Engineer, was examined as D.W.1 and Exs.D1 to D6 were marked.

6. The Trial Court, after considering the evidence adduced on either side, dismissed the suit. As against the decree and judgment, the plaintiff has filed the present appeal suit on the following grounds:

6.1. The Judgment and Decree of the Trial Court is erroneous and against law. The Trial Court failed to consider that the respondents have not explained or provided details about how they accrued the notice mentioned amount.



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6.2.The Trial Court failed to consider that while two phases were damaged, the plaintiff is paying the usual bill amount without any declaration of decreasing its value.

6.3.The Trial Court ought to have declared the demand notice as null and void as the respondents issued the notice dated 16.02.2012 after a period of eight months from the date of identifying the default.

6.4.The Trial Court is erred in considering the evidence of D.W.1 who was not present during the inspection.

6.5.The Trial Court failed to note that the blue phase current coil is found to be repaired from 14.07.2010 and the red phase current coil from 22.06.2011, however, the said defects were identified by the respondents only on 30.06.2011 and issued demand notice on 16.02.2012. Hence, the appellant could not be imposed with such huge amount for the above delayed period, which were caused only due to the lethargic attitude of the respondents.

6.6.The Trial Court failed to consider that though two phases viz., red and blue phases are defective, the appellant is running the firm with the third phase and properly remitting the electricity consumption every month.



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6.7. Therefore, the Judgment and Decree passed by the Trial Court is liable to be set aside.

7. The learned counsel appearing for the appellant after elaborate arguments, fairly conceded that the appellant/plaintiff is ready to pay the amount of Rs.16,00,906/- without any interest since there is no fault on the side of the appellant/plaintiff. He further submitted that the respondent/defendant has not issued any show cause notice to the appellant/defendant and thereby, they are not in a position to defend the notice issued by the respondent.

8. The learned counsel appearing for the respondent has also admitted that there is no wilful delay in payment of electricity service charges and due to the defect in the meter only, the demand notice was issued, however, the appellant/plaintiff is liable to pay interest.

9. This Court has perused the records. As per the submission made by the learned counsel for the appellant/plaintiff and as per the submission made by the learned counsel for the respondent/defendant, this Court without going



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into the merits of the case, is inclined to accept the contention of the learned counsel for the appellant/plaintiff and to direct the appellant/plaintiff to pay the above said admitted amount of Rs.16,00,609/-.

10. It is an admitted fact that there is no fault on the side of the appellant/plaintiff and due to the defect in the meter only, the above said consumption was identified by the authorities. Since there is no fault on the appellant/plaintiff, it is appropriate to direct the appellant/plaintiff to pay the amount mentioned in the demand notice without any interest. Further, as contended by the appellant/plaintiff, the respondent/defendant has not issued any show cause notice to the appellant and thereby, they are not in a position to defend the notice issued by the respondent/defendant. Therefore, the contention of the appellant that they are ready to pay notice mentioned amount only without interest, is acceptable. Accordingly, this Court is inclined to pass orders in this appeal by directing the appellant/plaintiff to pay the amount of Rs.16,00,906/- as mentioned in the demand notice without any interest, within a period of six months on installment basis.



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11. With the said observations, this Appeal Suit is dismissed. No costs.

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Consequently, connected miscellaneous petition is closed.

28.03.2024

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

1. The Principal District Judge, Thoothukudi.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL,J.

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