

IN THE COURT OF FIRST JUNIOR CIVIL JUDGE: CITY CIVIL COURT AT  
SECUNDERABAD.

**Present:- Sri D. Rajesh Babu, M.A.M.L.,**  
First Junior Civil Judge.

**Wednesday,** this the 22<sup>nd</sup> day of December, 2010.

**O.S.No.755/2008.**

**Between:**

Pramod Chandra Modi, S/o: late Sri Manilal Modi,  
aged 60 year, Occ: Business, R/o: 1-8-169,  
P.G.Road, Secunderabad.

... Plaintiff.

And

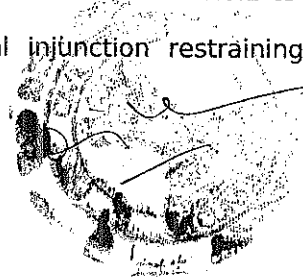
1. S.P.C.P.D.C.L.,  
Represented by it's Managing Director,  
Having their Corporate Office at Singareni Bhavan,  
Red Hills, Hyderabad.
2. Asst. Divisional Engineer,  
Operations D.XVIII, James Street  
City V, Secunderabad.
3. Asst.Accounts Officer,  
ERO-VI/Paradise,  
Secunderabad.
4. Sri Radheshyam S/o: Not known to plaintiff,  
aged about 50 years, Proprietor,  
M/s. Sailors Inn Restaurant, R/o: 19/1,  
Paigah Colny, S.P.Road, Secunderabad.

... Defendants.

This suit is coming on 03-12-2010 for final hearing before me in the presence of Sri C.Balagopal, Advocate for the Plaintiff and M/s. K.R. Koteswara Rao, Advocate for Defendants No.1 to 3 and Sri K. Prabhakar Rao, Advocate for Defendant No.4, upon hearing both sides and having stood over for consideration till to-day, the court delivered the following:-

### **J U D G M E N T**

This suit is filed on behalf of plaintiff for a declaration that the notices dated 26-07-2008 and 26-09-2008 issued by the defendants No.1 to 3 as null and void and also for a consequential injunction restraining the

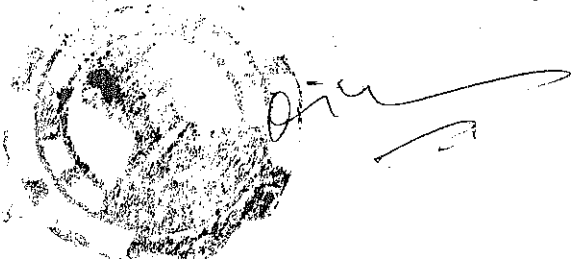


SRI D. RAJESH BABU

defendants from disconnecting electricity supply to the suit schedule property.

2. The brief averments in the plaint are as follows:-

The plaintiff is the owner for the suit schedule property and in the year 1991 he let out the same to defendant No.4 who has done business in the same in the name and style of M/s. Sailors Inn Restaurant by taking it on lease. The said tenant vacated the premises in the year 1997 and ever since then the plaintiff is in peaceful possession and enjoyment of the same and subsequently he let out the same to a new tenant. On 26-09-2008 the plaintiff received a letter from defendant No.2 wherein a sum of Rs.3,75,948/- was claimed to be due from the defendant No.4 since a case was booked on 27-03-1993 with respect to pilferage of electricity. After receipt of the said notice the plaintiff made representation to defendant No.2 vide letter dated 06-08-2008 stating that the dispute was between the old tenant of the plaintiff i.e. defendant No.4 and the other defendants and that the plaintiff is no way concerned with the pilferage case and that the letter dated 26-07-2008 is illegal. The defendants No.1 to 3 have no right to disconnect the electricity supply to the schedule property. Later the plaintiff contacted the defendant No.4 and the defendant No.4 informed that pilferage case was completed wherein it was proved that there was no tampering or pilferage of electricity. Subsequently the plaintiff also received another letter from defendant No.3 stating that due is Rs.61,810-05ps from the earlier tenant i.e. defendant No.4. The defendants also orally threatened to disconnect the electricity supply to the suit schedule property. The plaintiff in fact is regularly paying the electricity bills.

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The cause of action arose within the jurisdiction of this court where the schedule property is situated and hence the suit.

3. A written statement is filed on behalf of defendant No.2 which is adopted by defendants No.1 and 2 and its main contents in brief are as follows:-

The suit is not maintainable. Earlier on the same subject matter the defendant N.4 filed OS.1218/1995 on the file of IV Senior Civil Judge Court, Hyderabad for a declaration that the order dated 15-09-1995 passed by the APSEB as null and void and the said suit was dismissed on merits by Judgment dated 16-12-2003. There was no appeal preferred and the suit is filed by suppressing the said facts, hence the suit is hit by resjudicata also. The electricity service connect facility was availed by defendant No.4 for the suit schedule property and therefore the plaintiff cannot say that he has nothing to do with the electricity service connection usage to the consumer. It is incorrect to say that the plaintiff is not liable to pay the suit amount and that the pilferage case was closed and that there is no civil liability. The defendant No.4 filed an appeal over the assessment of pilferage order and in th same four installments were granted to be paid for 50% amount fixed. The electricity service connection is bearing No.D.6283 for the schedule property in the name of the plaintiff. The dues for the said service connection have to be paid by the consumer. The defendants have every right to recover the electricity charges from the owner since the plaintiff is a party to the L.T. power supply terms and conditions. After taking the installments amount paid the balance due is Rs.61,810/-. The defendant No.4 is an agent f the plaintiff and therefore the owner of the

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schedule property to which power supply was consumed is liable. The plaintiff approached the court with unclean hands by suppressing the relevant material facts and he is not entitled for any declaration and injunction. It is therefore prayed for dismissal of the suit with costs.

4. A written statement is filed on behalf of the defendant No.4 mainly contending as follows:-

The suit is not maintainable. It is true that the defendant No.4 was the erstwhile tenant in the suit schedule property belonging to the plaintiff and that a pilferage case was booked against the defendant N.4 business by the defendants wherein the pilferaged amount was fixed at Rs.3,75,079=25ps. The electricity power was disconnected by the Electricity Board and later with Rs.1,97,011=15ps was paid in four installments the electricity supply was restored to the tenanted premises. Infact an appeal was also preferred and in the appeal the estimated amount was reduced to Rs.2,49,705=20ps. The pilferage case was tried as CC.157/1995 on the file of XI Metropolitan Magistrate, Hyderabad and the same was ended in acquittal as per Judgment dated 04-03-1997. The defendant No.4 filed OS.1218/1995 to declare the order of the Chief Engineer APSEB in 4/1994-95 as null and void. In the said case Rs.25,000/- was deposited and how far the said suit was dismissed since the civil court has no jurisdiction. Therefor a total amount of Rs.2,22,011-15ps was paid by the defendant N.4. However the defendant N.4 has nothing to do with the notices issued by defendants No.1 to 3 to the plaintiff and the defendant N.4 has no knowledge about the same. The defendant N.4 is unnecessarily added as a party to the suit and there is no due to pay the

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amount claimed in the said notices also since it was held by the criminal court that there was no pilferage or tampering. It is therefore prayed for dismissal of the suit with costs.

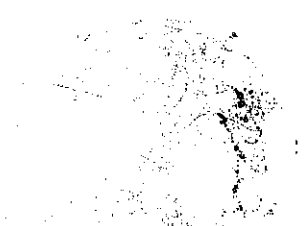
5. On the basis of above pleadings, the following issues are settled for determination of this case:

1. Whether the suit is maintainable?
2. Whether the suit is hit by doctrine of resjudicata?
3. Whether the plaintiff is entitled for a declaration that the notices dated 26-07-2008 & 26-9-2008 issued by the defendants No.1 to 3 are null and void?
4. Whether the plaintiff is entitled for a consequential injunction restraining the defendants from disconnecting the electricity supply to the suit schedule property?
5. To what relief?

6. On behalf of plaintiff, PW.1 is examined and Exs.A.1 to A.4 are marked. On behalf of the defendants, DWs.1 and 2 are examined and Exs: B.1 to B.4 are marked.

7. Heard the arguments from both sides.

8. **ISSUES NO.1 AND 2:-** PW.1 is the Manager looking after the business affairs and property of the plaintiff. DW.1 is defendant No.2 who is examined on behalf of the defendants No.1 and 3 also and DW.2 is defendant No.4. Ex:A.1 is the notice dated 26-07-2008 and Ex:A.3 is another notice dated 26-09-2008 which are sought to be declared as null and void in this case. Ex:A.2 is the reply to Ex:A.1 dated 06-08-2008 and Ex:A.4 is the certified copy of the judgment dated 04-03-1997 in CC.157/1995. Ex:B.1 is the sanctioned letter issued to defendant No.4 wherein the defendant No.4 was permitted to pay the pilferaged amount which was assessed by the defendants N.1 and 3 in four installments.



Ex:B.2 is the copy of the receipt wherein reconnection of service was granted to the suit schedule electrical service facility. Ex:B.3 is the proceedings of the Chief Engineer wherein the said proceedings were challenged in OS.1218/1995 by defendant No.4 unsuccessfully. Ex:B.4 is the particulars of the pilferage connection consumption month wise.

9. The learned advocate for the defendants No.1 to 3 mainly talked the maintainability of the present suit on the file of this court. It is true that earlier OS.1218/1995 was filed by the defendant No.4 for a similar relief with respect to the pilferage assessment. The documents under Exs:A.1 to A.4 and B.1 to B.4 are not disputed by any one of the parties to the suit. When the assessment of pilferage was made and estimated at Rs.3,75,079=25ps the defendant No.4 preferred an appeal before the Chief Engineer in appeal No.4/1994-95 and in the said appeal the Chief Engineer reduced the estimated mount to be paid to Rs.2,49,705=20ps. Subsequently the said order of the Chief Engineer was challenged by the defendant No.4 and to declare the same as null and void by filing OS.1218/1995 and that in the same Rs.25,000/- was deposited. The said suit undisputedly was dismissed on merits as per Judgment dated 16-12-2003. Therefore evidently the notices issued in this case which are sought to be declared as null and void forms part and parcel of the suit proceedings in OS.1218/1995. It is not out of place to mention that the notices under Ex:A.1 and A.3 emanated from and out of the proceedings under Exs:B.1 to B.4 only. When the principal and main order under Ex:B.3 was challenged and since the suit in which it was challenged was dismissed on merits it cannot be said that again on the subsequent proceedings

based on the unsuccessful challenged proceedings can be taken into consideration. This is not a suit where the amount paid is challenged. Therefore Exs:B.1 and B.3 documents are proved to be genuine documents and the plaintiff is entitled to claim the arrears as per the said contents. In view of all the above observations it is proved that the principles of resjudicata will apply to the case on hand.

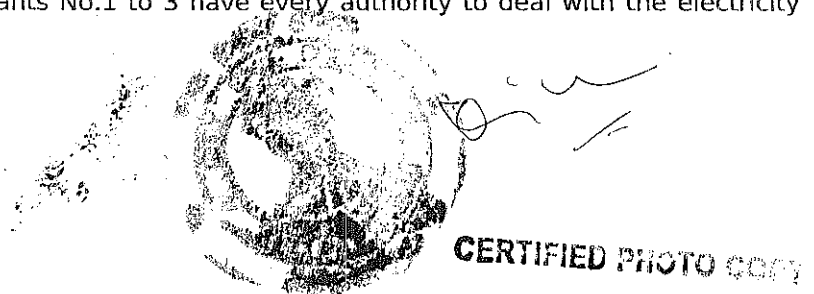
10. The learned advocate for the defendants argued that the suit is not maintainable since no procedure under the Indian Electricity Act was followed and exhausted and that even otherwise no suit or injunction can be granted in view of Sec.145 of the Indian Electricity Act, 2003. A perusal of Sec.145 of the said Act shows that no suit can be filed against any assessment/Order or etc. Further the estimate for the same lies in the appropriate court dealing with the electricity matters and if really the plaintiff is aggrieved he ought to have preferred appeal before the Chief engineer of the A.P.S.E.B. and after exhausted remedies as against Exs:A.1 and A.3 the plaintiff ought to have filed write proceedings under Articles 226 of Indian Constitution Act before the Hon'ble High Court of A.P. In view of all the above observations it is proved by the plaintiff that the suit is not maintainable and that it is hit by the doctrine of resjudicata. Issues No.1 and 2 are answered in favour of the defendants No.1 to 3 and against the plaintiff and defendant No.4.

11. **ISSUES NO.3 AND 4:-** In this case the plaintiff is not examined and the person looking after the business and management of the properties of the plaintiff is examined as PW.1. There is no authorization from the plaintiff in favour of PW.1 to deposed on his behalf. PW.1 does not appear

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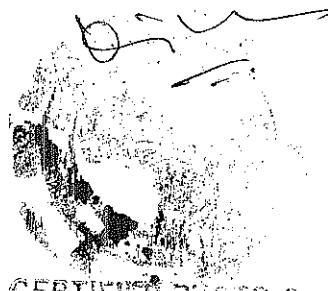
to have any personal knowledge about the facts of the present case. There is no satisfactory explanation and reason given for non-examination of the plaintiff. PW.1 cannot be deposed in the place of plaintiff and in fact he can only depose as an agent who has personal knowledge about the transactions which took place between the plaintiff and defendants so far as the electricity supply is concerned.

12. The notices dated 26-07-2008 under Ex:A.1 and 26-09-2008 under Ex:A.3 are true and correct as seen from the calculations made from the photographs given by both parties in common. The learned Advocate for the plaintiff argued that it is defendant No.4 who was the erstwhile tenant in the suit schedule property and in fact defendant N.4 and the defendants No.1 to 3 are only to look after the pilferage case or collection of money with respect to the same. On the other hand, the defence on behalf of the defendant N.4 is that he has nothing to do with the suit schedule electricity supply. It is to be noted that if any illegal usage of the electricity service connection is made either directly or indirectly by the owner or by anyone on his behalf in the schedule property, the owner is certainly liable to pay the amount for which there was illegal usage of electricity simply because as per Ex:A.4 the pilferage case ended in acquittal does not mean that the plaintiff and defendant No.4 are exempted from paying the balance of the electrical consumption amount assessed when pilferage took place. The order under Ex:B.3 became final and it was not challenged in the Hon'ble High Court of A.P. by way of a writ or other proceedings. Therefore the said order is binding not only on the plaintiff but also on the defendant No.4 and the defendants No.1 to 3 have every authority to deal with the electricity






service cut off if the balance or any electricity consumption bills are not paid. The evidence of PW.2 is not therefore satisfactory and convincing to prove the case of the plaintiff. On the other hand, the evidence of PW.1 is cogent and convincing. Further the evidence and defence of defendant No.4 who is examined as DW.2 cannot be accepted since the defendant N.4 exhausted all the remedies in the subject matter not only under the Electricity Act but also filed a suit in OS.1218/1995. At this juncture, it must be said that the plaintiff cannot escape the liability in paying the arrears of the pilferage assessed amount as claimed under Exs:A.1 and A.3. The plaintiff ought to have filed the suit by preferring to furnish all full and correct particulars about the pilferage case and the proceedings which ensued there on at the instance of defendant No.4. There is suppression of OS.1218/1995 and about the other documents filed by the defendants. The plaintiff cannot escape saying that he was not a party to the proceedings between the defendant No.4 and the other defendants since it is the plaintiff only who let out the suit schedule property to defendant No.4. Certainly when the name of the consumer for which pilferage amount was taxed and assessed is liable to the proceedings. In view of all the above observations, the notices dated 26-07-2008 and 26-09-2008 cannot be declared as null and void and no injunction can be granted in view of the dismissal of the declaration relief. The evidence of DW.1 is cogent, consistent and convincing with that of the written statement contents filed on behalf of the defendants No.1 to 3. The averments in the plaint cannot be accepted. Hence, Issues No.3 and 4 are answered in favour of the defendants and against the plaintiff and defendant No.4.

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13. **ISSUE NO.5:-** In the result, the suit is dismissed with costs.

Dictated to the Personal Assistant, transcribed by her, corrected and pronounced by me in open court on this the 22<sup>nd</sup> day of December, 2010.

  
FIRST JUNIOR CIVIL JUDGE  
CITY CIVILCOURT: SECUNDERABAD.

APPENDIX OF EVIDENCE  
WITNESSES EXAMINED

FOR PLAINTIFF:

PW.1: G. Kanaka Rao.

FOR DEFENDANTS:

DW.1: S. Chittarajan.  
DW.2: Radheshyam.

DOCUMENTS MARKED

FOR PLAINTIFF:

Ex:A.1: 26-07-2008 Notice.  
Ex:A.2: 06-08-2008 Reply of plaintiff.  
Ex:A.3: 26-09-2008 Notice.  
Ex:A.4: 04-03-1997 Certified copy of Judgment in CC.157/1995.

FOR DEFENDANTS:

Ex:B.1: 24-04-1993 Sanctioned for payment of monthly installment.  
Ex:B.2: 17-04-1993 Payment made for reconnection of service A/c. No.6283.  
Ex:B.3: 1994-1995 Proceedings of Chief Engineer.  
Ex:B.4: 30-06-1993 Pilferage case particulars consumption of monthly wise.

  
FIRST JUNIOR CIVIL JUDGE  
CITY CIVILCOURT: SECUNDERABAD.

IN THE COURT OF THE FIRST  
CHIEF JUDGE: C.C.C. SEC'ABAD  
CENTRAL PHOTO COPY SECTION

PCA.No..... 289/11  
Presented on..... 19.1.11  
C.F. Called on..... 19.2.11  
Charges Deposited on..... 22/2.26/11  
Receipt No.....  
Made Ready on..... 25.2.11  
Copy Delivered on..... 26.2.11

  
P.C. Superintendent

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P.C. SUPERINTENDENT

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## DECREE

IN THE COURT OF THE I JUNIOR CIVIL JUDGE;  
CITY CIVIL COURT - AT SECUNDERABAD.

Present: - Sri. D. Rajesh Babu M.A., M.L.,  
I Jr. Civil Judge.

Dated This The 22<sup>nd</sup> day of December, 2010.

O.S. 755/2008

Between:

pramod chandra Modi, s/o late Sri Manilal Modi,  
aged 60 years, occ: BUSINESS, R/O 1-8-169, P.G.  
Road, