

(2015) 11 DEL CK 0295
In the Delhi High Court
Case No : CS(OS) No. 1192 of 2006

Punjab National Bank

APPELLANT

Vs

BSES Rajdhani Power Ltd.

RESPONDENT

Date of Decision : 23-11-2015

Acts Referred:

Electricity Act, 2003 — Section 56
Limitation Act, 1963 — Section 17

Citation : (2016) 3 RajdhaniLR 178

Hon'ble Judges : Mr. Valmiki J. Mehta, J.

Bench : Single Bench

Advocate : Mr. U.C. Mittal, Advocate, for the Plaintiff; Ms. Anjali Sharma with Mr. Deepak Bashta, Advocates, for the Defendant

Final Decision : Dismissed

Judgement

Valmiki J. Mehta, J. (Oral) - Plaintiff by the present suit seeks declaration and permanent injunction for quashing of the Supplementary Bill dated 22.4.2006 (Ex.PW 1/4) issued by the defendant for a sum of Rs. 2,70,52,200.87/-. Plaintiff is the consumer of the electricity and the defendant is the licensee supplying electricity in the area in which the plaintiff is situated. The supplementary bill was raised by the defendant for the period from July, 2002 to 31.3.2006 on the ground that in this period the defendant billed the plaintiff only for half the units consumed instead of the full units and this was a mistake which occurred on account of the officers of the defendant wrongly noting/specifying the CT ratio of the CT meter as 150/5 AMPs instead of 300/5 AMPs.

2. The facts of the case are that the defendant substituted the old electro mechanical meter fixed in the premises of the plaintiff with a new electronic meter on 23.4.2003. Plaintiff is a High Tension (HT) consumer as it has a sanctioned load of 1710.05 KW for the meter fixed at the plaintiff's premises at 7, Bhikhaiji Cama Place, New Delhi. A cable fault developed in the HT cable supplying electricity to the premises of the plaintiff on 19.4.2006. The defendant

did the repair work on 20.4.2006 and 21.4.2006, reports exhibited as Ex.PW 1/2 and Ex.PW 1/3. Officers of the defendant at the time of the repair work noticed that the CT ratio is wrongly noted on the metering equipment as 150/5 AMPs whereas it should have been 300/5 AMPs and which resulted in the plaintiff only being billed for half the units consumed. The defendant therefore issued on 22.4.2006 its subject Supplementary Bill and which is questioned by the present suit.

3. The plaintiff pleads that it is in no way connected with the fixing of the metering equipment or specifying the CT ratio and therefore once the plaintiff is not at fault, the defendant cannot bill the plaintiff in terms of the supplementary bill. The supplementary bill is questioned by the plaintiff not only on the ground that mistakes of the defendant cannot penalise the plaintiff but the plaintiff also pleads illegality of the impugned supplementary bill on two counts. The first count is that the subject supplementary bill ought to have been raised within two years of the date when the same became due in terms of Section 56(2) of the Electricity Act, 2003 (hereinafter referred to as 'the Act') and the mistake in this case happened on 23.4.2003 when the electro mechanical meter was replaced by the defendant with an electronic meter i.e the Supplementary Bill issued on 22.4.2006 is beyond two years of the date of the mistake committed on 23.4.2003. The second count is the argument that even assuming the mistake was actually detected only on 20/21.4.2006, the mistake if not to be taken as having been committed on 23.4.2003 should at least be taken to have been committed on 23.4.2004 inasmuch as Regulation 19 of the Delhi Electricity Regulatory Commission (Performance Standards-Metering and Billing) Regulations, 2002 (hereinafter referred to the 'DERC Regulations') provides that the defendant was duty bound to check the CT ratio at least once every year and since the defendant did not check the CT ratio within one year from 23.3.2003, hence the date of deemed knowledge of the wrongly noted CT ratio has to be taken as 23.4.2004 and the subject bill therefore issued is barred by time in view of Section 56(2) of the Act inasmuch as the bill has been raised for the sum due which is claimed from July, 2002 till 31.3.2006. In other words it is argued on behalf of the plaintiff that since the sum as per the defendant became due from July, 2002, the Supplementary Bill raised on 22.4.2006 is barred by limitation as raised after two years. On this very count itself an additional argument of the plaintiff is that even if the supplementary bill can be raised, such supplementary bill cannot be raised for a period of six months before the date of raising of the bill on 22.4.2006 in view of Regulations 12, 19 and 31 of the DERC Regulations.

4. The relevant paras of the plaint containing the cause of action as pleaded are paras 4 to 16 of the plaint and out of these paras, the most relevant paras are paras 4, 6 to 10 and 12 to 16. These paras read as under :-

"4. That the plaintiff is a HT consumer categorized as "Key Consumer" having the sanctioned load of 1710.05 KW on 11 KV H.T supply. The electricity consumed by such consumers are measured on the basis of Current Transformer and Potential

Transformer ratio of the metering cubicle known as CTPT ratio and under the provisions of Regulation 19 of the Electricity Regulatory Commission (Performance Standard Metering and Billing) Regulation, 2002 (framed under the Delhi Electricity Reforms Act, 2002), it is the statutory duty of the defendant to check the meters at regular intervals of one year and also the CTPT ratio where applicable for "key consumers".

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6. That on 23.4.2003 the electro mechanical meter was replaced by the defendant by electronic meters and CTPT ratio was also checked. It may be submitted that the said equipment is the property of the defendant which was installed by the then Delhi Vidyut Board, which is calibrated and maintained by the office of the defendant company. On replacement of mechanical energy meters with electronic meters by the office of defendant on 23.4.03, it was specifically stated in the report of the defendant that the CT ratio is 150/5 AMPs. Copy of the report of defendant is hereby filed as ANNEXURE P-1.

7. That on 19th April, 2006 there developed a H.T. cable fault and the report/complaint was made to the defendant, which was attended to. It became necessary for the defendant to open the panel containing the meter and the CTPT unit. The work was done on 20th and 21st April, 2006 and two reports of the respective dates were given which are filed as ANNEXURE P-2 and ANNEXURE P-3. The report dated 20.4.2006 stated "site attended for seal opening and it is found existing CTR is 300/5 A however as per bill (150/5A) is recorded consumer already taken shut down for replacing outgoing cable (consumer site) submitted further needful action as per rule accordingly." The report dated 21.4.2006 inter alia stated "supply restored after repairing the consumer H.T. Cable outoing of Metering Cubicle by the consumer. The billing M/ F 3000 must be corrected to 6000 the CTR is 300/5A. Meter accuracy checked at found correct."

8. That on 22.4.06 the plaintiff bank received a supplementary bill amounting to Rs.2,70,52,200.87 ps. (Rupees Two Crores seventy lakhs fifty two thousand two hundred and eighty seven paise only) from the defendant alleging as due for the period from July, 2002 to March, 2006 on stating that during the inspection it was found that the current transformer (CT) ratio of the metering cubicle was 300/5 AMPs whereas the plaintiff was being billed with half the energy consumed (with multiplier factor of 3000 in place of 6000). The said bill was raised for the period from July, 2002, the date from which the defendant company came into existence and the electricity supply to the building of the plaintiff came under their control. The defendant also raised separately the bill for the month of April, 2006 at the revised CT ratio amounting to Rs.15,86,618.00. Copy of the supplementary bill (for the consumption upto Feb, 2006 as well as the bill for the month of April, 2006 for consumption for the period upto 31.3.2006 are filed herewith as ANNEXURES P-4 & P-5 respectively.

9. That the plaintiff vide its letter dated 27.4.06 informed the defendant that the report of engineers of defendant dated 21.4.06 is in contradiction to the earlier report of the engineers of defendant dated 23.4.03. In the earlier report which was also prepared by the engineers of defendant the CT ratio is shown as 150/5 AMPs and there was no reason for change of CT ratio from 150/5 to 300/5 AMPs. The demand raised by defendant was contested and also to withdraw the additional supplementary bill raised by them to the tune of Rs.2.70 crores.

