



## J U D G M E N T

**1.** This is the suit for declaration and for permanent injunction. The suit is valued at Rs. 29,93,631/- and the advolendum court fee is paid accordingly.

**2.** As reflected in the plaint, the plaintiff's case in brief is that the plaintiff being a company incorporated and registered under Companies Act. 1956 has been carrying the business of plantation, manufacture and sell of tea as a tea planter having its registered office at 17, R.N. Mukharjee Road, Kishore Bhawan, Kolkatta 700001. The plaintiff is also the owner of Monmohini Tea Estate situated at Dhekiajuli within the Dhekiajuli Revenue Circle (herein after called as plaintiff Tea Estate). On the other hand, the defendant uses to purchase, distributes and sells electric energy to consumers within the districts of Central Assam after re-organizing of the parent body that means Assam State Electricity Board. The defendant also raises and submits monthly deferred bills as per its prevailing tariff structure consisting of different types of consumers for administrative reasons of the defendant company. The plaintiff's company falls under the category of tea, coffee, rubber consumer and it falls under the jurisdiction of the Area Manager, Industrial Revenue Collection area in the matter of payment of monthly bills. The plaintiff's company Monmohinipur Tea Estate is a bonafide consumer of defendant under the name and style as C.A.E.D.C.L bearing Consumer No. 009000001031. The plaintiff Tea Estate has been also making regular payment of the energy bills to the defendant No. 3 at Tezpur without default.

**3.** The plaintiff's further case is that on 09-09-2008 the defendant No.3 forwarded a bill for Rs. 29,93,631/- only vide covering letter NO. AM/IRCA/TEZ/IR-TE-45/Dh-1/08 589 dated 09-09-2008 to the plaintiff Tea Estate stating therein ref. 1) MTI report

dated 06-03-05, 2) MTI report dated 08-08-08, sub:- revised bill for extension of connected load and charge of MF, wef April 2005 to July 2008, asking the plaintiff garden for necessary arrangement for payment. After perusal of the bill No. 42/412 date of payment 10-10-08 it reveals that the energy supplier company termed the bill "revised bill amount as per enclosed statement". The Manager of the plaintiff garden was surprised to receive the said bill for purported "revised bill amount as per enclosed statement", to the tune of Rs. 29,93,631/- only. The said bill dated 09-09-08 stated about the bill period which is and pertained to April 2005 to July 2008 and stated further that the instant bill of Rs. 29,93,631/- only is a result of "less billed difference of amount". The defendant company also annexed a copy of report of inspection stated to be dated 15-12-06 showing consumer No. I.R-Te-45/Dh-1 C.T.P.T set "11,000.00/110". In the said report the defendant company also made general remarks "the existing static TRI factor which is not having the provision of recording cumulative power OM hours is replaced with a lab. Tested static TRI factor meter". Meter reading parameter as displayed by both old and new meters are recorded above. But the defendant company through its officers inspected the premises on 06-03-05 and on 15-12-06 and it was never found during the said inspection any malpractice by the plaintiff garden or there was any tampering of the meter and as the meter was found operative and found functioning.

**4.** The plaintiff's further case is that the plaintiff Tea Estate used to receive energy bill to the extent of its use and used to make regular payments thereupon without any default. No any arrear was shown in the said monthly energy bills particularly in the bills received during the period from April 2005 to July 2008. But to the utter surprise to the plaintiff the defendants forwarded a new revised bill and showing the difference of amount through the

