
(1997) 07 MAD CK 0083
In the Madras High Court
Case No : Second Appeal No. 1887 of 1983

Asmath Begum

APPELLANT

Vs

The Superintending Engineer, Tamil Nadu Electricity Board
and Others

RESPONDENT

Date of Decision : 03-07-1997

Acts Referred:

Electricity Act, 1910 — Section 20, 24

Citation : (1997) 3 CTC 527 : (1998) 2 LW 691

Hon'ble Judges : Raju, J

Bench : Single Bench

Advocate : S. Rajasekar, for the Appellant; V. Rangabashyam, for the Respondent

Final Decision : Dismissed

Judgement

Raju, J.—The above second appeal has been filed against the judgment and decree of the learned District Judge, Salem, dated 7.1.1983 in A.S. No. 129 of 1982, whereunder, the First/Appellate Judge has chosen to set aside and reverse the judgment and decree of the learned trial Judge and dismissed the suit.

2. The suit O.S.No.225 of 1981 was filed by the respondent-plaintiff on the file of the District Munsif Court, Mettur, for declaring that the claim of Rs. 14,536.20 said to be the penal charges on the excess over quote consumption for service connection 702 of Omalur, which stands in the name of the plaintiff and included in the electric bill for the month of July, 1980 is illegal, arbitrary and unenforceable in law and for a permanent injunction restraining them from disconnecting the service connection for the non-payment of the alleged sum of Rs. 14,536.20. The service connection in question pertains to a cinema theatre at Omalur and there can be no dispute that at the relevant point of time, quota system was enforced on account of the power cut between September, 1976 and April, 1977 during which period, the plaintiff was said to have been given only 500 Units of electricity per month on condition that any excess consumption

would be charged at a special rate. The case of the plaintiff appears to be that there are no arrears of electricity charges, but the Department as issued Exhibit B-4 notice on 31.7.1980, claiming an arrears of Rs. 14,536.20 on the basis of audit report pursuant to which a working sheet was prepared of the quantum said to be due from the appellant. The further plea on behalf of the plaintiff was that the claim made is barred by limitation and therefore, no coercive steps can be taken to collect the same by threatening disconnection. The defendants representing the Board as noticed earlier, based on the materials gathered during the course of audit and the report submitted thereafter fixed the excess energy consumed during the period of power cut and it was contended that this vital fact was overlooked resulting in an error and could be detected only in June, 1979 and therefore, the claim is well in accordance with law and the plea of limitation will not avail the plaintiff in any manner to avoid the payment of the said amount as also the recovery thereof by the Board, having recourse to penal action.

3. On the above claims and counter claims, the suit came to be tried and oral and documentary evidence was adduced on both sides. The learned trial Judge came to the conclusion that the suit claim was barred by limitation and therefore, decreed the relief as claimed in its entirety by the grant of even permanent injunction. As a matter of fact, in paragraph 6 of the judgment of the learned trial Judge, it is stated "the plaintiff is not questioning the correctness of payment. The plaintiff is now questioning the right of the defendants to reopen the account long after the period of limitation. If the defendants have filed a suit for the disputed amount, the plaintiff will be entitled to plead limitation successfully."

4. Aggrieved, the Board filed an appeal in A.S.No.129 of 1982. The learned First Appellate Judge by his judgment and decree dated 7.1.1983, as noticed earlier, differed from the conclusions arrived at by the learned trial Judge, placing reliance upon the decision reported in *Mudaliandan Chettiar v. Hanganathan and Ors.* 81 LW 383. It appears the plea on behalf of the Board before the learned First Appellate Judge was that the plea of limitation cannot be used as a sword but could be used only as a shield. That was a case wherein despite the fact that the arrears of rent were for period, which could be held in a suit for recovery as time barred, the tenant would still be under a legal obligation to deposit the arrears in proceedings instituted u/s 11 of the Act before contesting the claim for eviction under the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act. This submission of the Board taken together with the provisions contained in Section 24 of the Indian Electricity Act, 1910 appealed to the learned First Appellate Judge, who agreed with the same and allowed the appeal and thereby ordered the dismissal of the suit. Hence the above Second Appeal.

