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HIGH COURT OF DELHI AT NEW DELHI

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RSA 100/2009

Date of decision : 31st July, 2009

SMT. DEEPIKA KALRA

..... Appellant

Through : Mr. Som Dutta Sharma,
Advocate with
Mr. H.S.Thukral, Advocate
Mr. K. Viswanath, Advocate

Versus

BSES RAJDHANI POWER LTD.

.....Respondent

Through : Mr. Sunil Fernandes, Advocate
with Mr. Rajat Jariwal,
Advocate

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CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest ?

J U D G M E N T

ARUNA SURESH, J. (Oral)

CM APPL.10434/2009 (exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of

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RSA 100/2009

1. Appellant (hereinafter referred to as 'Plaintiff') is a consumer of electricity vide K.No.6610 A 060032 (earlier 6610 B 060032), Meter No.27058528 of 23 KVA sanctioned load at A-7, Gali No.1 Rajapuri, Uttam Nagar, New Delhi.
2. Plaintiff found the meter burnt on 25.7.2007 and informed the respondent (hereinafter referred to as 'Defendant'). Thereafter a new meter bearing No.27102445 was installed.
3. After testing of the burnt meter, a meter test report No.40261 dated 8.10.2007 was submitted whereby the said meter was found tempered. The defendant issued a Show Cause Notice on 15.11.2007 for dishonest abstraction of energy (DAE). The Assessing Officer passed a speaking order on 29.1.2008 holding that an unauthorized meter was in use at the premises and theft of electricity was established under Delhi Electricity Code and Performance Standards Regulations and Section 135/138 of the Electricity Act (hereinafter referred to as 'Act'). Consequently, defendant raised an

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assessment bill dated 6.2.2008 for theft amounting to Rs.8,85,008/-. Since amount of this bill was not paid by the plaintiff, he received another Notice under Section 56 of the Electricity Act on 15.2.2008 wherein he was informed that the electricity supply would be disconnected if the bill was not paid within 15 days.

4. Challenging this bill, plaintiff filed a writ petition which was dismissed on the ground that the matter invoked disputed question of fact. Hence, plaintiff filed suit No.360/2008 in the civil court seeking declaration that the impugned bill dated 6.2.2008 and the notice of disconnection of electricity as well as the order of the Assessment Officer is illegal, unjustified, arbitrary and null and void. He also prayed for decree of permanent injunction for restraining the defendant, its employee, etc. from disconnecting power supply through his premises.
5. The trial court vide order dated 22.10.2008 allowed the interim injunction application and also disposed of the entire suit. Aggrieved by the said judgment and decree of the trial court, defendant went in

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appeal. The first Appellate Court vide impugned order dated 14.7.2009 was pleased to set aside the trial court's order on various grounds and also that Civil Court has no jurisdiction to entertain the suit while relying upon '**B.L. Kantroo vs. BSES Rajdhani Power Ltd, 154 (2008) DLT 56 (DB)**'.

This second appeal has been preferred by the plaintiff assailing the judgment of the First Appellate Court dated 14.7.2009.

6. One of the substantial questions of law as suggested by the plaintiff in the appeal is "*Whether the speaking order passed by Assessing Authority on the basis of patently wrong testing report from the laboratory in respect of a different meter can form the basis of impugned bill raised by the respondent against the appellant?*" This question is a pure question of fact and does not raise any substantial question of law.
7. The other questions of law as formulated pertain to the jurisdiction of the civil court to entertain the suit filed by the plaintiff.

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8. **B.L. Kantroo's case (supra)** has specifically dealt with the question of jurisdiction of a civil court to entertain a suit of declaration and injunction as prayed by the plaintiff in this case. It also interpreted the provisions contained in Section 126/127 and 135 vis-à-vis Section 145 of the Electricity Act which bars the jurisdiction of a civil court to entertain a suit and proceedings in respect of any matter which an assessing officer is empowered to determine and no injunction can be granted by any court or other authority in respect of any action taken or to be taken in pursuance of power conferred.

