
(2011) 03 MAD CK 0217

In the Madras High Court

Case No : S.A. No. 1334 of 2008 and M.P. No's. 1 of 2008 and 1 of 2009

M. Chenniappan

APPELLANT

Vs

The Superintending Engineer The Tamil Nadu Electricity Board, The Assistant Executive Engineer, Tamil Nadu Electricity Board, The Assistant Engineer (O and M) and The District Manager (R.V)

RESPONDENT

Date of Decision : 22-03-2011

Acts Referred:

Citation : (2011) 03 MAD CK 0217

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : N. Manokaran, for the Appellant; N. Muthusami, for R1 to R3, for the Respondent

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—This second appeal is focused by the original Plaintiff, animadverting upon the judgment and decree dated 31.07.2008

passed in A.S. No. 94 of 2007 by the Principal District Court, Erode, confirming the judgment and decree of the first Additional District Munsif

Court, Erode in O.S. No. 278 of 2005. The parties are referred to hereunder according to their litigative status and ranking before the trial Court.

2. Compendiously and concisely, the relevant facts absolutely necessary and germane for the disposal of this Second Appeal would run thus:

(a) The Plaintiff filed the suit seeking the following relief's

(i) To declare that the letter issued by the 3rd Defendant under f/vz;/,/kpbgh-e-tpgprp-Af-R/D772-2004, dated 07.01.2005 and the letter issued

by the 2nd Defendant under foj vz; 2 brhbgh-tp-tpr-bfh-7-tj-m002-04-05 dated

02.04.2005 is arbitrary capricious ultra virus and unenforceable against law, just, equity and is void and unenforceable.

(ii) To grant a consequential permanent injunction restraining the Defendants 1 to 3, their men and assignees from in any manner disconnecting the suit service connection bearing No. SC No. 1207-H of Veerappancharam Distribution, Erode under the guise of the enforcing the impugned orders of the 2nd and 3rd Defendant stated above; and (c) for costs.

(Extracted as such)

(b) The Defendants 1, 2 and 3 filed their single written statement and D4 filed a separate written statement resisting the suit.

(c) Whereupon the trial Court framed the issues.

(d) During trial, the Plaintiff-Chenniappan examined himself as P.W.1 along with P.W.2 ? Poornachandran and Exs.A1 to A11 were marked. On

the side of the Defendants, one Mr. Chandrasekar was examined as D.W.1 and Exs.B1 to B5 were marked. Exs.C1 and C2 were marked as

court documents.

(e) Ultimately the trial Court dismissed the suit, as against which appeal was filed for nothing but to be dismissed by the appellate court, confirming

the judgment and decree passed by the trial Court.

3. Challenging and impugning the judgments and decrees of both the Courts below, the Plaintiff filed this Second Appeal on various grounds and

also suggesting the following substantial questions of law:

(a) Whether the courts below are correct in law in dismissing the suit holding that the impugned demand in respect of the electricity consumption

charges made by the Electricity Board is valid especially when the 4th Defendant has been in possession of the building and using the electricity

service connection to run the bar and TASMAC shop?

(b) Whether courts below are right in law in upholding the demand of electricity consumption charges from the owner of the premises even though

the 4th Defendant is the use of the electricity in respect of the period relating to the impugned demand?

(c) Whether the courts below have committed an error in exonerating the 4th Defendant from the liability to pay the demand made by the

Electricity Board particularly when the pleadings of the 4th Defendant is not

supported by oral evidence as held in Vidhyadhar Vs. Manikrao and

Another,

(extracted as such)

4. My learned Predecessor virtually adopted the aforesaid substantial questions of law.

5. Placing reliance on the aforesaid substantial questions of law as well as the grounds of Second Appeal, the learned Counsel for the Plaintiff

would put forth and set forth his arguments, which could tersely and briefly be set out thus:

(a) The Plaintiff being the owner of the property bearing Door Nos. 180/182 Sathy Road, Erode, initially leased out the property to a privator for

running IMFL Shop and in the rear side of the said premises, he was also permitted to run a catering establishment adjacent to that IMFL shop.

Subsequently it so happened that the Government took over those shops.

(b) In fact, IMFL shop is being run by the Tamil Nadu State Marketing Corporation (TASMAC) and by virtue of having taken over the said

business, they in turn put one Kandasamy, to run the catering establishment.

(c) D4 was not justified in disowning their liability to pay the electricity charges in respect of the service connection bearing SC. No. 1207-H. Both

the Courts below failed to consider the said fact, but directly proceeded as against the owner of the premises, who incidentally happened to be the

agreement holder of the electricity supply, [hereinafter referred as "Consumer" as per the Tamil Nadu Electricity Supply Code, {for short T.N.E.S.

Code)].

6. Per contra, in a bid to torpedo and pulverise the arguments as put forth and set forth on the side of the Plaintiff, the learned Counsel for D1 to

D3, would advance his arguments thus:

(a) The Electricity Board as per T.N.E.S. Code is concerned only with the agreement holder of the electricity supply, namely the consumer and not

with the person who might be actually consuming electricity as a licensee or tenant under the said consumer. (b) In this case, neither as per Clause

13.10 of the Terms and Conditions of the Supply of Electricity nor as per Clause 17(4) of the the Tamil Nadu Electricity Supply Code, advance

intimation was given to the Electricity Board by the Plaintiff. In fact relating to

the impugned period, Clause 13.10 of the old Terms and Conditions

of the Supply of Electricity was in vogue and as per both those clauses, i.e., the erstwhile clause as well as the new clause referred to supra, it is

the agreement holder who is liable to pay the dues and the Electricity Board cannot be driven to the extent of finding out the actual person who

consumed electricity as a tenant or a licensee in the premises concerned.

