WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07-04-2026 PRONOUNCED ON : 05-06-2026

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

AS No. 267 of 2011

Tamil Nadu Electricity Board
A Statutory Board,
Rep. By Superintending Engineer / C.E.D.C.
Metro/Tamil Nadu Electricity Board, Having
Office at Tatabad, Coimbatore.

..Appellant(s)

Vs

1. Thiru.N.G.Srinivasan
   S/o Now Known, Veeriyampalayam, Gandhi Nagar, Veeriyampalayam Post, Coimbatore.

2. Tmt.Lalitha Bai (died) Exonerated
   W/o Mohanadass Bai,
   No.3G, Palanisamy Colony, 2nd St, Nehru Nagar, Civil Aerodrome Post, Kalapatti, Coimbatore.

3. Thiru.P.Vairavan
   S/o Pachiappan, Working As Manager, Kesav Industry Nehru Nagar, Civil Aerodrome Post, Kalapatti, Coimbatore.

4. R. Naveena
   W/o.Ravi Prakash,
   No.6/49, Sri Vanaja Illam, Thirumangal Nagar Main Road, Peelamedu Pudur Peelamedu, Coimbatore South.
   [R4 is impleaded vide order of Court dated 19.06.2024 made in CMP No. 26322 of 2023 in A.S. No. 267 of 2011]

..Respondent(s)

https://www.mhc.tn.gov.in/judis

WEB COPY

For Appellant(s): Ms.J.Hemalatha Gajapathy

For Respondent(s): R1 – Served – No appearance
R2 - Died
R3 – Not ready in notice
Mr.S.Mukunth Sree
for Mr.T.Balaji (R4)

JUDGMENT

The present first appeal has been filed challenging the decree and judgement dated 11.08.2010 made in the O.S.No. 588 of 2007on the LearnedAdditional Districtand Fast Track Judge, Coimbatore.

2.The suit was instituted by the plaintiff for recovery of a sum of Rs.10,62,708/- together with subsequent interest at the rate of 12% per annum. The amount claimed comprised compensation assessed for theft of electrical energy and delayed payment charges. The plaintiff stated that Service Connection No.1195 stood in the name of the first defendant. According to the plaintiff, the second and third defendants had taken the premises on lease from the first defendant and were carrying on industrial activities therein. The plaintiff further averred that the second and third defendants had installed machinery in the premises for manufacturing purposes and were using electricity supply through the said service connection.

https://www.mhc.tn.gov.in/judis

WEB COPY

3.The plaintiff alleged that all the defendants were jointly responsible for the proper use of electricity supplied to the premises. It was specifically pleaded that on 02.01.2004 at about 2.00 p.m., the Assistant Executive Engineer, Chinniyampalayam, along with the Assistant Executive Engineer, Enforcement, Coimbatore, conducted an inspection in the premises. During the course of inspection, the officials allegedly detected theft of electrical energy and violation of the Terms and Conditions of Supply of Electricity.

4. According to the plaintiff, the inspection revealed that the defendants had bypassed the cut-outs and made direct connection to the machinery installed in the premises. It was alleged that the service pipe had been cut and a separate service wire had been connected directly to the load, thereby enabling consumption of electricity without the same being recorded in the meter.The plaintiff further stated that the second and third defendants were present at the time of inspection. It was alleged that they signed the inspection report prepared by the officials and also gave signed written statements admitting tampering of the electricity apparatus and unauthorised abstraction of electrical energy.

5. The plaintiff also referred to the criminal proceedings initiated immediately after the inspection. The plaintiff stated that an FIR was lodged before the Peelamedu Police Station in FIR No.7 of 2004 was registered against the persons involved in the theft of electrical energy. The plaintiff further

https://www.mhc.tn.gov.in/judis

WEB COPY

pleaded that a show cause notice dated 02.01.2004 was issued to the defendants under the provisions of the Indian Electricity Act, 2003 and the terms and conditions of supply of Electrical Energy to the service connection and the occupier. Pursuant to the notice, an enquiry was conducted by the Executive Engineeron 24.04.2004.After conducting the enquiry and considering the inspection materials and connected records, the Executive Engineer assessed compensation for theft of electrical energy at Rs.7,38,108/-. In addition to the said amount, delayed payment charges amounting to Rs.2,70,590/- were levied.

6. The plaintiff contended that the second and third defendants, being occupiers and users of the premises, had committed theft of electrical energy. The plaintiff further asserted that the first defendant, being the owner and consumer in whose name the service connection stood, was also liable to pay the assessed amount.On the above pleadings, the plaintiff sought a decree directing the defendants jointly and severally to pay the suit claim together with interest and costs.

