
(1999) 06 MAD CK 0025
In the Madras High Court

The Tamilnadu Electricity Board and Others	APPELLANT
Vs	
Shanmuga Engineering College and Shanmuga Polytechnic	RESPONDENT

Date of Decision : 09-06-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 9

Citation : (1999) 3 LW 784 : (1999) 3 MLJ 566

Hon'ble Judges : V. Bakthavatsalu, J

Bench : Division Bench

Judgement

V. Bakthavatsalu, J.—The defendants are the appellants.

2. The respondent/plaintiff filed a suit for declaration, permanent injunction and mandatory injunction.

3. The case of the plaintiff is as follows: The plaintiff college of Engineering was started in the year 1984. The Shanmugha Polytechnic was started

on 6.9.1984. Shanmugha College of Engineering is affiliated to the Bharathidasan University, Trichy. At present there are about 1200 students

studying in both the college and polytechnic. The Polytechnic and the college has three service connections Nos.93, 98 and 102 while the

students' hostel has a separate service connection No. 138. The Electricity Board has classified the service connections 93 and 98 under Tariff

VII applicable to Educational Institutions. The service connections 102 and 138 are wrongly classified under tariff IV and IX. All the above four

service connections should be rightly classified under tariff No. VII. Service connection 102 caters to the various laboratories in the college.

Service connection No. 138 is purely a lighting load for the benefit of the students in the hostel. The Electricity Board has been requested to bring

service connections 102 and 138 under tariff No. VII.

4. As per Clause 3.01 of the terms and conditions of supply, additional, loads upto 130 HP can be connected to a service connection without the

permission of the Electricity Board. The college approached the Electricity Board to change the meters in Service connections 93 and 98 so as to

enable the institution to connect additional loads to these service connections instead of connecting to the single service connection 102. The

plaintiff also requested the Electricity Board to instal suitable metering arrangements. The Electricity Board did not take any action in this matter. In

the same letter, it was reiterated that utilisation would not exceed 50 per cent of the total connected load for the time being. The Assistant

Executive Engineer served a notice on the plaintiff's staff member informing about the proposed inspection to the service connection No. 102 on

19.12.1991. Accordingly, he made inspection. There is no violation of any terms and conditions of service connection. The additional load

connection to service connection 102 was made in the year 1988 itself, only after informing the defendants' department that the actual load will not

exceed 50% of permitted limit. The plaintiff has expressed its willingness to have service connections in H.T. line in case the Electricity Board

insists on it.

5. After inspection of the Engineer, the defendants have filed Caveat O.P. on 22.1.1992 as if the plaintiff is likely to move the Court for orders.

After that the Electricity Board served a show cause notice dated 28.1.1992 on the plaintiff on 29.1.1992 as if there is excess load connection by

115-72 H.P. The plaintiff is not admitting the correctness of the contentions raised in the show cause notice. In fact, the plaintiff is demanding the

levy under tariff VII instead of tariff IV as it happens to be an educational institution and requesting refund of the excess tariff collected so far. It is

alleged in the Caveat Petition that the plaintiff has removed three capacitors attached to main and is keeping them idle. It is a malicious allegation.

The capacitors are fixed by the plaintiff alone at its cost and it has to be periodically replaced or serviced, and for that purpose they will be

disconnected whenever, unavailable. Attaching capacitors to supply connections have nothing to do with the recording of actual consumption by

the meter. The capacitor only regulates the supply. In any educational institution,

though all the machineries are available, all of them are not put into simultaneous use as in factories. The utilisation at any time would be only 40% of the connected load as the machinery are put to use purely for demonstration purposes. The plaintiff also requested the Electricity Board to instal maximum utilisation of power at any given point of time so that they can find out whether the college is utilising even the connected load. The Board has not taken steps to classify service connections 102 and 138 under tariff VII and refund the excess amount collected from the plaintiff college. The college has been authorised to conduct capacity tests on the motors of service connection in industries and issue certificates. The college has issued nearly 40 certificates in the past. One such certificate has been issued to a consumer of Tamil Nadu Electricity Board, but the Board has rejected the certificate and issued a show cause notice to the consumer demanding about Rs. 15,000. The said consumer by name Mr. Perumal, filed a suit in O.S.No. 224 of 1986 and obtained injunction in O.S.No. 224 of 1986. The plaintiff's Principal appeared as a witness in the said case and the certificate issued was marked as exhibit. This was not liked by the Tamil Nadu Electricity Board Officials. There fore the defendants have taken a hostile attitude against the plaintiff. The show cause notice issued by the Tamilnadu Electricity Board has not been signed and it is not a complete document.