defendant No. 3 for the said period. Moreover, the installation of transformer/meter and other allied instruments, equipment, gazette, and test and sealing of such items are within the exclusive control and command of the defendant's Company and they have the monopoly and control over the entire works of the installation, connection and supply of energy and to raise monthly energy bills thereunder for the consumption made by the consumer. So there was no scope of anomaly over the matter. So, the defendant company has no right to raise the aforesaid revised bill dated 09-09-08 for the period from April 2005 to July 2008 amounting to Rs. 29,93,631/- in connection to the energy supply to the plaintiff Tea Estate which was installed and sealed by defendant's Company in course of official works, rules and notification framed by the defendant's Company in this regard. The plaintiff's garden never defaulted in the matter of payment of regular monthly energy bill to the defendant's company. So, there was no outstanding in payment of due bills by the plaintiff. The defendant's Company had no any reason to raise the instant 'revised bill' dated 09-09-08 the purported dues related to the period from April 2005 to July 2008 and therefore, the purported bill not having been raised within the statutory period of 2 years from the date when such sum became due and the bill related to specific period upto July 2008 and not being shown continuously recoverable in the monthly energy bills as an arrear as such the demand of the defendant's company for the said revised bill has become time barred and not recoverable from the plaintiff under the specific provisions u/s 56 (2) of the Electricity Act, 2003. So, by the unjust and unlawful acts of defendant's company through it's Officers by raising and demanding aforesaid untenable, non-recoverable and palpably time barred revised bill has illegally invaded upon and threatened on the plaintiff's valuable right of due enjoyment of electric energy from the defendant's company as a bonafide Industrial consumers. So, it has become

necessary to seek the decree of declaration that the said revised bill dt. 09-09-08 is not due and recoverable from the plaintiff under law and equity. The plaintiff has the reason to apprehend that the electric connection can be disconnected and disrupted. The plaintiff has also reason to apprehend that they may suffer irreparable loss, injury if the power of supply is disconnected. So, the plaintiff has filed the suit for permanent injunction also.

**5.** Though the plaintiff Tea Estate through its garden management made several approaches during October, November and December, 2008 before the highest authority (revenue) of the energy supplier company at Bijuli Bhawan, Guwahati, Assam to desist from enforcing the unjust bill of Rs. 29,93,631/- only but no relief has been granted by the defendants. Rather the defendants have been trying to recover the unjust amount through the current bill and for this matter the plaintiff's Tea Estate had to approach the defendant No.3 several times against the threat of disconnection.

**6.** The cause of action for the suit arose on 16-03-05 the date of inspection, on 08-08-08 the date of 2<sup>nd</sup> inspection, on 09-09-08 the date of bill for Rs. 29,93,631/- and on 10-10-08 the due date of payment of revised bill, on 26-08-08 the date of payment of last energy bill for Rs. 3,22,908/- only 01-10-08,08-11-08,05-12-08 and thereafter at Monmohinipur Tea Estate and within the jurisdiction of this Court. So, the plaintiff has prayed for a decree of declaration that the revised bill No. 42/412 dt. 09-09-08 for the period from April, 2005 to July, 2008 Rs. 29,93,631/- raised by the defendant's Company is not recoverable and it is time barred U/s 56(2) of the Electricity Act, 2003. The plaintiff has further prayed for a decree of permanent injunction prohibiting the defendant's Company from recovering the said amount and also from disconnecting the electricity connection/power supply and also costs of the suit.

**7.** After receiving the summon, the defendants have contested the suit by filing the written statement on the grounds that the suit instituted by the plaintiff is not maintainable in its present form, there is no cause of action for institution of the suit, the suit is barred by limitation, the suit is his by principle of waiver, estoppel and acquiescence, the suit is bad for non-joinder of necessary parties and misjoinder of unnecessary parties and the suit is not properly valued. The defendants have also denied most of the allegations of the plaintiff in their written statement. They have further stated in the written statement that the energy bill for consumption of energy by the plaintiff Tea Estate is being done in the Office of Area Manager of Central Assam Electrical Distribution Co. Ltd. The detail description of consumer is as follows :

- a) Name of Consumer : Manager, Monmohinipur  
Tea Estate.
- b) Consumer No. : IR-TE-45-DHT
- c) Conn. Load : 459 Kw.
- d) Meter No. : ASE -18210
- e) MF : 1000.