10. That the defendant company in response to the said letter vide their letter dated 29.4.06 alleged that the report dated 23.4.03 which is being relied upon by the plaintiff was prepared in good faith by taking into account the cubicle CT ratio as mentioned in the nameplate, but on actual checking it was found that the CT ratio was 300/5 AMPs instead of 150/5 AMPs and the supplementary bill raised by the defendant for the period from which the defendant company came into existence was justified.

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12. That it may be submitted that the Metering Cubicle consisting of CTPT, Meter and its wiring etc are totally sealed and kept under the control of defendant and the plaintiff bank has no control on them except that the same are installed in the premises of the plaintiff bank. Plaintiff bank cannot be blamed for any wrong billing, if any, done by the defendant. The nameplate on which the CT ratio is mentioned as 150/5 is also put by the defendant and the plaintiff bank is not at fault in any manner. The plaintiff bank has paid the bills regularly as raised and charged by the defendant from time to time and the defendant company has no authority whatsoever to raise the supplementary bills at this stage after the expiry of four years taking advantage of its own wrongs.

13. That the plaintiff bank again received a bill for the month of May, 2006 wherein the amount of supplementary bill raised by the defendant was shown under the head "arrears" and the defendant also gave the notice and threatened that in case the bill raised for the month of May, 06 inclusive of arrears is not paid, the electricity connection to the Head Office building of the plaintiff bank shall be disconnected on 29th May, 2006. It is submitted that the plaintiff bank has paid the current energy charges for the month of May, 2006 under protest but has again disputed the arrears as claimed by the defendant by way of supplementary bill.

14. That it is submitted that the action of defendant company in raising the supplementary bill after the expiry of four years of the alleged consumption is not only illegal, arbitrary and mala fide but also against the statutory provisions of law. The CT ratio for the purpose of consumption and raising bills was shown by the defendant itself as 150/5 AMPs and they have been billing the plaintiff for four years continuously on the basis of the same ratio and the bills have been paid regularly and now all of a sudden the defendant cannot change the method of calculation by raising the CT ratio to double the amount of energy charges. It

at all, there has been any mistake on the part of the defendant, the defendant cannot be allowed to take advantage of its own wrongs and to make the plaintiff suffer without any fault on their part.

15. That even otherwise it is the statutory duty of the defendant to check the CTPT ratio at regular intervals of one year and if the defendant has failed to perform its part of duty since 23.4.03, the defendant now cannot put blame on the plaintiff bank as such the defendant is stopped from raising any bill for arrears.

16. That it is further submitted that under section 56(2) of the Electricity Act, 2003, bill for arrears of electricity beyond a period of two years, cannot be recovered, and are barred by limitation/restriction as provided in the statute by which the defendant is bound. Section 56(2) of the Electricity Act 2003 provides as follows:-

"(2)-Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

"Admittedly, the supplementary bill raised on 22.4.06 has never been shown recoverable at any point of time in the previous bills, and therefore, the alleged arrears which is beyond the period of two years are barred by limitation/bar provided under the Electricity Act, 2003 and the defendant company cannot raise any demand for the said arrears, if any."

(underlining added)

5. Defendant has denied that the bill is time barred because of Section 56(2) of the Act. It is also argued by the defendant that the argument of the plaintiff that the bill cannot be raised for a period before six months of raising of the supplementary bill is misconceived and Regulations 12, 19 and 31 of the DERC Regulations relied upon by the plaintiff do not apply and are disputed in their application to the present case as also the fact that those regulations would stand superseded by Section 56(2) of the Act.

6. The following issues were framed in this suit on 18.4.2007 :-

"1. Whether the correct multiplication factor known as CTPT ratio for measuring the consumption of electricity in raising the supplementary bill dated 22.4.2006 has been applied? OPP & OPD

2. Whether the demand of the defendant is barred by the provisions of Section 56(2) of Electricity Act, 2003? OPP

3. Whether the defendant is stopped from raising the supplementary bill in view of the reports dated 23.3.2013 and 21.4.2006? OPP

4. Whether the plaintiff is entitled to injunction? OPP

5. Relief."

Issue Nos. 1 to 3

7. Issue nos. 1 to 3 are taken together for disposal inasmuch as under these issues it will have to be discussed as to whether the subject supplementary bill is barred by limitation of two years prescribed under Section 56(2) of the Act as is the case of the plaintiff or as to whether the bill is not time-barred, and if so whether the defendant can raise a bill for a period before six months of raising of the supplementary bill.