6. The consumer is liable to compensate the Board for any damage occurred to the equipment or machinery of the Electricity Board. In this case, there has been no damage at all. The terms and conditions of supply framed by the Tamil Nadu Electricity Board should in no way be repugnant to the Indian Electricity Act, 1910. The defendants cannot claim any compensation under the Rule. After the defendant issued show cause notice threatening of immediate disconnections, the plaintiff filed a suit in O.S.No. 29 of 1992 and obtained interim order on 4.2.1992. The defendants issued notice dated 6.2.1992 claiming compensation charges. The contents of the above letter is not correct and arriving of figures as compensation charges is arbitrary and not based on any scientific method. Rule 4.02 in the terms and conditions of supply of electricity is invalid in law and not enforceable against the plaintiff. To arrive at a correct conclusion of the connected load of consumption, the Electricity Board should

instal the Maximum Demand ineter and arrive at the load delivered at the point of consumption during any consecutive 30 minutes prior to issuing a notice to the consumer. There is no application of mind by the officials of the Electricity Board before issuance of such notice to the plaintiff. The plaintiff is well prepared for assessing the consumption by a very scientific method by instalation of a Maximum Demand meter. The plaintiff has withdrawn the suit in O.S.No. 29 of 1992 which is only a suit for injunction, since the plaintiff has filed a comprehensive suit for various reliefs. The suit is filed for declaration that consumption charges is payable only under tariff VII and not under tariff IV for service connections 102 and 138 and for declaration that show cause notice issued by the third defendant dated 25.1.1992 is illegal and unenforceable and for an injunction restraining the defendants from disconnecting the electricity supply to service connection No. 102 and for declaration that Rule 4.02 found in the terms and conditions of supply of electricity is invalid and not enforceable and for mandatory injunction directing the defendants to fix demand and supply meter to service connection No. 102.

7. The case of the defendant is as follows: The suit is not maintainable in law. The plaintiff has not stated whether it is a recognised educational institution. "Service connection No. 102 is an industrial service under tariff IV which cannot be changed to Tariff VII. Service connection No. 138 is a commercial service granted for construction purposes and the plaintiff is using the same for testing motors and issuing certificates regarding Horse Power of Motors on payment of fees. Service connection 138 is rightly put under tariff No. 9 which is for commercial purposes. The plaintiff is using the said service for Shanmugha gardening purposes. The plaintiff has to establish that it is a recognised educational institution. The permitted load for service connection No. 102 is 125 H.P. During the surprise raid by A.P.T. Squad on 19.12.1991 at 10.30 a.m., it was detected that the plaintiff illegally and unauthorisedly used a total load of 240-72 H.P. which is 115-72 H.P. over and above the sanctioned load of 125 H.P. It was found that the plaintiff has not connected the three capacitors to the main which is mandatory on the part of the plaintiff to connect the same to the main and the same resulted in the motors not recording the actual energy consumed. On that account 10% loss in the recording by

the motor has been caused to the Tamil Nadu Electricity Board. Hence action was taken as per the rules and regulations in force and show cause

notice was duly given to the plaintiff calling upon the plaintiff to stop within a week the unauthorised use of excess load of 115-72 H.P. the loss to

the Board was assessed at Rs. 78,965 as per the rules and regulations. As the plaintiff was likely to move the court for getting ex parte orders of

stay, the defendants filed a caveat petition in the Sub Court. There is nothing wrong on the part of the defendants to take preventive action to

safeguard the interest of the Board. All the motors in the college are connected to Service Connection No. 102 and not in respect of other Service

connections 93, 98 and 138. To escape payment of penal levy, the plaintiff has rushed to the court. The Professor of Electricity Engineering was

present in the College during surprise inspection on 19.12.1991.

8. It is false to say that the plaintiff sent any communication to the Executive Engineer as alleged in the plaint. The copies of the alleged letters filed

are only self serving and not received by the second defendant. The excess load is not removed and capacitors are not connected to the respective

service and show cause notice was not complied with the plaintiff. The alleged motive for the defendants to take action against the plaintiff is not

true. It is a bona fide omission to sign the show cause notice due to oversight. The plaintiff is not entitled to any of the reliefs as claimed in the

plaint. The court has no jurisdiction and the plaintiff has to take action in accordance with the rules in force before the competent higher authorities

of Tamil Nadu Electricity Board.

