
(2011) 04 AHC CK 0192
In the Allahabad High Court
Case No : Second Appeal No. 335 of 2011

Dinesh Pal Singh

APPELLANT

Vs

Chairman, Power Corporation and Others

RESPONDENT

Date of Decision : 15-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Electricity Act, 2003 — Section 126, 127, 25

Uttar Pradesh Electricity Supply (Consumers) Regulations, 1984 — Section 23

Citation : (2011) 04 AHC CK 0192

Hon'ble Judges : Shishir Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shishir Kumar, J.—Heard learned Counsel for the Appellant and Mr. Shobhit Dubey for the Respondent-Power Corporation.

2. This is a Plaintiff 's second appeal arising out of Suit No. 21 of 2004 for declaration and injunction in respect of forged bill issued by the contesting-Respondents for realization of Rs. 53,338.90. During the pendency of the suit, the Plaintiff-Appellant moved an application for issuance of interim injunction to the effect regarding non-realization of the amount. The said application was rejected. Then a miscellaneous appeal was filed, that too was dismissed. Then a writ petition was filed as Writ Petition No. 22889 of 2006 in which an order was passed not to take coercive measure.

3. The trial court has framed various issues on the basis of the pleadings of the parties and one of the issues was as to what relief can be granted to the Plaintiff and whether the Court has jurisdiction to hear the matter? The trial court after considering the various issues ultimately on Issue No. 4 recorded a finding that suit itself is not maintainable before the civil court being the fact that the Plaintiff is having a remedy u/s 127 of the Indian Electricity Act in case he was having any grievance regarding the assessment, he should have filed an appeal as

provided in the Act. The trial court dismissed the suit vide its judgment and order dated 22.9.2008. The Plaintiff-Appellant filed an appeal which was numbered as Appeal No. 1 of 2009. The said appeal too has been dismissed vide its judgment and order dated 28.2.2011. Hence, the present second appeal.

4. Learned Counsel for the Appellant has submitted before this Court that the courts below has committed an error apparent on the face of the record by dismissing the claim on the ground that civil court will have no jurisdiction in view of the fact that in case the Appellant was aggrieved, he should have filed an appeal u/s 127 of the Indian Electricity Act and as there was no assessment, therefore, there was no remedy of appeal and the suit should have been entertained on merit and should have been decided accordingly.

5. On behalf of Defendant-Corporation, a written statement was filed and it was stated that on 29.10.2003 a surprise inspection was made, then it was found that Plaintiff-Appellant was using power directly from the pole and was running a flour-Chakki and a motor without any plate of 75 H.P. was also recovered. As the Plaintiff-Appellant was involved in theft of power, therefore, an assessment to the tune of Rs. 53,388.90 was made and it was sent to the Appellant but no objection was raised. Even no objection was filed within the period prescribed i.e. within 30 days from the date of receipt. In case he was dissatisfied with the assessment, he should have filed an appeal but admittedly no appeal has been filed. One of the pleas was also taken on behalf of the Defendant-Respondents that assessment bill was sent under the Regulation of 2003 u/s 126 of the Indian Electricity Act and he was having remedy of filing an appeal u/s 127 of the Act but admittedly, he has not done so. Further submission has been made that in view of Section 25 of the Indian Electricity Act 2003, the Civil Court will have no jurisdiction in a dispute like such, therefore, the civil court is having no jurisdiction to entertain the suit and it is liable to be dismissed for want of jurisdiction. Another submission was also made that in view of Section 23 of the U.P. Electricity Supply Consumer Regulation 1984 which gives a right to a consumer that in case he is dissatisfied with the assessment, he can also file an appeal. The courts below was justified in dismissing the suit.

6. I have considered the submissions made on behalf of the parties and perused the record. There is no dispute to this effect that a surprise inspection was made and the Appellant was found using power without authority of law, therefore, an assessment was made for the amount mentioned above. The court below taking into consideration the pleadings of the parties and the law, has taken a view that suit cannot be held to be maintainable in view of the provisions mentioned thereunder and the Appellant has a right of appeal which is equally efficacious, therefore, suit cannot be held to be maintainable and is barred in view of the provisions of the Act. If under the Act suit itself is barred, then in that circumstance, it is a question of jurisdiction. The court below was justified in dismissing the suit for want of jurisdiction.

7. In Punjab State Electricity Board and Another Vs. 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, 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 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 para 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 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.

9. In view of the aforesaid facts and circumstances, I am of opinion that the court below was justified in holding that if there is a remedy of appeal provided in the statute which is equally efficacious, in that contingency, suit itself cannot be held to be maintainable. Therefore, in my opinion, the findings recorded by the court below are correct and rightly the suit has been dismissed.

10. In view of the aforesaid facts and circumstances, I am of opinion that there is no illegality committed by the court below. The appeal is without merit and is hereby dismissed.

No order is passed as to costs.