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**(1998) 11 MAD CK 0190**

**In the Madras High Court**

**Case No : Second Appeal No. 1422 of 1986**

The Tamil Nadu Electricity, Thanjavur Electricity System

APPELLANT

Vs

Chandra Chakrapani

RESPONDENT

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**Date of Decision : 04-11-1998**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

**Citation :** (1999) 3 CTC 443 : (1999) 2 MLJ 151

**Hon'ble Judges :** A. Ramamurthi, J

**Bench :** Single Bench

**Advocate :** Mr. V. Rengapashyam, for the Appellant; Mr. R.N. Kothandaraman, for the Respondent

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## **Judgement**

1. The unsuccessful defendant is the appellant herein. The plaintiff filed a suit for permanent injunction. The plaintiff is the owner of Sangam Theatre at Thiruvarur. The electricity service connection No. 220 was given to the Theatre and the permitted work load was only 12.8.Kilo Watt. She has been paying the electricity charges regularly. On 10.12.1983, some of the officials of the Electricity Department came to the Theatre for inspection and obtained some Statement from some person in the Theatre as if the electricity was used to the extent of 22.9. Kilo Watt and the work load was more than the permitted load. The inspector as well as the subsequent accounting is not proper and correct. The plaintiff sent a communication to inspect the Theatre again. But it was not carried out. Further a communication was sent to the plaintiff calling upon her deposit a sum of Rs. 2,985 representing half of the provisional assessment within a period of 15 days failing which the service connection would be cut of. The communication sent by the department is arbitrary and no opportunity was also given to the plaintiff and hence the suit.

2. The defendant stated that the permitted load of the plaintiff's Theatre was only 12.8. Kilo Watt. On 10.12.1983, the squad inspected the Theatre and came to know that they have got a load of 22.9. Kilo Watt. One Ramesh said to be the

manager of the Theatre was there and the statement of the said Manager was also recorded. On 14.4.1984, the plaintiff sent a letter containing wrong facts. The department has found out that the Theatre had used more load than sanctioned by the department. The Electricity department had also sustained loss and a provisional assessment was made calling upon the plaintiff to pay the sum as otherwise electricity supply will be out of. Moreover, the plaintiff ought to have come forward with the suit for declaration if really he is aggrieved about the provisional assessment. The suit for permanent injunction alone is not sustainable under law.

3. The trial court framed four issues and on behalf of the plaintiff, P.Ws. 1 and 2 were examined and Exhibit A.1 was marked and on behalf of the defendant, D.W.1 and 2 were examined and Exhibits B1 and B2 were marked. The trial Court dismissed the suit filed by the plaintiff and aggrieved against this, the plaintiff filed A.S.No. 40 of 1985 on the file of Nagapattinam and the lower appellate court allowed the appeal setting aside the judgment and decree of the trial court and the suit was decreed granting the relief of permanent injunction. Aggrieved against this, the defendant has come forward with the present second appeal.

4. The defendant/appellant has raised the following questions of law:

(1) Whether the lower appellate Court is correct in law in holding that inspite of admission made in Ex.B1 the burden to prove that there was an additional unauthorised load during inspection is on the board?

(2) Whether the Court below is correct in law in granting permanent injunction restraining the board to proceed further with a provisional assessment notice usual as per the terms and conditions of supply?

5. The points that arise for consideration are as follows:

(1) Whether the plaintiff is entitled to the relief of permanent injunction?

(2) Whether the suit filed by the plaintiff is maintainable under law?

6. There is no dispute that the plaintiff is the owner of Sangam Theatre at Thiruvavur and Service Connection No. 220 was also given to the Theatre by the Electricity Board. It was also not in dispute that the permitted power load was only 12.8.K.W. On 10.12.1983, D.W.1 and other officials made a surprise check in the Theatre in question and they found out that they have used the power load to the extent of 22.9. K.W. without any authority or sanction. Ramesh, said to be the Manager was present at that time and the statement was also taken from him under Exhibit B1. The husband of the plaintiff was examined as P.W. 1 and the Cashier was examined as P.W.2. On the side of the defendant, D.W.1 who made an inspection on 10.12.1983, was also examined and another witness D.W.2 Prakasam was also examined. It is practically conceded that on 10.12.1983 the Theatre in question was inspected by the electricity Department officials.