7. The first defendant denied all the allegations relating to theft of electrical energy, tampering of meter arrangements and unlawful abstraction of electricity. He contended that the second defendant became a tenant of the premises in November 2003. According to him, after taking the premises on lease, the second defendant installed machinery for manufacturing

https://www.mhc.tn.gov.in/judis

WEB COPY

polypropylene bags and independently carried on industrial activities in the premises.

8. The defence specifically pleaded that the first defendant had no connection whatsoever with the business activities conducted by the tenants. It was stated that the second defendant and her concern alone were using electricity power exclusively for manufacturing purposes and that the first defendant was in no way connected with the use of machinery or electricity consumption in the premises.

9.The first defendant further stated that on 02.01.2004 he had merely gone to the premises for collection of rent from the tenant and at that point of time the officials of the plaintiff Board implicated him in the alleged theft case. 1The written statement denied the allegation that the first defendant tampered with the meter box, cut-outs or service connection. It was specifically denied that he manipulated the meter readings or dishonestly abstracted electrical energy.

10. The defence further denied the allegation that any voluntary confession statement had been given by the defendants admitting theft or tampering. According to the first defendant, the alleged statements relied upon by the plaintiff were not genuine and could not be relied upon.The first

https://www.mhc.tn.gov.in/judis

WEB COPY

defendant also challenged the enquiry proceedings conducted by the Executive Engineer. It was contended that the enquiry was not fair and proper and that sufficient opportunity had not been granted to him for effectively putting forth his defence. The written statement therefore alleged violation of principles of natural justice.

11.The defence further pleaded that the plaintiff manipulated records and falsely instituted the suit against the first defendant without any valid basis. The first defendant disputed the assessment made by the Electricity Board and denied liability to pay the compensation amount or delayed payment charges.The written statement also raised a plea that the suit was barred by limitation.During the pendency of proceedings, the second defendant died and stood exonerated. The third defendant remained ex parte before the Trial Court.

12. On the aforesaid pleadings the following issues were framed

Issue 1: Whether the plaintiff is entitled for recovery of the suit amount?

Issue 2: Whether there is no cause of action for the suit?

Issue 3: Whether the suit is barred by limitation?

Issue 4: To what relief?

On the side of plaintiff, PW1 to PW3 was examined and Ex.A1 to Ex.A13 have been marked. On the side of the defendants DW1 examined, and no

https://www.mhc.tn.gov.in/judis

WEB COPY

documentary evidence adduced.

13. On Issue 1, the Court found that the electricity service connection bearing No.1195 admittedly stood in the name of the first defendant, while the second defendant was the tenant in occupation of the premises and the third defendant was functioning as the Manager of the second defendant's industry, namely "Kesav Industries." The Court relied upon the evidence of P.W.1 to P.W.3 and the documentary exhibits marked on the side of the plaintiff, particularly Ex.A1 to Ex.A12.The Court observed that on 02.01.2004, the Anti Power Theft Squad inspected the premises and detected theft of electrical energy. The inspection revealed that the electricity meter box had been tampered withand the seals were disturbed as duplicate seals had been affixed. It was further found that the service pipe had been cut and a separate service line had been connected directly to the load, thereby preventing the actual consumption from being recorded in the meter. These facts were spoken to by P.W.3, the Executive Engineer, who explained that even though the meter had been burnt, the actual consumption could be assessed through MRT procedure and battery mode readings.

14.The Court relied upon Ex.A3 (certified copy of the FIR), which showed that the criminal complaint regarding theft of electricity had been lodged only against defendants 2 and 3. The Court also relied upon Ex.A5 and

https://www.mhc.tn.gov.in/judis

WEB COPY

Ex.A8, namely the inspection records and assessment order, which established that the theft squad had detected unauthorized abstraction of energy and that the Executive Engineer had assessed the loss sustained by the Electricity Board. Ex.A8 showed that an assessment order was passed on 30.06.2004 calculating the extra levy for theft of energy based on the MRT sketch and the unrecorded units consumed.