9. On the above pleadings, the trial court has framed 8 issues. On consideration of oral and documentary evidence, the trial court has not granted

relief in respect of declaration that Rule 4.02 is invalid. Regarding the relief (a), the trial court has granted decree for declaration. The trial court has

held that the plaintiff institution is an educational, institution and that as per the circular issued by the Electricity Board under Exs.B-9 and B-10, the

consumption charges for service connection Nos.102 and 138 has to be assessed and collected only under tariff No. VII, with effect from

16.3.1993. With regard to other reliefs, the trial court has granted decree as prayed for.

10. The defendant filed an appeal against the said judgment and decree. The

appellate judge.

Thanjavur by judgment dated 13.11.1995 dismissed the appeal confirming the judgment and decree passed by the trial court. The defendant, who

lost in both the courts, has come forward with the second appeal.

11. The following substantial question of law was formulated while admitting the second appeal:

Whether or not the failure of the courts below to appreciate the existence of additional machines over and above the sanctioned load vitiate the

finding?

12. It is seen from the judgment of the trial court that the trial court has not granted decree in respect of prayer (d) made in the plaint. Under the

above clause, the plaintiff prayed the court to declare that Rule 4.02 found in the terms and conditions of supply of electricity is invalid against the

plaintiff's institution. Learned Counsel for the appellants contended that the terms and conditions of supply of electricity to consumer are statutory

in character and that, therefore, they cannot be declared as invalid by the civil court. In support of his submission, he relied upon a judgment in the

case of M/s. Hyderabad Vanaspathi Limited Vs. Andhra Pradesh State Electricity Board and Others, , the trial court has held that P. W. 1, the

plaintiff has not adduced any evidence in respect of the said relief and that the civil court has no jurisdiction to alter or declare invalid any of the

rules and regulations framed by the Electricity Board. The trial court has rightly negatived to grant relief in respect of Clause (d) of the prayer in the

plaint. But the appellate court has held that the defendants' witnesses have not stated in their evidence that Rule 4.02 is valid under law and that the

plaintiff institution is an educational institution, and that the said rule would not apply to the plaintiff and that, therefore, the plaintiff is entitled to

declaration. Ultimately, the appellate court dismissed the appeal. The plaintiff has not filed any cross appeal when the defendants filed first appeal.

The decree of the trial court has not been modified by the appellate court regarding the above prayer. The reason given by the appellate court for

accepting the prayer of the plaintiff in this regard cannot be sustained as the terms and conditions framed by the Electricity Board are statutory in

character. The civil court has no jurisdiction to declare such order as invalid under law. The remedy of the plaintiff is not before the civil court to

get such declaration. Therefore, I have no hesitation to hold that the findings of the appellate court that the plaintiff is entitled to get relief in respect of prayer (D) cannot be sustained.

13. Regarding the other reliefs granted by the Trial Court which are confirmed by the appellate court, the learned Counsel for the appellants

contended that the civil court has no jurisdiction to grant any such relief and that the plaintiff has not exhausted their remedy in preferring appeal

against the show cause notice issued to it by the Electricity Board regarding compensation payable by the plaintiff and that even though the show

cause notice was not signed by the officials, the plaintiff was not prejudiced as it received subsequent order and notice from the Electricity Board

and that the plaintiff was informed that it has got right to file appeal against the said assessment order had that no appeal was filed by the plaintiff

that the dispute between the plaintiff and the defendants cannot be agitated and decided in the civil court. The learned Counsel for the

appellants/defendants elaborately argued on the question whether the plaintiff institution has been properly classified under Tariff VII or not.

14. It is contended by the plaintiff that even though the plaintiff has served notice to the defendants demanding them to classify service connection

102 and 138 under Tariff VII, the defendants failed to do so. The defendants denied having received any such notice. It is contended by D.W.1

that no such notice under Exs.A-3 to A-8 were received by the defendants. In fact the plaintiff has not filed any acknowledgement to prove that

they sent notice to the defendants demanding them to change the Tariff. It is needless to pursue any discussion on this aspect, since it is admitted

that subsequent to the suit, a circular was issued under Ex.B-9 whereunder it is stated that Tariff VII can be applied to the recognised educational

institutions or hostel run by the recognised educational institution. In a subsequent circular under Ex.B-10, the Electricity Board has stated that the

order regarding change of Tariff to educational institutions will be effective from 16.3.1993. Both the courts have held that the defendants did not

raise any objection for applying the above circular to the plaintiff institution with effect from 16.3.1993. The appellate court has also held that there

can be no objection for assessing the plaintiff's institution under Tariff VII. The trial court has held that the defendants represented in the trial court

that they have no objection to collect consumption charges under Tariff VII with effect from 16.3.1993. The said findings of the courts below are

not seriously challenged in the grounds of appeal filed in the second appeal.

