(2013) 09 RAJ CK 0158

In the Rajasthan High Court

Case No : Civil Second Appeal NO. 17 of 1994

Jaipur Vidhyut Vitran Nigam Ltd. and Others — APPELLANT

Vs

M/s. Hari Industries — RESPONDENT

Date of Decision : 05-09-2013

Acts Referred:

Electricity Act, 1910 — Section 26(6)
Rajasthan Government Electrical Undertakings (dues Recovery) Act, 1960 — Section 4, 5

Citation : (2013) 09 RAJ CK 0158

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Alok Garg, for the Appellant; T.P. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Alok Sharma, J.—Vide order dated 21.01.1994, this second appeal was admitted inter alia on the following substantial question of law:

(A) Whether in view of Section 5 of the Rajasthan Government Electrical Undertakings (dues recovery) Act, 1960, the suit filed by the plaintiff is maintainable and issue No. 5 has rightly been decided against the defendant-appellant ?

Heard the counsel for the appellant-defendant (hereinafter ''the defendant'') and the respondent-plaintiff (hereinafter ''the plaintiff'') and perused the impugned judgments and decree dated 27.09.1993 and 07.09.1991, passed by the trial court and the first appellate court, respectively.

2. Mr. Alok Garg, appearing for the defendant, at the outset has drawn the attention of this Court to the judgment of a Coordinate Bench of this Court in the case of Jaipur Vidhyut Vitran Nigam Ltd. & Anr. Vs. Sitaram & Anr. [2008 WLC (Raj.) UC 181] and submits that the aforesaid judgment fully covers the substantial question of law framed in this appeal and detailed earlier in this

judgment. He submits that it has been held by this Court in Jaipur Vidhyut Vitran Nigam Ltd. (Supra) that no suit against a demand of electricity dues was maintainable with reference to Section 5 of the Rajasthan Government Electrical Undertakings (dues recovery) Act, 1960 (hereinafter ''the Act of 1960''), without the pre-deposit of the amount in issue albeit under protest.

3. Section 5 of the Act of 1960 is reproduced hereunder:

5. Suit to challenge liability to payment: (1) Where a notice of demand has been served on the debtor or his authorised agent u/s 4, he may, if he denies his liability to pay the dues, penalty or costs or any part of any of them institute a suit after depositing with the prescribed authority the aggregate amount specified in the notice of demand under protest in writing for the refund of the same.

(2) A suit referred to in sub-section (1) may be instituted in a civil court of competent jurisdiction at any time within six months from the date of deposit with the prescribed authority and subject to the result of such suit, the notice of demand shall be conclusive proof of the various dues, penalty and costs mentioned therein.

4. Counsel for the defendant further submits that admittedly the amount of electricity dues under demand i.e. Rs. 5,542.45/- was not deposited by the plaintiff prior to the filing of the suit and consequently the pre-condition of Section 5 of the Act of 1960 not having been satisfied, the suit was not maintainable.

5. Mr. T.P. Sharma, appearing for the plaintiff, would submit that no demand on the basis of the purported malfunction of meter as in the present case could have been raised without resort to Section 26(6) of the Indian Electricity Act, 1910 (hereinafter ''the Act of 1910'') submits that it was not open for the defendant to raise a demand on the purported malfunctioning of meter without having ascertained the extent of malfunctioning through the Electrical Inspector u/s 26(6) of the Act of 1910. The submission is that the demand for electricity dues for an amount of Rs. 5,542.45/- premised on a faulty electricity meter was therefore wholly ultra vires the provisions of Section 26(6) of the Act of 1910 and therefore the suit was rightly decreed by the trial court and the judgment/decree upheld by the first appellate court.

6. In my considered opinion, there is no force in the submission of the counsel for the plaintiff. Whatever be the defence against the demand for electricity dues, laying of a suit in regard thereto held to be compliant with the provisions of Section 5 of the Act of 1960. Section 5 of the Act of 1960 deals with the procedure and not with the substance of the dispute and mandates that the amount due and demanded towards consumption of electricity be first deposited before the suit could be maintained at the instance of a consumer against the Electricity Company. Subsequent to the laying of the suit in compliance with the procedure set out u/s 5 of the Act of 1960, it would have been open for the

aggrieved consumer i.e. plaintiff to have agitated all manner of merits of the suit including the alleged invalidity of demand without resort to the provision of Section 26(6) of the Act of 1910 and the testing of meters by Electrical Inspector. In my considered opinion, the pre-condition for laying a suit against the demand by the defendant relating to charges of electricity consumption not having been satisfied, the suit was not maintainable. The trial court in my considered opinion therefore could not have entertained the plaintiff''s suit and had no jurisdiction to address the merits thereof. The suit was deserving of dismissal at the threshold for reasons of non-compliance with Section 5 of the Act of 1960.

7. Consequently, in my considered opinion, the judgments and decree dated 27.09.1993 and 07.09.1991, passed by the trial court and the first appellate court, respectively deserve to be quashed and set aside. The second appeal stands allowed.