8. At this stage, it will be necessary to refer to the relevant provisions which will have to be discussed and which provisions are Section 56 of the Act and Regulations 12, 19 and 31 of the DERC Regulations. Another provision which will also be very relevant for determining the issues between the parties would be Section 17 of the Limitation Act, 1963. These relevant provisions read as under:

"Section 56 of the Electricity Act, 2003

56. Disconnection of supply in default of payment.- (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -

(a) an amount equal to the sum claimed from him, or

(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

Regulations 12, 19 and 31 of the DERC Regulations

12. General.-(i) The licensee shall notify Billing and Payment Schedule area-wise, District wise or Circle-wise as may be decided by the licensee.

(ii) The licensee shall raise the bill for every billing cycle based on actual meter readings. The bills sent to consumers by the licensee should reflect details, e.g., current and last meter readings, rate, quantity of electricity consumed during the cycle, total amount to be paid for current consumption and details of past arrears, if any, last date for payment, etc.

(iii) Delivery of each bill shall be effected at least 15 days before the last day for payment of the bill.

(iv) Provisional billing (based on average consumption) shall not be more than one billing cycle. In case meter is rendered inaccessible for two consecutive billing cycles, action as per regulation 18 shall be followed.

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19. Testing of meters.- (i) The licensee shall conduct periodical inspection/testing and calibration of the meters as per rule 57 of Electricity Rules, in the following manner:-

(a) Periodicity of meter tests

The licensee shall observe following time schedule for regular meter testing:-

Category Interval of testing

NDMC, MES, Railways 6 months

Bulk Supply meters (HT) 1 year

LT meters (11 kW-100 kW) 3 years

LT meters (upto 11 kW) 6 years

Wherever applicable, CT and PT shall also be tested along with meters.

(b) When the meter is found to be fast beyond limits specified in rule 57 (1) of the Electricity Rules, the licensee/consumer, as the case may be, shall replace/rectify the defective meter within 30 days of testing. The licensee shall adjust/refund the excess amount collected on account of the said defect, based on percentage error, for a period not more than 6 months from the date of test and charge the cost of replacement/repair of the meter in the next bill sent to the consumer.

(c) When the meter is found to be slow beyond permissible limits, as specified in rule 57(1) of the Electricity Rules and the consumer does not dispute the accuracy of the test, the licensee/consumer, as the case may be, shall replace/rectify the defective meter within 30 days of testing. The consumer shall pay the

difference due to the defect in the meter at normal rates, based on percentage error, for a period of not more than 6 months prior to date of test with due regard being paid to conditions of working, occupancy, etc., of the premises during this period and up to the date on which defective meter is replaced/rectified.

(d) If the consumer or his representative refuses to sign the test report and pay due billing charges, the defective meter shall not be replaced/rectified and the licensee shall approach the designated electrical inspector, who shall test the correctness of the meter and give results within one month. The decision of the Inspector shall be final and binding on the licensee as well as the consumer.

(ii) The licensee shall keep record of all such meter tests and submit to the Commission exception report every six months.

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31. Procedure for levy of charges other than normal tariff for violation of provision(s) of Tariff Schedule.- (i) The licensee shall not be entitled to levy any charge on account of violation of provision(s) of Tariff Schedule prior to the date of last reading/inspection and in no case beyond past six months from the date of the current reading/inspection.

(ii) In the Inspection Report the nature of violation shall be clearly mentioned.

(iii) The inspection report and the show cause notice thereto must be signed by an authorised signatory of the licensee and must be handed over to the consumer or his/her representative at site immediately under proper receipt. In case of refusal by the consumer or his/her representative to either accept or give a receipt, a copy of each must be pasted at a conspicuous place in/outside the premises. Simultaneously, the inspection report and the notice shall be sent to the consumer under Registered Post.

