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**(1997) 07 KAR CK 0068**

**In the Karnataka High Court**

**Case No : Regular Second Appeal No. 460 of 1987**

The Assistant Executive Engineer (Electricity), Sub-Division,  
Karnataka Electricity Board, Indi, Bijapur District

APPELLANT

Vs

Subhash Chunilal Rathod

RESPONDENT

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**Date of Decision : 30-07-1997**

**Acts Referred:**

Karnataka Electricity Board (Recovery of Dues) Act, 1976 — Section 5

**Citation : (1998) 1 KarLJ 30**

**Hon'ble Judges : T.N. Vallinayagam, J**

**Bench : Single Bench**

**Advocate : Sri N.K. Gupta, for the Appellant; Sri U.L. Narayanarao, for the Respondent**

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## **Judgement**

1. In this second appeal the suit based on complaint against the Electricity Board must fail and to be held as not maintainable in view of the provisions of Section 5 of the Karnataka Electricity Board (Recovery of Dues) Act, 1976, which is extracted below:

"5. Suit to challenge liability to payment.--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 within six months from the date of service of notice of demand, after depositing with the Prescribed Authority the aggregate amount specified in the notice of demand under protest in writing that he is not liable to pay the same. Subject to the result of such suit, the notice of demand shall be conclusive proof of the various dues, penalty and costs mentioned therein".

2. Admittedly, the plaintiff has not deposited the protest amount into Court before filing the plaint. The fact that no amount has been deposited is not only admitted by the plaintiff but also seen by the Courts below. But, yet they have not applied the provisions of law correctly and consequently the approach of the Courts below is wrong. The visa to the plaintiff to enter the Court with the plaint

is u/s 5. Once Section 5 does not permit the visa to the plaintiff, he cannot enter the Court at all. Therefore, on this ground also the second appeal is allowed and the finding of the Courts below have to be set aside. However, in case, the plaintiff feels that he was led to believe that the defence taken by the Electricity Board will come to his aid and therefore he was under bona fide impression that he need not deposit the money into Court.

3. As the second appeal is disposed of on a very technical ground, I am giving the plaintiff an opportunity to institute a fresh suit on the same cause of action after depositing the protest amount u/s 5 with the Electricity Board. It is made clear that the money is to be deposited with the Electricity Board.

4. Subject to the above observation, the second appeal is allowed and the judgment and decree of the Courts below are set aside.