15. It is no doubt true that the suit was filed in the year 1992. The above circulars Exs.B-9 and B-10 came to be passed in the year 1993. It

cannot be disputed that the courts can take note of the subsequent event and mould the relief. The judgment of the trial court will show that on the

representation made by the defendants in the trial court, the trial court has granted decree for declaration that Tariff VII will be applicable to the

plaintiff with effect from 16.3.1993.

16. In view of the above facts, I hold that the decree and judgment of both the courts that consumption charges for service connections 102 and

138 has to be collected under Tariff VII with effect from 16.3.1993 have to be upheld and that part of the decree cannot be interfered with in the

second appeal.

17. Clauses (b), (c) and (e) of the prayer relate to show cause notice issued by the defendants. The learned Counsel for the respondent-plaintiff

contended that both the Courts have found that the show cause notice is not valid under law and that inspection report prepared by the defendants

is not in accordance with the rules and regulations and that the show cause notice was not signed by the authorities who issued the same and that

the plaintiff is entitled to additional load to the extent of 130 H.P. and that, therefore, the order of the defendants that the plaintiffs have to pay the

compensation is not valid in law. In this context, it will be useful to refer to the documents which led the defendants to issue show cause notice and

order for paying compensation. It is admitted in the plaint in paragraph 6 that the Assistant Executive Engineer served a notice on the plaintiff's

staff member about the proposed inspection to service connection 102 on 19.12.1991 and that accordingly he made an inspection. Ex.B-1 is the

said notice issued before inspection the service connection. R W. 1 has also admitted in his evidence that on 19.12.1991 the officials inspected the

service connection and on that day he was in the college and that at the time of inspection a Professor was present. Ex.B-1 will show that the

defendant s informed the plaintiff about the proposed inspection at about 10.30 a.m. on 19.12.1991. The said notice was also signed by the I lead

of the Department of Electronics. Ex.B-2 is the Inspection Report. It is stated therein that three capacitors are not connected with the meter and

that they were kept idle. In the above report, the Head of the Department has signed on 19.12.1991. It is contended by the plaintiff that the copy

of the report was not furnished to him on the date of inspection. Subsequently, the defendants issued notice under Ex.B-3 dated 25.1.1992 stating

that violations of terms and conditions are reported. It is stated thus:

Exceeding the contracted load by 115.72 H.P.

The plaintiff has been directed to stop the violations and also remove the equipments causing the above violations within 7 days. The above notice

was received by the plaintiff on 1.2.1992. In Ex.B-4 assessment notice received by the plaintiff on 10.2.1992, it is stated that the compensation

charges payable are worked out as Rs. 75,935. Along with the above order, working sheet is also enclosed. The connected load at the time of

inspection is noted as 240.72 H.P. and unauthorised extended load as 115.72 H.P. Under Ex.B-5 dated 20.2.1992 the plaintiff has been informed

that three capacitors are not connected with service and that penal payment of Rs. 3,030 has to be paid within 15 days failing which the electricity

would be disconnected. Under Ex.B-4 the plaintiff was informed that he can prefer an appeal to the appellate authority within 60 days from the

date of receipt of the notice after paying at least two instalments.

18. The learned Counsel for the respondent challenged the above show cause notice and assessment order mainly on two grounds. Firstly, it is

contended that the show cause notice was not signed by the authority who issued the same. Secondly, it is contended that the consumption charges

never exceeded 125 H.P. and that the meter installed by the plaintiff is only 100 Amps which can sustain only 8 H.P. of connected load. As per

condition 3.01 of terms and conditions of Supply of Electricity, the plaintiff has got right to connect additional load not exceeding 130 H.P. and

that, therefore, the plaintiff has not committed any violation of terms and conditions of electricity supply.