(iv) The consumer shall be served upon with a 7 working day show cause notice at site as to why charges on account of violation of the provision(s) of Tariff Schedule, indicated in the inspection report, should not be levied on him/her. The notice should clearly state the time, days and place at which the reply has to be submitted and the designation of the person to whom it should be addressed.

Section 17 of the Limitation Act, 1963

17. Effect of fraud or mistake.- (1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act-

(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or

(b) the knowledge of the right or title on which suit or application is founded is concealed by the fraud of any such person as aforesaid; or

(c) the suit or application is for relief from the consequences of a mistake; or

(d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him,

the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production:

Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which-

(i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or

(ii) in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or

(iii) in the case of concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed.

(2) Where a judgment-debtor has, by fraud or force, prevented the execution of a decree or order with the period of limitation, the court may, on the application of the judgment-creditor made after the expiry of the said period extend the period for execution of the decree or order:

Provided that such application is made within one year from the date of the discovery of the fraud or the cessation of force, as the case may be."

(underlining added)

9. A reading of Section 56 of the Act shows that it contains the following ingredients:-

(i) There is a right in the licensee of electricity supply to disconnect the electricity supply on account of non-payment of the sum due towards electricity charges or any other charges which have to be paid by consumer to the licensee.

(ii) It is on the neglect of the consumer to pay the sum due that the licensee is entitled to disconnect the electricity supply.

(iii) A licensee such as the defendant cannot disconnect the electricity supply on the basis of the bill which is raised unless the bill on the basis of which electricity supply is sought to be disconnected is raised within two years of the sum becoming due from the consumer.

10. It also bears note that the provision of Section 56 of the Act provides a right in addition to the civil law remedy of the defendant/licensee which is to file a suit for recovery of monies for claiming its dues. Section 56 of the Act gives an additional right for disconnecting electricity supply when for the sum which is due in law, the consumer neglects to pay the same, provided that the defendant/licensee raises the bill within two years of the sum becoming due. Thus, the defendant/licensee can on the neglect of the consumer to pay the bill disconnect the electricity supply, in addition to being entitled to recover the amount due by filing a civil suit for recovery of monies on the requirements of Section 56 of the Act being satisfied. It is also relevant to note that Section 56 of the Act provides a restriction that electricity can only be disconnected if the bill is raised within two years of the same becoming due and which period of two years is different and lesser than the limitation period of three years provided under Article 113 of the Schedule of the Limitation Act for filing a suit for recovery of monies.

11. The crux of the matter is that when under Section 56 of the Act has the sum become due to the defendant in the facts of the present case. It is only if the Supplementary Bill dated 22.4.2006 has been raised within a period of two years of the sum becoming due that the defendant can exercise powers under Section 56 of the Act to disconnect the electricity supply on non-payment of such supplementary bill.

12. It is obvious that the sum which is due is a sum which is legally payable by the consumer of electricity to the defendant/licensee. A sum to be a sum due therefore must be a sum/amount which is due and payable in law. For example the sum claimed as due must not be barred by limitation as provided under the Limitation Act. Another example where the sum cannot be said to be due, although claimed by the defendant/licensee as per a bill, would be if the amount has already been adjudicated upon against the defendant/licensee in a judicial proceeding. In the facts of the present case, I need not multiply examples, inasmuch as, the issue in the present case will turn as to if a mistake has been committed by the defendant in billing the plaintiff for only half number of units because the defendant wrongly took the CT ratio as 150/5 AMPs instead of the correct CT ratio as 300/5 AMPs, and what are the consequences of this mistake upon the parties including the aspect as to for what period from the actual or deemed detection of mistake, can the defendant raise a bill against the plaintiff/consumer.