5. Mr. S. Rajasekar, learned counsel appearing for the appellant, while elaborating the substantial questions of law contended that it was not given to the respondents Board to reopen the account relating to consumption charges once the bill has been raised and duly paid for a particular period at the relevant

point of time and the Board cannot take umbrage u/s 20 of the Indian Electricity Act, 1910 or Section 24 of the said ? Act to recover the same, which otherwise could not be recovered by filing a suit on account of the bar of limitation. My attention has been drawn to the findings of both the Courts below by the learned counsel besides bringing to my notice Sections 20 and 24 of the Indian Electricity Act, 1910, and the agreement entered into between the parties marked as Exhibit during the trial. The learned counsel for the respondents Mr. V. Rangabashyam while adopting the reasons assigned by the learned First Appellate Judge contended that the conclusions arrived at are in accordance with law and unassailable and do not call for any interference in this second appeal.

6. I have carefully considered the submissions of the learned counsel appearing on either side. In my view, there is absolutely no merits whatsoever in the challenge made to the judgment of the First Appellate Judge, non-suiting the plaintiff for any relief. The fact that if a proper account is taken, the amount is due, is not in dispute and appears to have not been disputed before the learned trial Judge as could be seen from the observations made by the learned trial Judge himself in paragraph 6 of the judgment as noticed earlier. If any bill for any particular period has been issued on a mistaken impression of the fact and the real liability of a consumer, nothing precludes the Board or its servants to set right the mistake particularly when it has come to their knowledge at a subsequent stage and this is what has been done in the case on hand. In view of the above, and having regard to the fact that there had been excess consumption and that the penal amount is chargeable on such excess consumption are not matters, which admit of any controversy, the only ground on which the appellant's case has been projected before the learned trial Judge effectively at the time of trial and before the First Appellate Court is based on the bar of limitation, contending that if the Board could not file a suit for recovery of the sum for such a claim on account of the said claims hereby becoming barred by limitation, the Board cannot invoke any penal action to recover such claims, which are barred by law of limitation. I am afraid, I can countenance such a plea. The analogy drawn or the inspiration derived on the basis of the decision of this Court in *Mudaliandan Chettiar's case*, 81 LW 383, cannot be said to be an erroneous one or concert of this relevant consideration. It is by how well settled that the law of limitation as contained in the Limitation Act is applicable to and governs only actions or causes instituted before a competent civil court or before any other statutory authority to which the Limitation Act is rendered applicable, in processing or adjudicating such claims for being entertained or sustained. It is equally well settled that the law of limitation does not have the effect of destroying the right itself but it only disables the holder of such a right beyond a particular period stipulated in the law of limitation to have recourse to the Courts constituted to enforce or vindicate such right, which as per the law of limitation is said to be barred. In other words the avenue for enforcement of such right only in foreclosed. So far as the Electricity Board is concerned, the rights secured to them u/s 24 of the Indian Electricity Act cannot be ignored or denied. The

disconnection or even dismantling u/s 20 of the Act of the installations, ultimately, which is available for the Electricity Board to ensure recovery of arrears due to them, cannot be said to have been lost by any period of limitation stipulated in the Limitation Act and the provisions contained in Section 24 being a special provision to safeguard the interest of the Electricity Board, a public undertaking, cannot be construed in a manner such to defeat the legislature intendment itself. It is not a condition precedent that the amount due from the consumer concerned must also be such, which should not have been barred by limitation, if a suit for recovery thereof is filed by the Electricity Board. Whether the remedy available to the Board under Sections 20 and 24 of the Act. On the other hand, the word "due" used in Section 24 would take within its fold to mean of monies owed and payable even though their recovery may be barred by the law of limitation, thus viewed, the amount indisputably payable could not be avoided to be paid or could not be prevented from being recovered by Board having recourse to Section 24 of the Act by the Electricity Board. If that be the correct position of law and in my view. It is so then it is not given to the appellant to seek a permanent injunction restraining the Electricity Board from recovering the amount due to the Board by having recourse to penal and coercive action of the nature envisaged u/s 24 of the Act cannot be any injunction granted to operate or run against specific mandate of the statue and the learned trial Judge committed a grave error in decreeing the suit as prayed for in such wide terms thereby preventing the Electricity Board from invoking a statutory provision enacted by the Parliament conferring a specific right upon the Board and its servants there is no inbuilt condition as a prerequisite for the Board to have recourse to Section 24 of the Act to prove that the claim or amount due and is sought to be recovered, if claimed before the civil court would also be decreed and would not be barred by limitation under the general law of limitation. Such considerations about the bar of limitation in an action for recovery before a civil court is a totally irrelevant factor in adjudging the right of the Electricity Board to have recourse to Section 24 of the Act. Consequently, I see no illegality or infirmity in the view taken by the learned First Appellate Judge.

7. The Second Appeal, therefore, fails and shall stand dismissed. No costs.