**8.** The defendants have further stated in the written statement that since April, 2005 to July, 2008 the plaintiff Tea Estate has not paid the outstanding amount of Rs.29,93,631/- which is liable to be paid by him as per MF -1000 even though amount of bill preferred on the basis of MF – 500 was paid earlier. The bill was also forwarded to the Manager of Monmohinipur Tea Estate, Dhekiajuli on 09-09-08 with supporting statement. The existing old version static trivector meter was replaced by a new version laboratory tested static trivector meter on 15-12-06. All metering works at the site of such testing, inspection and replacement were done in the concerned site in presence of consumer and during the replacement of meter, the Welfare Officer of plaintiff Tea Estate Sri

K. Kalita represented the plaintiff. Moreover, no malpractice was detected at the time of inspection by MTI on 16-03-2005 and on 15-12-2006. The revised bill was served upon the plaintiff due to change of multiplying factor of the Metering Unit. The existing CTR was changed from 25/5A to 50/5A due to result of additional load of 155 KW and consequently overall existing MF -500 had to be changed to MF (New) -1000. The same was changed in presence of plaintiff or its representative and as per Clause 15(g)(ii) of the Terms and Conditions of Supply, 1998 readopted in 2004, the defendants have got right to raise revised bill in case of any defective CTs & PTs and or for any calculation mistake etc. for the period of such mistake. And the revised bill was served only after detection of mistake and it was served within the statutory period. So, the revised bill is not unjust and unlawful and the amount of Rs. 29,93,631/- is legally recoverable from the plaintiff as per Clause of Terms and conditions of Supply of Assam State Electricity Board and the plaintiff is also legally liable to pay the amount as per the impugned revised bill. As such, the question of suffering loss or irreparable loss does not arise at all. It is also normal practice to serve revised bill along with the current bill by the Board/Company and the disconnection of power supply to consumer is made as per Terms and Conditions of supply. Hence, the question of illegal disconnection does not arise. So, the plaintiff is not entitled to the decree for declaration and also for permanent injunction as claimed in the plaint. The suit has been instituted vexatiously and falsely. So, the defendants have prayed for dismissing the suit with compensatory cost of Rs. 3000/- U/s 35(A) of CPC.

**9.** On the basis of contention raised in the plaint and the written statement and after hearing both sides, the following issues are framed :-

- 1.** Whether there is any cause of action for the plaintiff to file the present suit ?
  - 2.** Whether the suit is maintainable in its present form?
  - 3.** Whether the suit is barred by limitation?
  - 4.** Whether an amount of 29,93,631/- under the revised bill dt. 09-09-08 raised by the defendant company is legally recoverable from the plaintiff company for supply of electricity by the defendant company to the plaintiff company ?
  - 5.** Whether the plaintiff is entitled for a decree as prayed for ?
  - 6.** To what relief / reliefs the parties are entitled ?
- 10.** During the course of hearing, the plaintiff has examined the Manager and attorney of the plaintiff Tea Estate as PW 1 and proved 16 kinds of documents in support of the plaintiff's case.
- On the other hand, the defendants have examined 3 DWs and proved 5 kinds of documents in support of defendant's case.
- 11.** Both parties have also submitted written argument during the final hearing by placing reliance on their respective grounds.
- 12.** On the backdrop of aforesaid material fact and also the submissions of learned counsel of both sides, I like to discuss the issues one by one for finally deciding the suit.

**Issue No. 1.**

**13.** Whether there is cause of action for the plaintiff to file the present suit ?

Regarding this issue, the plaintiff has contended in the plaint as well as in the evidence that the plaintiff Tea Estate has the cause of action to file the present suit because, the plaintiff Tea Estate is not liable to pay the revised bill of Rs. 29,93,631/- because, the plaintiff committed no default in payment of regular energy bill to the defendant's company. The plaintiff has further stated that defendant's Company had no any reason to raise the instant revised bill dt. 09-09-08 from the period from April, 2005 to July, 2008 and therefore the purported revised bill not having been raised within the statutory period from the date when such amount became due and the bill related to the specific period upto to July, 2008 only and not being shown continuously recoverable in the monthly energy bills as an arear amount, so such demand of the defendant company for paying the said revised bill has become time barred and not recoverable from the plaintiff under the specific provisions of Section 56(2) of the Electricity Act, 2003.