15.The Trial Court accepted the evidence of the plaintiff that approximately 76,606.94 extra units of electricity had been dishonestly consumed and that the assessment amount was calculated on that basis under Clause 8.02 of the Terms and Conditions of Supply. The Court also noted that the second and third defendants had admitted the theft before the inspecting officials.However, the Court carefully examined the liability of the first defendant. The Court referred to Section 39 of the Indian Electricity Act, 1910 and Rule 8 of the Tamil Nadu Electricity Supply Code relating to theft of energy and extra levy. The Court reproduced the statutory provisions dealing with dishonest abstraction of energy, tampering of meters, and liability in cases of theft. Particular reliance was placed upon the Explanation introduced in the Tamil Nadu Electricity Supply Code, which provided that where the premises is occupied by an authorised tenant through an agreement with the consumer, the responsibility for theft of electricity would be upon the authorised tenant alone.

https://www.mhc.tn.gov.in/judis

WEB COPY

16.The Court observed that the plaintiff itself had pleaded that defendants 2 and 3 were in occupation of the premises and were running the industry by using the electricity connection. The evidence further showed that the first defendant was merely the registered consumer and landlord and had not personally abstracted or dishonestly used the electricity. The Court held that, in order to fasten liability under Section 39 of the Indian Electricity Act, 2003 it must be proved that the consumer himself dishonestly abstracted or used the energy. In the present case, the theft had admittedly been committed only by the tenant and the Manager.

17.The Court therefore concluded that there was no statutory provision under the Supply Code or the Terms and Conditions of Supply making the landlord-consumer liable for theft committed by a lawful tenant. The Court held that the Explanation to the amended Supply Code clearly absolved the first defendant from liability once it was established that the second defendant was an authorised tenant in occupation of the premises.

18.Accordingly, the Court held that the plaintiff was not entitled to recover the suit amount from the first defendant. Since the second defendant had died and was exonerated from the proceedings, the Court held that the third defendant, who actively participated in and facilitated the theft of energy as

https://www.mhc.tn.gov.in/judis

WEB COPY

Manager of the industry, alone remained liable. Consequently, the suit was decreed only against the third defendant for recovery of the suit amount together with interest.

19. On Issue 2, the Court held that the plaintiff had clearly established a valid cause of action for instituting the suit. The pleadings and evidence demonstrated that the Anti Power Theft Squad conducted an inspection on 02.01.2004 and detected theft of electrical energy in the premises connected to Service Connection No.1195.

20. The Court observed that Ex.A2 notice had been issued immediately after inspection and that Ex.A3 FIR was registered against defendants 2 and 3 for theft of electricity. The inspection reports, MRT sketch, assessment proceedings and the evidence of P.W.3 conclusively established that the meter had been tampered with and electricity had been dishonestly abstracted without proper recording of consumption.The Court further held that Ex.A8 assessment order dated 30.06.2004 was passed after calculating the loss sustained by the Electricity Board on the basis of the actual unrecorded consumption. Since the plaintiff Board had suffered monetary loss due to theft of electricity, it had every right to institute the present suit for recovery of the assessed amount.

https://www.mhc.tn.gov.in/judis

WEB COPY

21.The Court rejected the contention of the first defendant that there was no proper enquiry or that the proceedings were manipulated. The oral evidence of the plaintiff's witnesses remained substantially unshaken and the documentary evidence corroborated the case of theft. Therefore, the Court held that the suit was supported by a valid and subsisting cause of action.

22. On Issue 3, the Trial Court held that the suit was not barred by limitation. The Court noted that the theft of electricity was detected during inspection conducted on 02.01.2004. Thereafter, notices were issued and enquiry proceedings were conducted by the Electricity Board.The Court relied upon Ex.A8 assessment order dated 30.06.2004, by which the Executive Engineer finally determined the liability and quantified the amount payable towards theft of energy. The Court observed that the present suit had been filed within three years from the date of assessment and therefore squarely fell within the prescribed period of limitation.

23.The Court rejected the contention of the first defendant that the records had been manipulated to bring the suit within limitation. In the absence of any convincing evidence to disprove the dates found in the official records and exhibits, the Court accepted the plaintiff's case that the suit was instituted within the legally permissible time.

https://www.mhc.tn.gov.in/judis

WEB COPY

24. On Issue 4, the Trial Court partly decreed the suit. The Court held that the plaintiff Electricity Board was not entitled to recover the suit amount from the first defendant, as the first defendant was merely the registered consumer and landlord, whereas the theft of energy had actually been committed by the tenant and the Manager.

25. The Court further recorded that the second defendant had already been exonerated from the suit owing to her death and non-impleadment of legal representatives. However, the third defendant, who remained ex parte and against whom the evidence clearly established involvement in theft of electricity, was held liable for the assessed amount.Accordingly, the suit was decreed against the third defendant alone for recovery of the suit amount of Rs.10,62,708/- together with interest and costs, while the suit against the first defendant stood dismissed.