9. The facts and circumstances of the said case are similar to the fact and circumstances before this court in this appeal. In **B.L. Kantroo's case (supra)** it was observed in para 13:-

"13. On plain reading of the aforesaid section, the jurisdiction of the civil Court is excluded for entertaining any suit or proceeding in respect of any matter which the assessing officer referred to in Section 126 or the appellate authority referred to under Section 127 or adjudicating officer appointed under this act has to determine. It is further expressly

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provided that no injunction shall be granted by any Court or any authority in respect of any action taken or to be taken in pursuance of powers conferred or under this Act. Therefore, there is express provision for excluding the jurisdiction of the Civil Court in respect of the matters, which the assessing officer has to decide under Section 127 of the Act. Therefore, pending the procedure of assessment under Section 126 and pending the decision by the appellate authority or the adjudicating officer, as the case may be, no injunction can be granted by the civil Court."

10. Learned counsel for the plaintiff has submitted that Section 145 of the Electricity Act bars the jurisdiction of a court in respect of any matter which an assessing officer as referred under Section 126 or an appellate authority referred to in Section 127 or the adjudicating officer appointed under this Act is empowered or under this Act to determine. However, this Section does not bars the jurisdiction of the civil Court where the assessment of theft or energy has been given and a bill is raised for theft as per the provision of Section 135 of the Act. The assessment under Section 126 and 135 of the Act are absolutely different from each other and operate in different fields.

11. It is not in dispute that there is no specific provision under Section 145 of the Act for exclusion of jurisdiction of a civil Court to entertain any proceedings in respect of any matter which the special court is empowered by or under the Act to determine. An offence under Section 135 of the Act does not find mention in Section 145 of the Act. However, any dispute about civil liability in theft cases is impliedly excluded from the jurisdiction of the civil Court in view of the provision contained under Section 153/154 of the Act wherein special court has got the jurisdiction to determine any dispute regarding the quantum of civil liability specifically in theft cases and the said Court can act as civil Court as well as criminal Court while adjudicating the cases before it.
12. Thus, it is clear that though, not specifically but, by necessary implication the appropriate competent authority should hear the parties, consider their objections and pass a reasoned order either accepting or negating the claim and, therefore, under the circumstances civil Court has no

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jurisdiction by necessary implication to entertain a suit for declaration and injunction against specially constituted Forum in view of the specific provisions found in the Electricity Act.

13. In '**B.L. Kantroo vs. BSES Rajdhani Power Ltd's case (supra)** it was observed in para 28:-

"28. It is well settled that 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. The scheme of the Electricity Act is complete in itself and thereby the jurisdiction of the civil Court to take cognizance of the cases under the Act, by necessary implication, stood barred. The Act provides for the jurisdiction of the Tribunals and/or appropriate forum and also hierarchy of appeals or revisions and gives finality to the orders passed thereunder. This also necessarily implies that the jurisdiction of the civil Court to take cognizance of the suit of civil nature covered under Electricity Act stands excluded. Consumer cannot approach civil Court without exhausting alternative remedies provided under Electricity Act."

14. Even if there is no criminal complaint filed against the plaintiff under Section 135 (1) of the Act, the special court has the jurisdiction to entertain a civil

dispute raised by the plaintiff. Reference is made to
'Varshal Kapoor vs. BSES Rajdhani Power Ltd,
CM (M) 2552009, decided on 20.7.2009.

15. Learned counsel for the defendant has submitted that in case suit is filed by the plaintiff in the special court, he shall not raise any question of jurisdiction before the said court.
16. Hence, I conclude that there is no substantial question of law which needs to be determined by this court. Hence, the appeal deserves dismissal and is accordingly dismissed.
17. CM APPL.10435/2009 for stay also stands disposed of.


(ARUNA SURESH)
JUDGE

JULY 31, 2009
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