
(2016) 02 RAJ CK 0136

In the Rajasthan High Court

Case No : Civil Regular First Appeal No. 14 of 1997

Rajasthan State Electricity Board

APPELLANT

Vs

M/s. B.R. Industries

RESPONDENT

Date of Decision : 10-02-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 25

Citation : (2016) 3 WLN 473

Hon'ble Judges : Mr. Kanwaljit Singh Ahluwalia, J.

Bench : Single Bench

Advocate : Mr. Alok Garg, Advocate, for the Appellant; Mr. Nitin Jain, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Kanwaljit Singh Ahluwalia, J.—The present appeal has been filed by the Rajasthan State Electricity Board, Vidhyut Bhawan, Jyoti Nagar, Jaipur. They are aggrieved against the judgment dated 2.11.1996, rendered by the court of District Judge, Tonk, whereby the suit preferred by the respondents-plaintiffs was decreed and it was held that the appellants-defendants were not entitled to recover Rs.55,426.83 paisa and Rs.3,980.80 paisa from the respondents-plaintiffs.

2. Mr. Alok Garg, the learned counsel for the appellants-defendants has relied upon Jaipur Vidhyut Vitran Nigam Ltd. & Anr. v. Sitaram & Anr. 2008 WLC (Raj.) UC 181 to contend that in view of Section 5 of the Rajasthan State Electricity Recovery Act, the suit could not be entertained without depositing the amount due. In case of Jaipur Vidhyut Vitran Nigam Ltd. & Anr. (supra), this Court not only relied on Section 5 of the Rajasthan Government Electrical Undertakings (Dues Recovery) Act, 1960, but also on Section 26 of the Indian Electricity Act, 1910 and also judgment rendered by the Apex Court in Punjab Electricity Board & Anr. v. Ashwani Kumar 1997 (5) SCC 120 to hold that the suit could not be entertained without pre-deposit of the amount sought to be recovered.

3. Mr. Nitin Jain, the learned counsel for the respondents-plaintiffs has contended that Rs.34,788/- vide Exhibit/2, was deposited in excess with the Rajasthan State Electricity Board and therefore, there was no necessity of predeposit. It is further contended that no issue was framed by the trial court whether for want of pre-deposit, suit can be entertained or not. The dispute between the parties is within very narrow compass. Hence, following issue is framed:

"Whether the suit can be entertained without deposit of the amount of demand under Section 5 of the Rajasthan State Electricity Recovery Act?"

4. The onus to prove above issue is on the appellants-plaintiffs, who has raised the preliminary objection.

5. In view of framing of additional issue, the matter is remitted back to the trial court to give finding on this issue after parties adduce their evidence. Each party shall be granted two effective opportunities to lead the evidence. The trial court is directed to decide the above issue within one month.

6. The record be sent back to the trial court forthwith.

7. To await the finding on above issue, list the present appeal after six weeks.