26. Heard Ms.J.Hemalatha Gajapathy, learned counsel for the appellant and Mr.S.Mukunth Sree, learned counsel for the fourth respondent.

27. Pending the appeal suit, the first respondent had sold the property in favour of the fourth respondent who had taken out an application to implead himself in CMP No.26322 of 2023 in A.S. No. 267 of 2011 and the same also came to be ordered by this Court on 19.06.2024.

https://www.mhc.tn.gov.in/judis

WEB COPY

28. The appellant is before this Court challenging the refusal to grant a decree as against the first respondent who is the owner of the property. The Court had casted the liability on the third respondent. The second respondent as noted above, who has been exonerated by the Court, had died during the proceedings, no steps were taken to bring the legal heirs during that proceedings. There is no dispute with regard to the liability and the only dispute is with regard to who is liable to pay the amount. In that context, the only issue that arise for consideration is whether the Court below was right in exonerating the first respondent /first defendant. It is not disputed that the first respondent was the owner of the property. It is also not disputed that the seconds respondent has taken on lease the property belonging to the first respondent and had been energized by the first respondent for the industry that was established by the second respondent. These are categorical admission of the appellant even in their plaint. It is their only case that as per the provisions of the Tamil Nadu Electricity Act and the regulations framed thereunder, the owner of the property is liable for making good the loss that had been ocurred to the board and such charges payable would be a charge on the property. Various judgments had been relied upon by either side with regard to the liability viz-a-viz owner and occupier of the property.

https://www.mhc.tn.gov.in/judis

WEB COPY

29. Reference to Ex.A3 to A6 would indicate that the owner had not been implicated for the offence of theft of energy and the same had been only proceeded as against the second and third respondents.

30. The learned trial Judge had placed reliance upon Chapter 4 Rule 23 explanation of the Tamil Nadu Electricity Supply Code in exonerating the first respondent from liability.

31. Section 2(g) defines consumer and Section 2(o) defines occupier. Consumer had been defined to mean a person who is supplied with electricity for his own use for licensee and also includes a person whose premises is being connected for such purposes. Occupier had been defined to mean a person who is in occupation either as an owner or otherwise.

32. Rule 23 of the said Supply Code deals with tampering, distress or damage to electrical plant, meters, etc.

33. A reference to Section 135 to 141 of the Electricity Act had been made in framing those regulations. Rule 23(4) explanation which had been relied upon by the trial Court to exonerate the first respondent reads as thus under:-

"4) The provisions of the Code of Criminal Procedure, 1973 (2 of

https://www.mhc.tn.gov.in/judis

WEB COPY

1974) relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.

Explanation :-

For the purposes of the above section on tampering of meters and theft of electricity, if the premises in question is occupied by an authorized tenant through an agreement with the respective consumer, the responsibility shall rest with the authorized tenant only."

34. A reading of the explanation categorically fixes the responsibility on an authorized tenant in cases of tampering of meters and theft of electricity. Even though in general a liability had been clothed on the consumer which includes the owner of the property of a premises, which had been energized, the explanation to Sub-Rule 4 of Rule 23 fixes the responsibility on an occupier who had been an authorized tenant through an agreement with the consumer.

35. As noted above even in the plaint, the appellant has pleaded that the second and third defendants had established a manufacturing industry and for which purpose, the machineries have been energized. In that connection, the tenancy had been recognized by the appellant and therefore, they are deemed to be an authorized tenant under the first respondent. Hence, the trial Court has rightly applied the law in exonerating the first respondent from his liability to

https://www.mhc.tn.gov.in/judis

WEB COPY

make good the loss suffered by the appellant. The appellant had miserably failed to take necessary steps to bring on record the legal heirs of the deceased second respondent and had allowed the suit to have abated as against the second respondent and even in the Appeal Suit no steps have been taken by them to bring on record the legal heirs of the deceased second respondent.

36. For the aforesaid reasons, I do not find any merit in the appeal and accordingly, the Appeal Suit stands dismissed. No order as to costs.

05-06-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

Maya

To

The Additional District and Fast Track Judge, Coimbatore.

https://www.mhc.tn.gov.in/judis

WEB COPY

K.KUMARESH BABU, J.

Maya

AS No. 267 of 2011

Dated : 05-06-2026

https://www.mhc.tn.gov.in/judis