

R.S.E.B. Vs. Deepak Oils

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Court : Rajasthan

Decided On : Mar-10-1998

Reported in : AIR1998Raj176

Judge : Mohd. Yamin, J.

Acts : [Electricity Act, 1910](#) - Sections 26

Appeal No. : Civil First Appeal No. 94 of 1981

Appellant : R.S.E.B.

Respondent : Deepak Oils

Advocate for Def. : Jai Kishan, Adv. for Dinesh Mahaeshwari, Adv.

Advocate for Pet/Ap. : D.S. Sisodia, Sr. Adv. assisted by Manish Sisodia, Adv.

Disposition : Appeal dismissed

Judgement :

Mohd. Yamin, J.

1.This appeal on behalf of the Rajasthan State Electricity Board has been preferred against the judgment and decree of the learned Addl. District Judge, Bhilwara. M/s. Deepak Oil Mills plaintiff-respondent filed a suit for declaration with following averments. Plaintiff's firm was a registered partnership firm having Rang

Lal and Mahesh Kumar as partners. It was carrying on the business of oil production and its sale. the Firm had taken electric connection from the Rajasthan State Electricity Board having account No. 3-6-21. The oil mill which was being run by the plaintiff-respondent was seasonal and used to work from November to May every year. The Firm had an electric meter of 60 horse power. The Electricity Board sent a supplementary bill No. 443709 on 23-3-79 by registered post which mentioned the average consumption. It amounted to Rs. 21,158,40/- and payable till 11-4-79. It was also mentioned in the letter enclosed with the bill that the body seal and the terminal seal of the meter were found broken and the average consumption of three months was taken into consideration. As such the plaintiff-respondent was asked to deposit Rs. 21,158,40/- till 11-4-79. He was to deposit an amount of Rs. 25,816,40/- after due date. It was also averred that an amount of Rs. 230/- as penalty for breakage of body seal and terminal seal was paid and a sum of Rupees 300/- was also paid as the rent of current transformer. The said bill was issued by the Asstt. Engineer who was not authorised to issue. It was further averred that the allegation of theft of electricity or misuse of electricity by illegal means was false. The meter was not tested in the laboratory nor there was any basis to issue the questioned bill. The plaintiff was alleged to have broken the body seal and terminal seal of the meter for which penalty had been paid and the bill sent by the Electricity Board was illegal. A declaration was sought that the electricity connection may not be disconnected, and the amount of Rs. 25,816,40/- be not recovered from the firm.

2. In reply the Board submitted that the factory was not seasonal and that on 2-11-79 the Asstt. Engineer (Vigilance) checked meter and found body seal and terminal seal broken. With the result on 24-11-79 new meter was installed. The bill was prepared on the basis of three months consumption as shown in the new meter. It was admitted that an amount of Rs. 530/- was received by the Electricity Board. It was submitted that it was not necessary to get the meter tested from the laboratory. That the amount paid by the plaintiff was insufficient. It was also averred that the connection was first installed on 1-7-74 but since the meter stopped working new meter was installed on 9-8-74. It was found that the meter was tampered with and hence third meter was installed on 4-10-76. This meter was checked and its body seal and terminal seal were found broken. A

panchnama was prepared. The meter was not giving correct reading and the bill was issued correctly on the basis of average. The trial Court framed following issues :

1- vk;k oknh QeZ jftLVMZz QeZ gSvkSj okn i= dh /kkjk ua- 1 esa of.kZr O;fDr bl QeZ ds lk>snkj gS

2- vk;k okn i= dHkh dks VZ Qhl dsdkj.k pyus ;ksX; ugh gS

3- vk;k izfroknh }kjk 'kqnk fcyrknknh 25816@:- 40 xyr vk/kkjghu] voS/k ,oa fcuk vf/kdkj ds gS

4- nknjlh D;k gksxh

3. Plaintiff examined Rang Lal and defendant examined D.W. 1 Laxmi Narain. Learned Addl. District Judge after hearing the parties decreed the suit.

4. I have heard the learned counsel for both the parties and gone through the judgment as well as the record of the trial Court.

5. Learned counsel for the appellant submitted that the court-fee paid by the plaintiff was insufficient and instead of paying the court-fee on declaration he should have paid on the amount of bill. This argument is not acceptable for the simple reason that the suit was filed about declaration.

6. The second argument of the learned counsel for the appellant is that the finding of the trial Court on issue No. 3 is erroneous and should be set aside. On the ground that when checking was done seal was not tampered and that report of laboratory is not available on record. Admittedly meter was not sent to laboratory for test. The finding on issue No. 3 is based on the evidence led by the parties. Burden of this issue lay upon plaintiff who examined himself as P.W. 1. According to him in the month of August, 1978 the Junior Engineer had checked the meter. He stated that the body seal and terminal seal were not broken by the plaintiff but in the month of November, 1978 a new meter was installed and the old meter was taken but the same was not tested in the laboratory. Oral requests were made by plaintiff for the purpose. Even written request was made. The written requests are

Ex. 3 & 4 on record but the fact remains that meter was not tested in laboratory. A request Ex. 5 was also made by the plaintiff to the effect that since the meter was not tested by laboratory the question of tampering with the seal or of theft of electricity or fraud did not arise. The appellant did not pay any heed to this representation and no report was supplied to the plaintiff respondent. D. W. 1 Laxmi Narain who was examined on behalf of defendant stated that when meter was checked its body seal and terminal seal were not available and even box seal was not found. He stated that at the time of checking it was found that the cover was put in such a condition that it was removable. Memo Ex. A-1 was prepared. Electricity was disconnected on 25-1 -78 a new meter was installed. He has also stated that on earlier occasion meter was installed on 4-10-76 but to the utter surprise the electricity board did not get any meter tested from the laboratory and even then bill on the basis of average was prepared which was definitely was not correct according to rules. A crucial point in this case is whether meter was tested in laboratory but it is not proved and it is an admitted case that the meter was not tested in laboratory. As such the bill on the basis of average reading could not should not have been issued. Finding on issue No. 3 does not require interference.

7. Consequently, there is no force in this appeal. It is hereby dismissed. Costs of both the Courts are made easy.

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