

(2011) 05 AHC CK 0108
In the Allahabad High Court
Case No : Second Appeal No. 404 of 2011

Ainul Huda

APPELLANT

Vs

State of U.P. Power Corporation and Others

RESPONDENT

Date of Decision : 04-05-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Electricity Act, 1910 — Section 23

Citation : (2011) 05 AHC CK 0108

Hon'ble Judges : Shishir Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shishir Kumar, J.—This is a Plaintiffs second appeal arising out of suit for permanent injunction restraining Defendants from interfering in realizing an amount of Rs. 13,495.41 p.

2. It was stated in the plaint that he is the owner of the house No. A-32/72 Chitrapura Varanasi having domestic connection No. 613261. He has taken one horse power connection for running power loom. The supply was not proper, therefore, Plaintiff-Appellant has requested to disconnect the connection. It was disconnected on 4.9.1984 but Respondent-Corporation forcibly wanted to realize the amount mentioned above. Trial Court on the basis of pleading, framed various issues and ultimately suit has been dismissed vide its judgment and order dated 12.11.2009. Appeal filed by Plaintiff-Appellant has also been dismissed.

3. Appellant has submitted before the Court that Courts below have wrongly considered the record and evidence. If permanent disconnection bill of Rs. 2,134.11p has been paid then there will be a presumption that all amounts have been paid. Findings recorded by Courts below dismissing the suit and appeal is based on no evidence.

4. Sri H.P. Dubey, learned Counsel appearing for Respondents has raised an objection regarding maintainability of the suit and appeal and has submitted that suit itself was not maintainable. This being a question of jurisdiction can be raised in the present appeal and he has placed reliance upon a judgment of the Apex Court reported in JT 1997 (5) 182, Punjab State Electricity Board and Anr. v. Ashwani Kumar.

5. Though Appellant placing reliance on The State of West Bengal Vs. The Indian Iron and Steel Co. Ltd., The State of West Bengal v. The Indian Iron and Steel Company has submits that Apex Court has held that even if jurisdiction of civil Court is excluded, civil Courts will have jurisdiction to examine the cases were the provisions of the act has not been complied with or statutory authority has not acted in conformity with fundamental principles of judicial procedure. In the present case also, no assessment was made and a notice for realization of the amount has been given, therefore, the suit was maintainable.

6. I have considered the issue and perused the record. There is no dispute to this effect that at the time of surprise inspection, Appellant was consuming electricity excess to the horse power sanctioned to him according to Respondents. On that basis assessment was made and Plaintiff-Appellant was directed to deposit the said amount but admittedly a dispute has been raised without approaching the authority under the statute available to the Appellant for that purpose. Trial Court has not considered the issue in that light and decreed the suit but the Appellate Court has taken into consideration the fact that as in view of Section 23 of the U.P. Electricity Manual, Appellant has a right to file an appeal and appellate remedy is more efficacious and the suit is barred in view of provisions of the act, therefore, allowed the appeal and dismissed the suit. It is well settled in law that question of jurisdiction can be raised at any stage and at any point of time being fact that if an authority or Court is not having any jurisdiction, the order will be treated to be without jurisdiction at any stage. If under the Electricity Act, suit itself is barred then in that circumstances, if in spite of fact trial Court has decreed the suit, being a question of jurisdiction, it is always open to the Appellate Court to go into that question of jurisdiction and can decide the same.

7. In JT 1997 (5) 182, Punjab State Electricity Board and Anr. v. Ashwani Kumar, the Apex Court has held that Section 9 of the CPC provides that Civil Court shall try all suits of civil nature, subject to pecuniary jurisdiction, unless their cognizance is expressly or by necessary implication is barred. Such suit would not be maintainable. It is true that ordinarily, 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 reviews, circulars, 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 Court has been excluded. As a consequence, Civil Court was not justified in entertaining the suit and giving declaration without directing the party to avail

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. In paragraph 10, the Apex Court has observed as follows:

10. The question then arises: Whether the Civil 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 CPC provides that Civil Court shall try all suits of civil nature, subject to pecuniary 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.

8. In view of facts and circumstances, in the opinion of the Court, Court below was justified in holding that if there is a remedy of appeal provided under the statute which is equally efficacious, in that contingency, suit itself cannot be held to be maintainable and Appellate Court has rightly set aside the judgment passed by the trial Court and has directed Appellant to approach appellate authority u/s 23 of the U.P. Electricity Manual.

9. In view of facts and circumstances of the case, there is no occasion to take a different view. Therefore, I am of opinion that judgment and order passed by Courts below is perfectly just and proper and strictly in accordance with law, therefore, the appeal is hereby dismissed.

10. No order as to costs.