(c) Both the Courts below according to D1 to D3 decided the lis properly, warranting no interference in the Second Appeal.

7. All the aforesaid substantial questions of law are taken together for discussion as they are inter linked and inter woven with one another.

8. I would like to extract here under Clause 17(4) of the Tamil Nadu Electricity Supply Code:

17(4) If the consumer fails to give advance intimation as aforementioned of his intention to sell or lease out or otherwise dispose of the properties

or business to which supply is given or contracted for, the licensee shall have the right to recover the charges for consumption and other charges

due to the license under the agreement even beyond the date of sale or lease out or otherwise disposal of the properties or business.

9. I would also like to extract hereunder Clause 13.10 of the Terms and Conditions of Tamil Nadu Electricity Board for ready reference:

13.10 If the consumer, at any time during the currency of the agreement, intends to sell or otherwise dispose of or lease out in whole or in part of

the properties or business to which supply is given or has been contracted for, he should give the Engineer of the Board three months notice of his

intention to do so and clear all dues upto the date of sale / disposal / lease.

If the consumer is covered under Clause 13.08 he should pay in addition, the special guarantee as per the formula mentioned in Clause 13.09 for

the unexpired period of the agreement, unless the purchaser or lessee of the property as the case may be, enters into an agreement with the Board

agreeing to abide by special guarantee clause for the unexpired period of agreement. If, in the case of such notice the above conditions are satisfied

the agreement in so far as the consumer is concerned, will cease to operate with effect from the date specified in such notice, but without prejudice

to any claim or right which may have accrued to the parties thereunder.

If the consumer fails to give advance intimation as aforementioned of his

intention to sell or lease out or otherwise disposed of the properties or business to which supply is given or contracted for, he will continue to be liable to pay the charges for consumption and other charges due to the

Board under the agreement even beyond the date of sale or lease out or disposal otherwise of the properties or business.

In the case of lease of the property in part, the consumer may continue to take supply. Supply, if required by the lessee, will be given by the Board direct to the lessee.

10. A mere perusal of it would clearly show that if at all the agreement holder of the electricity supply fails to give advance intimation about the lease or licence given by the said consumer in favour of another person, then the Electricity Board cannot be compelled to collect the dues from the licensee or the tenant under the lease holder or under the consumer.

11. In this case it is ex facie and prima facie clear from the perusal of the evidence as well the judgments of the Courts below, that no such prior

intimation was given by the consumer, namely the Plaintiff to the Electricity Board regarding the factum of he having leased out the premises in

favour of Poornachandran. No doubt, Poornachandran who was examined as P.W.2, would narrate the facts to the effect that consequent upon

the change in the policy of the Government, the retail selling of IMFL was taken over by TASMAL and TASMAL alone started running the said

IMFL shop which was run by Poornachandran, with effect from 29.11.2003 and in fact, the catering establishment relating to which SC. No.

1207-H was applicable, was also taken over by TASMAL and it is they who put one Kandasamy to run the same and only they in fact consumed the electricity.

12. Here the indisputable and indubitable facts are that for five months, so to say November 2003 to March 2004 there were some disputes

concerning tariff, because according to the Plaintiff the meter concerned was not functioning properly and whereupon by taking into account the

average consumption charges for three months anterior to November 2003 the tariff was charged as against the Plaintiff. But the Plaintiff tried to

disown his liability by stating that only the TASMAL should pay it, but TASMAL filed written statement disowning their liability on the ground that

they are not in any way concerned with the catering establishment relating to

which the electricity service connection bearing SC. No. 1207-H is available.

13. At the hearing, I have come to understand that the rent was collected from the said Kandasamy directly by Poornachandran, who was the tenant under the Plaintiff. In such a case, I am of the view that there was no direct connection between TASMAL and the Plaintiff. The clauses

referred to supra from the Tamil Nadu Electricity Supply Code and the erstwhile Electricity Supply Rules would reveal that the liability of the

consumer cannot be disowned by him because somebody else was actually consuming the electricity.

14. The question might arise as to what would be the position of the consumer, if he is made to pay the charges which arose out of the real

consumption of the electricity by the tenant or licensee or sub tenant, the answer as per law is at once clear, that the consumer has to pay and in

turn recover the same from the tenant or the sub tenant, as the case may be by filing a contribution suit. In this suit itself the Plaintiff has not chosen

to implead the said Poornachandran or the tenant or the sub tenant under him so as to get *alternis visibus*, a relief as against them in the event of the

Plaintiff paying the dues in favour of D1. As such, only a contribution suit is possible in the event of the Plaintiff discharging the dues in favour of the

Electricity Board. As such, both the Courts below *au fait* with law and *au courant* with facts appropriately appreciated the facts and decided the *lis*

warranting no interference in the Second Appeal.

15. Wherefore, the substantial question of law No. 1 is decided to the effect that both the Courts below were correct in law in dismissing the suit

holding that the impugned demand in respect of the electricity consumption charges made by the Electricity Board is valid.

16. The substantial question of law No. 2 is decided to the effect that both the Courts below were correct in law in upholding the demand of

electricity consumption charges from the owner of the premises even though the 4th Defendant is the user of the electricity in respect of the period

relating to the impugned demand.

17. The substantial question of law No. 3 is decided to the effect that both the courts below were correct in exonerating the 4th Defendant from

the liability to pay the demand made by the Electricity Board.

18. In the result, this Second Appeal is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.