On the other hand the defendants have contended in the written statement as well as through the evidence of the DWs that due to change of CTR from old 25/5A to new 50/5A and as the CTR was changed due to enhancement of additional load and similarly MF was changed from 500 to 1000, so, revised bill had to be raised and the defect was detected on 16-03-05 in the report of MTI. Actually, the bill should have been calculated on the basis of New MF 1000 and new CTR 50/5A due to enhancement of additional load of 155 KW. So, it can be stated that though it is termed as revised bill but it is a part of continuous monthly regular bill for which the plaintiff Tea Estate has to pay the defendant company

under Clause 15(g) (ii) of Terms and conditions of Supply, 1988, readopted in 2004.

On meticulous examination of material on records, it is found that there are so many facts in the suit which are asserted by the plaintiff and denied by the defendants and it is also found that the Civil Court has the power to adjudicate the matter and considering such facts, I am of the opinion that there is a cause of action for the plaintiff Tea Estate to institute the suit and for that reasons, this issue is decided in affirmative.

### **Issue No. 2.**

**14.** Whether the suit is maintainable in its present form?

Regarding this issue, the defendants have raised the plea that the suit is not maintainable in its present form, but they have not specifically asserted the cause or ground for raising the plea that the suit is not maintainable in its present form. On appreciation of evidence of DWs it is also found that such plea of defendants has not been substantiated either by oral evidence or documentary evidence. So, the plea raised by the defendants regarding maintainability of the suit is not justified and for that reasons, this issue is also decided in affirmative.

### **Issue No. 3.**

**15.** Whether the suit is barred by limitation ?

Regarding this issue, the defendants have averred in the written statement that the suit is barred by limitation. But the defendants have not specifically stated the reason or grounds for which the suit can be declared as barred by limitation. Moreover, it has been pleaded by the plaintiff in the plaint as well as in the evidence that the defendants submitted the revised bill No. 42/412

on 09-09-08 by calculating the amount with effect from April, 05 to July, 08. It is also found that the plaintiff has instituted the suit on 05-01-209. So, considering such facts as appears in the case record, I am of the considered opinion that the suit is not barred by limitation either by Limitation Act or by any other Act and for that reasons stated above, this issue is decided in negative.

**Issue No. 4.**

**16.** Whether an amount of 29,93,631/- under the revised bill dt. 09-09-08 raised by the defendant company is legally recoverable from the plaintiff company for supply of electricity by the defendant company to the plaintiff company ?

Regarding this issue, the plea of plaintiff raised in the plaint as well as in the evidence that plaintiff Tea Estate used to receive energy bill to the extent of its use and the plaintiff tea estate has been regularly paying the energy bill without any default. Even then no arrear amounting to Rs. 29,93,631/- was shown in the monthly energy bill. The Manager of the plaintiff Tea Estate had no knowledge about the arrear of the bill. Moreover, the instalation of all allied instruments, equipment, gazette, and test and sealing of such items are within the exclusive control and command of the defendant Company and they have the monopoly and control over the entire works of the installation, connection and supply of energy and to raise monthly energy bills. Even then, the plaintiff committed no fault in payment of regular energy bill. The plaintiff has further pleaded in the plaint as well as in the evidence that the purported bill not having been raised within the statutory period of 2 years from the date when such sum became due and the bill related to specific period upto July 2008 only and not being shown continuously recoverable in the monthly energy bills as an arrear as