19. Regarding the capacitors, it is contended by the plaintiff that they are fixed by the plaintiff at their own cost and that it can be replaced or

serviced and that attaching capacitors to supply connections have nothing to do with the recording of actual consumption by the meter. In this

context, the evidence of P.W.1 was relied on by the learned Counsel for the plaintiff. The Executive Engineer, D.W.1 has admitted in his evidence

that it is permissible to run the motor for three months without capacitors. It is seen from Ex.B-7 Test Report that 80 H.P. load only was given to

service connection 102 and additional load is permitted to an extent of 45 H.P. totalling to 125 H.P. The defendants denied the case of the plaintiff

that the plaintiff is entitled to the additional load of 130 H.P. It is contended by the Appellants that even assuming that the order of compensation as

demanding by the defendants is not proper and legal, the civil court cannot go into the above question, since the plaintiff has got other remedy to file

appeal under the rules and regulations of Electricity Board.

20. But the learned Counsel for the respondent contended that the show cause notice is not valid in law and as such the assessment claiming

compensation is not enforceable. The learned Counsel for the respondent also relied upon an unreported decision in W.P.No. 13832 of 1996. It is

seen that the excise officials sent a notice to the petitioner. The court has held that the procedure given for service of the appellate order has not

been complied with and that the respondent has not sent any original order signed by him by registered post. It is no doubt true that any order

issued by the public authority has to be signed by the authority who issued the same. In this case the unsigned show cause notice A-9 was received

by the plaintiff on 29.1.1992. But subsequently, on 10.2.1992 the plaintiff received an assessment notice along with working sheet for initial

assessment. The entire particulars are given in the above notice. Therefore, it is clear that the plaintiff has been given ample opportunity to explain

his case after receipt of Ex.B-4. Therefore, the fact that the show cause notice was not signed by the defendant official cannot be a ground for filing

the suit in the civil court without exhausting other remedies.

21. The learned Counsel for the respondent has relied upon another decision to substantiate his case that the civil court has jurisdiction. In the case

of Municipal Corporation of Delhi Vs. M/s. Ajanta Iron and Steel Company (Pvt.) Ltd., , it is held that the service of notice is a pre-requisite for

disconnection. In the above case, no notice was served by the Delhi Electricity Supply on the plaintiff before disconnecting the electricity. It is thus

clear that the above decision will not apply to the facts of this case. In this case,

the defendants/the officials inspected the service connection in the presence of Professor of College.

22. In the case of M.P. Electricity Board, Jabalpur Vs. M/s. Vijaya Timber Co., , it is held thus;

The exclusion of jurisdiction of civil court cannot be readily inferred and the normal rule is that civil courts have jurisdiction to try all suits of a civil nature except those of which cognizance by them is either expressly or impliedly excluded. Where provisions of the particular Act, where under plaintiff remedy lie, have not been complied with, civil court's jurisdiction cannot be excluded.

It is seen from the facts of the above case that the Electricity Board has taken high tension transmission lines over the construction already started in the said land belonging to the plaintiff without his consent. It is held by the High Court that the transmission lines were not laid under any approved scheme and that the lines were laid without consent. The facts of the above case will not apply to this case. Therefore, the above case will not help the plaintiff in any way.

23. As already stated, the terms and conditions for Supply of Electricity are statutory in character. In the case of M/s. Hyderabad Vanaspathi

Limited Vs. Andhra Pradesh State Electricity Board and Others, , it is held that the terms and conditions of supply have to provide for

compensation as well as immediate disconnection. The learned Counsel for the appellants relies upon a recent judgment in the case of Punjab State

Electricity Board and Another Vs. Ashwani Kumar, . It is held in the above decision thus:

The question then arises whether the civil court would be justified in entertaining the suit and issue injunction as prayed for? It is true, as contended

by Shri Goyal, learned Senior Counsel, that the objections were raised in the written statement as to the maintainability of the suit but the same

were given up. Section 9 of the C.P.C. provides that the civil court shall try all suits of civil nature, subject to pecuniary jurisdiction, unless their

cognizance is expressly or by necessary implication barred. Such suit would not be maintainable. It is true that ordinarily, the court has jurisdiction

to go into and try the disputed questions of civil nature, where the fundamental fairness of procedure has been violated. The statutory circulars

adumbrated above do indicate that a fundamental fairness of the procedure has been prescribed in the rules and is being followed. By necessary

implication, the cognizance of the civil cause has been excluded. As a consequence, the civil court shall not be justified in entertaining this suit and

giving the declaration 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 as stated above.

