

Rajeev Vs. State of Kerala

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Court : Kerala

Decided On : Nov-07-2013

Judge : Honourable Mr.Justice V.K.Mohanan

Appellant : Rajeev

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE S.S.SATHEESACHANDRAN THURSDAY, THE 7TH DAY OF NOVEMBER 2013 16TH KARTHIKA, 1935 AS.No. 522 of 2000 (D) ----- AGAINST THE

JUDGMENT

IN OS 201996 of ADDL.SUB COURT, ALAPPUZHA, DATED 28-03-1998. APPELLANT/PLAINTIFF:- ----- K.V.BHUVANENDRAN, KURUPASSERIL, NORTH ARYAD MURI, KOMALAPURAM VILLAGE. BY ADV. SRI.J.OM PRAKASH RESPONDENTS/DEFENDANTS:- ----- 1. THE KERALA STATE ELECTRICITY BOARD, REPRESENTED BY ITS SECRETARY, VIDHYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM.

2. THE ASSISTANT EXECUTIVE ENGINEER, KERALA STATE ELECTRICITY BOARD, ELECTRICAL MAJOR SECTION, S.L. PURAM, ALAPPUZHA. BY ADV. SRI.S.SHARAN, SC, K.S.E.BOARD THIS APPEAL SUITS HAVING BEEN

FINALLY HEARD ON0711-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: S.S.SATHEESACHANDRAN, J.

= = = = = A.S.No.522 of 2000. = = = = = Dated this the 7th November, 2013.

JUDGMENT

Plaintiff is the appellant. Suit was one for injunction. After trial, suit was dismissed. Aggrieved by the decree of dismissal he has preferred this appeal.

2. Plaintiff is the Proprietor of an oil mills, namely, Ambili Oil Mills, situate in North Aryad, Alappuzha. Executing a minimum guarantee agreement with the first defendant Electricity Board, plaintiff got electric supply for functioning his oil mills. He could run the factory only for six months and had to close it down due to scarcity of working capital, and as such some delay occurred in paying the minimum charges guaranteed to the Electricity Board, according to plaintiff. Coercive steps were initiated by the defendants to realise exorbitant sum, as if such amount was due from him towards the minimum charge in terms of the agreement. Plaintiff was called upon to pay a sum of A.S.No.522/2000. 2 Rs.1,27,377/- towards the dues alleged threatening him disconnection of electric supply to his establishment. Steps so taken by the defendants are illegal, was his case to seek a decree of injunction. Second defendant, an officer working in the first defendant Board filed a written statement disputing the allegations imputed in the plaint. Among other contentions the defendant also challenged the maintainability of the suit. Whatever amounts legally due to the defendants alone was sought to be recovered in terms of Ext.B1 agreement, was the case of the defendant.

3. Learned Sub Judge appreciating the pleadings of the parties and also materials tendered in the case coming to the conclusion that the plaintiff is not entitled to the discretionary relief canvassed, dismissed the suit. Correctness and legality of that decision is challenged in this case.

4. I heard learned counsel on both sides. Learned counsel for appellant confined his submissions to urge for reservation of the right of appellant despite the dismissal of A.S.No.522/2000. 3 his suit, to move an appeal before the competent authority as provided under Clause 48 of Regulations Relating to Conditions of Supply of Electrical Energy, 1990 to raise his objections over the demand made by the Board towards the charges under the minimum guarantee agreement.

5. A suit of the nature to injunct the demand made to a consumer by the Board cannot be entertained before the civil courts except where it is shown that the proceedings relating to the demand are vitiated on account of violative of fundamental fairness of procedure. Apex Court in Punjab State Electricity Board v. Ashwani Kumar (1997(5) SCC120 examining the question whether civil courts have jurisdiction to entertain a suit of this nature has held thus: "Section 9 of the CPC 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 civil 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 A.S.No.522/2000. 4 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." Clause 49 of Conditions of Supply of Electrical Energy, 1990 provides an alternative efficacious remedy to the plaintiff if he has any grievance over the demand by an officer of the Board on the charges claimed towards the amount due under Ext.B1 agreement. A right of appeal so provided has necessarily to be exhausted by the party aggrieved and he cannot straight away rush to the civil court whatever be his grievance over the demand made by the statutory authority. A suit filed seeking injunction to restrain the statutory authority from enforcing the demand as provided under Ext.B1 agreement and the rules applicable, cannot be entertained and adjudged by the civil court. So much so, I find dismissal of the suit

by the court A.S.No.522/2000. 5 below does not call for any interference. But, I make it clear that dismissal of the suit shall not stand in the way of appellant seeking appropriate relief as provided by the statutory rules, and if any such representation is moved, it shall be considered and disposed by the authority concerned in accordance with law. Subject to the observations made above the appeal is dismissed directing both sides to suffer their costs. Sd/- S.S.SATHEESACHANDRAN, (Judge) Kvs/- -// true copy //- PA to Judge. A.S.No.522/2000. 6 S.S.SATHEESACHANDRAN, J.

= = = = = A.S.No.522 of 2000. = = = = =

JUDGMENT

Dated:

7. h November, 2013. A.S.No.522/2000. 7

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