7. The learned counsel for the plaintiff contended that the statement under Exhibit B 1 is not a proper one and it has been taken from a person not connected with the Theatre and out of compulsion this has been taken. The said Ramesh was physically present in the Theatre when the surprise check was made by the Squad and a statement was also given in the letter head of the Theatre itself. Simply because the name of Ramesh does not find a place under Exhibit B1, it cannot be thrown out. P.Ws. 1 and 2 are not in a position to state as to how the said Ramesh was available in the Theatre. If really he had no connection whatsoever to the Theatre he should have simply refused to sign the statement and in fact the statement was said to have been written by him. There is no reason to reject Exhibit B1 on the ground alleged by the plaintiff. The Electricity Department officials have made an inspection on the said date and there is no reason for them to give a false version that mere power load was used than the permitted load. Nothing has been elicited in the evidence of D.W. 1 as to why he should give a false report against the plaintiff.

8. The lower appellate Court misdirected itself and came to a wrong conclusion. In fact, the statement said to have been given by one Ramesh was also not accepted by the lower appellate Court. It is admitted that the plaintiff is maintaining a list of employees in the Theatre and the same has not been produced into the Court. If this document was produced, it would have thrown light as to whether the name of Ramesh finds a place as one of the employee in the Theatre or not. The plaintiff attempted to explain that the documents relating to the Theatre in question were produced in the Labour Court. It is pertinent to state that if there is any case in the Labour Court, it is not difficult for the plaintiff to give the number of the case or the plaintiff could have taken steps to send for all these documents. The very fact that the plaintiffs 1 and 2 have not chosen to produce the case number pending in the Labour Court is a strong circumstance to come to the conclusion that the document has been deliberately suppressed because if produced it would expose the case of the plaintiff. Under the circumstances, there is no difficulty in coming to the conclusion that Exhibit B.1 was given voluntarily by the Manager of the Theatre and hence much weight can be attached to the same. Further more, the plaintiff has not chosen to examine the said Ramesh in order to prove under what circumstances it was executed by him.

9. The learned counsel for the plaintiff further contended that no opportunity was given to the plaintiff. But however, provisional assessment was made calling upon her to deposit half of the amount within a period of 15 days. Otherwise there was threatening of disconnection of the electricity supply. Only a provisional assessment has been ordered and it is open to the plaintiff to put forth his objections and the department is entitled to consider the same and pass appropriate orders. Instead of adopting such a course, the plaintiff has rushed to the Court and claimed the relief of permanent injunction only. This being a suit for bare injunction, it is not known how the lower appellate Court has granted the relief of permanent injunction. When there was dispute between the parties

relating to the power load and also the calculation of the amount, naturally the plaintiff ought to have come forward with a suit for declaration. Admittedly, the plaintiff has not chosen to among the plaint claiming the relief of declaration and this being so the correctness or other wise of the provisional assessment can not be gone into in this suit. Further, the lower appellate Court has misdirected itself on a wrong interpretation of Rules and gave the relief of permanent injunction in favour of the plaintiff. When once the permanent injunction is granted then naturally the plaintiff is not liable to pay any amount and under the circumstances, the plaintiff also can carry on the said illegal act of having extra load without proper authorisation or permission. The lower appellate Court ought to have directed the plaintiff to put forward his objections before the Electricity Department and they should have directed to consider the objection and pass appropriate orders and in the meantime, the plaintiff ought to have been directed to deposit half of the amount claimed under pretest. The grant of permanent injunction is virtually putting an end to the case of the Department without looking into the details of the assessment or otherwise. By this, the Department will be leasing and more over it will be only encouraging the plaintiff to gain wrongfully and it amounts to giving seal of the court for the wrong committed by the plaintiff.

10. The defendant also relied upon the decision reported in Punjab State Electricity Board and Another Vs. Ashwani Kumar, , wherein it is stated that by necessary implication the cognizance of civil cause has been excluded. As a consequence, the civil court shall not be justified in entertaining this suit and giving the declaration injunction without directing the party to avail of the remedy provided under the Indian Electricity Act and the Indian Electricity (Supply) Act and the Instructions issued by the Board in that behalf from time to time. This decision is applicable to the case on hand. It is, therefore, clear that the plaintiff, if aggrieved, would avail the remedy provided under the Electricity Act and the instructions issued by the Board without resorting to Civil Court and only after exhausting the remedies, the plaintiff has got right to file a suit and under the circumstances, the suit is also not maintainable under law. Since there is wrong approach relating to the question of law also by the lower appellate Court, I am of the view that it is just and necessary to interfere with the findings and as such it is liable to be set aside.

11. For the reasons stated above, this Second Appeal is allowed. The judgment and decree of the lower appellate Court are set aside and the suit is dismissed. In the peculiar circumstances, there will be no order as to costs. However, it is open to the plaintiff to send his objections to the defendant and on receipt of the same, the defendant is directed to consider and pass appropriate orders within a period of two months from the date of receipt of a copy of the objection.