such the demand of the defendant's company for the said revised bill has become time barred and not recoverable from the plaintiff under the specific provisions of section 56 (2) of the Electricity Act, 2003. In support of the claim of the plaintiff regarding the regular payment of energy bill, the plaintiff has exhibited some documents as Ext. 4 to 13 in support of such plea. On perusal of the said documents, it is found that no arrear amounting to Rs. 29,93,631/- was shown in the said bill. During the cross-examination of PW 1, the defendants have failed to bring out the major contradiction or infirmities for which the evidence of PW 1 can be disbelieved. So, the plea raised by the plaintiff that the amount of Rs. 29,93,631/- shown in the revised bill is not recoverable from the Plaintiff Tea Estate from the supply of electricity by the defendant's company has been adequately substantiated by both reliable, oral as well as documentary evidence.

On the other hand, the defendants have contended in the written statement as well as in the evidence of DWs that due to change of multiplying factor of meter of unit and due to change of existing CTR from 25/5A to 50/5A and also due to release of additional load of 155 KW the overall existing MF -500 had to be changed to over all MF (New) -1000 and the changes was made in presence of representative of the plaintiff Tea Estate. The earlier bills were prepared on the basis of MF – 500 in place of MF -1000 mistakenly and the alleged revised bill had to be prepared and sent to the Manager of plaintiff's Tea Estate. The plaintiff is also legally bound to pay energy bill as per Terms and Conditions of Supply, 1998 readopted in 2004.

**17.** During the course of final hearing, the learned counsel for the plaintiff has raised the plea that the revised bill submitted by the defendant's company has become time barred and not

recoverable from the plaintiff Tea Estate under the specific provision of section 56(2) of the Electricity Act, 2003. Because, the revised bill submitted vide Bill No. 42/412 dt. 09-09-08 relates to the period from April, 05 to July, 08. Therefore, the purported bill not having been raised within the statutory period of 2 years from the date when such sum became due as the bill relate to specific period upto July, 08 and not being shown as arrear continuously in the monthly energy bills the purported revised bill can not be recovered from plaintiff Tea Estate. . The learned counsel for the plaintiff has insisted only on the point that the revised bill amounting to Rs. 29,93,631/- is not recoverable in view of the provision of section 56(2) of Electricity Act. The learned counsel for the plaintiff has vehemently argued that two conditions must be complied with by defendants in case of raising the arrear amount for energy consumption. One the claim should be made within two years and the other is that the arrear amount should be shown in monthly bills. But the defendant's company did not complied with the said condition to justify their claim over revised bill. In this context, I like to mention the provision of section 56(2) of Electricity Act, 2003. The section provides as :

**"2. Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless uch sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."**

On bare reading of the aforesaid provision of law, it is found that for raising arrear energy consumption bill two condition as submitted by the learned counsel for the plaintiff must be fulfilled.

**18.** On perusal of documents exhibited by the DW 1, it is found that the DW 1 has proved some testing report regarding replacement of CT/PT. The DW 1 has also exhibited the statement of previous bills from the month of April, 05 to July, 08.

**19.** The learned counsel for the defendants has submitted during the course of argument that due to mistake and oversight the bill amount for the period from April 2005 to July 2008 was raised on the basis of old MF - 500 instead of MF - 1000. Actually, the bill should have been calculated on the basis of New MF 1000 and new CTR 50/5A due to enhancement of additional load of 155 KW. The learned counsel has further submitted that all these happened due to oversight of billing personnel but the fact was within the knowledge of plaintiff Tea Estate. So, the plaintiff is bound to pay the revised bill as the revised bill is a part of continuous monthly regular bill for which the plaintiff Tea Estate had to pay the defendant's company under Clause 15(g) (ii) of Terms and conditions of Supply, 1988, readopted in 2004.

**20.** On appreciation of evidence of DWs, it is found that the DW 1 has admitted in the cross-examination that the defendant's Company never mentioned about the arrear of the bill. No awareness notice was also issued to the plaintiff Tea Estate before giving the revised bill amounting to Ts. 29,93,631/-. The particulars of the revised amount was only shown in the bill submitted on 09-09-08. The DW 2 and DW 3 have also admitted in their cross-examination that the revised bill amounting to Rs. 29,93,631/- was not shown continuously in monthly bills as arrear nor any intimation was also sent to plaintiff Tea Estate regarding the fault in calculation of energy bill. So, considering the materials on record in its entirety, it has become crystal clear that the plaintiff has raised the plea regarding legality of raising of revised bill in view of provision of

section 56(2) of Assam Electricity Act, 2003 as the revised amount was not continuously shown in the monthly energy bill. As the plaintiff has raised the plea in view of the provision of law so, I am of the considered opinion that this issue is required to be decided as per relevant provision of prevailing law i.e. the Electricity Act, 2003.

**21.** On meticulous examination of materials on record, it is also found crystal clear that the defendant's Company neither shown the amount of revised bill as arrear of monthly energy bill nor it has been raised within the statutory period as per provision of law as per above noted provision of law. So, the revised bill amounting to RS. 29,93,631/- is not recoverable and it has become time barred. Moreover, the defendants have admitted that due to fault and mistake committed by personnel of the defendant's Company, the bill could not be prepared on the basis of new CTR 50 /5A and new MF -1000.

**22.** The result of the above discussion is that an amount of Rs. 29,39,631/- only under the revised bill dt. 09-09-08 raised by the defendant's company is not legally recoverable from the plaintiff Tea Estate for supply of electricity by the defendant's company to the plaintiff Tea Estate. And for the reasons stated above, this Issue is decided in negative.

**Issue No. 5 and 6.**

**23.** Whether the plaintiff is entitled for a decree as prayed for and to what relief / reliefs the parties are entitled?

I like to discuss these two issues jointly as both the issues are inter-related.

Regarding these issues, it has already been decided in Issue No.4 that an amount of Rs. 29,93,631/- only on the revised bill dt. 09-09-08 raised by the defendant's Company is not legally recoverable from the plaintiff Tea Estate for supply of electricity by

the defendant's company to the plaintiff Tea Estate. So, the plaintiff is entitled to the decree of declaration that the revised bill No. 42/412 dt. 09-09-08 for the period from April, 2005 to July, 2008 for Rs. 29,93,631/- raised by the defendant's company is not legally recoverable from the plaintiff Tea Estate as it is time barred under the provision of section 56(2) of the Electricity Act. As the said amount is not recoverable plaintiff is also entitled to a decree of permanent injunction from the possible disconnection of energy supply to the plaintiff Tea Estate by the Defendant's Company.

Considering the facts and circumstances of the case, I am of the opinion that the parties are to bear their own cost. Hence, the suit is deserved to be decreed on contest without cost for above relief.

### **O R D E R**

**24.** The suit is decreed on contest without cost for the following reliefs:-

a) It is declared that the revised bill No. 42/412 dt. 09-09-08 for the period from April, 2005 to July, 2008 for Rs. 29,93,631/- only raised by the defendant's Company is not legally recoverable from the plaintiff Tea Estate as it is time barred under the provision of section 56(2) of Electricity Act, 2000.

b) Permanent injunction is granted by prohibiting the defendant's company, their men and agent from recovering the said amount and also from disconnecting the electricity connection / power supply to the plaintiff Tea Estate in reference to Consumer No. 009000001031/ I.R-TE-45/Dh-1 in any manner what soever.

Prepare decree accordingly.

**25.** Judgment is pronounced in an open court, written on separate sheets and enclosed with the case record.

**26.** Given under my hand and seal of this court, I have signed and delivered this judgment on this 23<sup>rd</sup> day of August, 2012.

(M. Kalita)  
Civil Judge,  
Sonitpur, Tezpu

Dictated and corrected by me .

Typedby me

(M. Kalita)  
Civil Judge,  
Sonitpur, Tezpur

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