The above decision has been referred to in subsequent judgment of our High Court Justice A. Ramamurthi, in Second Appeal No. 1333 of 1986

has relied upon the above decision and held that the suit for declaration that the order passed by the officials is illegal, unjust is not maintainable in

law as the civil court has no jurisdiction. In view of the latest judgment of Apex Court referred to above, a similar view was taken by Justice P.D.

Dinakaran, in S.A.No. 1154 of 1998: The facts of the above case will show that the plaintiff filed a suit for declaration of provisional assessment

notice as void, illegal and in enforceable and also for grant of permanent injunction. Relying upon the Apex Court judgment referred to above, the

Court has held that the remedy of the plaintiff is to proceed against the defendant subject to the remedial measures of the respondent, under the

Indian Electricity Act and Indian Electricity (Supply) Act.

24. Now, the question is whether any procedure is laid down by the defendant to enable the aggrieved party to file an appeal. The learned Counsel

for the respondent contended that from the decision of the Apex Court it is seen that a number of statutory orders were issued by the department,

which provide remedy to file appeal and such circulars are not issued under the Terms and Conditions of the Tamil Nadu Electricity Board. I am

unable to accept the above contentions of the respondent.

25. Condition No. 6.01 of the terms and conditions of Supply of Electricity, which was approved on 24.12.1988, relate to the procedure for

collecting compensation charges and for taking further steps. Condition 6.01 states that the consumer may file appeal within 60 days from the date

of receipt of assessment notice. Condition No. 12.01 relates to the procedure as to how the memorandum of appeal should be preferred.

Condition No. 13.00 relates to the disposal of the appeal. It is thus seen that the

plaintiff has got right to file an appeal against the order of assessment. In fact, the said right is also mentioned in Ex.B-4 when alternate and adequate remedy is available by way of filing an appeal against the order of Electricity Board, it is not within the province of the civil court to give a finding on the question whether the plaintiff is entitled to additional load as per condition 3.01 and whether the compensation charges claimed by the defendants is arbitrary and illegal. The remedy of the plaintiff is only to file an appeal against the assessment order and if he is not successful or if his contentions were not properly considered by the appellate court, then it is open to the plaintiff to file a suit for declaration.

26. It is contended by the learned Counsel for the respondent that both the courts below have given a concurrent finding that the plaintiff is entitled to declaration and substantial question of law was not formulated on the question of jurisdiction in this appeal and that, therefore, the finding of the courts below cannot be upset in this second appeal. It is no doubt true that in the grounds of appeal, the appellants/defendants have not raised any question of law regarding the jurisdiction of the court. It is no doubt true that the power of the High Court to entertain second appeal is based only on substantial question of law that was formulated while admitting the second appeal. But Proviso to Section 100 of the C.P.C. reads thus:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear; for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.

In this case, the defendants have challenged the jurisdiction of the civil court, in the suit as the courts below have also given findings on the said issue. The question whether the civil court has got jurisdiction to entertain and the suit is a substantial question of law. The relief claimed by the plaintiff cannot be granted if the civil court has no jurisdiction to entertain the suit and as such it has to be held that the question whether the civil court has got jurisdiction to entertain the suit of this nature is a substantial question of law. The latest judgment of the Apex Court referred to above was reported in year 1997.

27. In the above circumstances, it cannot be contended that the appellants have no right to advance arguments on the question of jurisdiction of the

court. In view of the latest judgment of the Apex Court referred to above, the civil court has no jurisdiction to entertain the suit for declaration that

the order of assessment made by the Electricity Board is not valid in law. The question whether the plaintiff is entitled to insist the defendants to fix

the demand of supply meter to service connection 102 will not arise at this stage without exhausting the remedy before the appellate authority.

Therefore, the plaintiff is not entitled to the relief in respect of prayer (b), (c) and (e). The plaintiff is at liberty to avail the remedy of appeal and

after exhausting the said remedy, he is entitled to file the suit, if necessary.

28. I hold the courts below did not properly advert to the above aspects of the case. I hold that I the suit for declaration in respect of show cause

notice and demand for fixing meter are not maintainable in law and as such the suit is liable to be dismissed in so far as the said reliefs are

concerned.

29. In the result, the second appeal is partly allowed. The judgment and decree of the courts below that the plaintiff is entitled to declaration and

injunction in respect of relief b, c and e are set aside. The judgment and decree of the courts below regarding relief No. (a) and (d) are confirmed.

There will be no order as to costs.