13. At this stage, it is relevant to mention that in the entire plaint the plaintiff has nowhere disputed that the defendant has wrongly applied the CT ratio as 150/5 AMPs instead of the correct ratio of 300/5 AMPs. The plaintiff in the plaint only states that plaintiff should not suffer for the mistake of the defendant. Also, it is relevant to note that at the request of the plaintiff, the defendant appointed an independent agency to give a report as to whether the CT ratio of the CT meter installed in the premises of the plaintiff is 300/5 AMPs or 150/5 AMPs, and this third party/agency M/s Yadav Measurement Pvt. Ltd. has given its report,

filed and proved by the defendant as Ex. D-4 that the CT ratio of the CT meter is 300/5 AMPs and not 150/5 AMPs. Plaintiff has led no counter evidence, whether by filing its own report or any other evidence to show that defendant has in fact not committed the mistake and that the CT ratio be taken only as 150/5 AMPs and not 300/5 AMPs as is the case of the defendant. Therefore, it is established on record, and so held by this Court, that the defendant has been mistakenly applying the CT ratio as 150/5 AMPs instead of 300/5 AMPs resulting in the defendant billing the plaintiff for only half the amount of the bill by charging for only half the number of units instead of 100% of the units.

14. (i) Once it is found and held that the defendant has by mistake applied the wrong CT ratio of 150/5 AMPs instead of 300/5 AMPs, the issue which then arises is that when this mistake can be said to be discovered by the defendant and that whether it is the actual date of detection of the mistake which is relevant or the deemed date of detection of the mistake.

(ii) The answer to this issue is provided by Section 17 of the Limitation Act which states that a mistake is to be taken as discovered when it is actually discovered or when with reasonable diligence it could have been discovered. In the present case, in view of Regulation 19(i)(a) as quoted above, the defendant was bound to check the CT ratio every one year and therefore though the defendant discovered the mistake actually on 20/21.4.2006, the defendant is deemed to have discovered the mistake one year after the new electronic meter was fixed at the premises of the plaintiff on 23.4.2003 i.e the defendant is deemed to have discovered the mistake on 23.4.2004 i.e one year after fixing of the electronic meter on 23.4.2003 and when the new electronic CT meter was fixed wrongly specifying therein the CT ratio as 150/5 AMPs instead of the correct CT ratio of 300/5 AMPs.

15. (i) In the present case, this date of 23.4.2004 is to be taken, for one argument, as the date when the sum became due to the defendant because on the mistake being deemed to be detected by the defendant and whereby the defendant was entitled to raise the bill for the sum due caused on account of the mistake, although as stated below a particular time period has to be given to the defendant for raising the bill after discovery of the mistake.

(ii) A two year period is provided under Section 56 of the Act, and in the present case, it is noted that the Supplementary Bill has been raised on 22.4.2006 i.e on the last date of the second year commencing from 23.4.2004 and clearly therefore the impugned supplementary bill is raised within the two year period provided under Section 56 of the Act. In fact in law by virtue of Section 12(1) of the Limitation Act, the date from which the limitation has to be calculated is excluded and therefore actually the two year period will commence on 24.4.2004 and end on 23.4.2006.

(iii) Also, it bears note that as per Regulation 12 of the DERC Regulations and the Affidavit dated 28.10.2015 filed by the defendant pursuant to the orders of this

Court dated 28.9.2015 and 9.10.2015, it is seen that after the normal billing calendar month the actual bill for consumption is to be raised within one month after the billing calendar month and thereafter a period of 15 days is provided to a consumer to make payment to the licensee/supplier of the electricity such as the defendant. Actually, therefore, the period of two years will end not on 22.4.2006 or 23.4.2006, but the period will end after 30 days + 15 days of 22.4.2006 or 23.4.2006 i.e the amount which would be due to the defendant from the plaintiff for the supplementary bill will be two years after the 45th day from 23.4.2004 or 24.4.2004 i.e the defendant could raise the supplementary bill on account of mistake till 22.5.2006 or 23.5.2006, and only thereafter there is neglect to pay by the plaintiff in terms of the language of Section 56 of the Act after 15 days from 22.5.2006 or 23.5.2006. In the present case, as already stated above, the supplementary bill has been raised much before 22.5.2006 or 23.5.2006 i.e on 22.4.2006, and therefore, it cannot be said that the supplementary bill has been raised beyond the period of two years of the sum becoming due as provided under Section 56 of the Act.

(iv) Therefore, for both the reasons of the supplementary bill having been actually raised on the last date of the two year period commencing from 23.4.2004, and also in any case before 22.5.2006, the amount claimed under the supplementary bill cannot be said to be beyond the period of two years when the sum became due. It is therefore held that the defendant has not violated the provision of Section 56 of the Act by raising the impugned supplementary bill beyond a period of two years from the date from when the sum became due.

16. (i) The next question which arises is that even if the defendant can raise the supplementary bill within two years of the sum becoming due, for what retrospective period before detection of the mistake can the defendant raise the bill. In this regard, it is noted that the subject bill has been raised for the period of electricity consumed from July, 2002 to 31.3.2006.

(ii) In civil law, a person's right to recover money on account of mistake would be a period of three years from discovery of the mistake in view of Article 113 of the Schedule of the Limitation Act and which is a residuary article for a suit which is not covered under any of the preceding articles of the Schedule of the Limitation Act. As per Article 113 of the Schedule of the Limitation Act, a suit for recovery has to be filed within three years of arising of the cause of action, and since the mistake in this case is deemed to be discovered on 23.4.2004, the defendant as per Article 113 can file a suit for a bill raised for a period of three years before 23.4.2004 ie from 23.4.2001. The supplementary bill however has been raised not from April, 2001 but from July, 2002, and therefore, the defendant is rightly entitled to raise the bill from July, 2002.

17. At this stage, let us examine as to whether the normal civil right of the defendant to recover the amount in question within three years from when the sum became due is in any manner restricted to a period of six months in view of Regulations 19 & 31 of the DERC Regulations. The answer in this regard has to

be in the negative, first for the reason that Section 56 of the Act is a provision in a later statute of 2003 than the 2002 DERC Regulations. Also Section 56(2) of the Act contains a non obstante clause i.e the said provision will supersede any other provision to the contrary once for the sum due a bill is raised within two years. Once therefore Section 56 of the Act allows raising of a bill for a sum due within two years of the sum becoming due, and which sum due is a sum due under the civil law i.e for a period of three years prior to the detection of the mistake, the argument of the plaintiff therefore that the supplementary bill could only claim charges for six months prior to the date of raising of the same on 22.4.2006 is a misconceived argument and is accordingly rejected.

18. The argument of the plaintiff that Regulations 19(i)(b) and (c) of the DERC Regulations apply for not raising a bill before six months has to be rejected even on a plain reading of these Regulations because these Regulations 19(i)(b) and (c) only apply where in the facts of a present case a meter is running fast or slow, whereas in the present case it is not a case of the meter running fast or slow, but of the defendant committing a mistake.

19. Similarly Regulation 31 of the DERC Regulations would not apply in view of the non obstante clause of Section 56 of the Act and the 2003 Act being a subsequent legislation than the 2002 DERC Regulations and what is contained in 2003 later statute will prevail over anything to the contrary on the same subject contained in any prior legislation.

20. Clearly therefore the provisions of Regulations 19 and 31 relied upon by the plaintiff do not apply and argument raised on behalf to restrict the supplementary bill only for a period of six months prior to 22.4.2006 is misconceived and rejected.

21. Issue nos. 1 to 3 are therefore decided in favour of the defendant and against the plaintiff.

Issue No. 4

22. Since issue nos. 1 to 3 are decided in favour of the defendant and against the plaintiff, this issue will also automatically be decided in favour of the defendant and against the plaintiff holding that the plaintiff is not entitled to the injunction as prayed for.

Relief

23. In view of the above, since all the issues are decided in favour of the defendant and against the plaintiff, the suit is dismissed. I may note that the plaintiff has deposited certain amounts with the defendant during the pendency of the present litigation in compliance of the Order dated 4.8.2006 of this Court, and whatever amount accordingly which has been deposited by the plaintiff with the defendant during the pendency of the present suit, plaintiff will be entitled to get the same adjusted from the date the said amount has been paid/deposited to/with the defendant against the amount as claimed by the defendant under the

subject supplementary bill. Parties are left to bear their own costs.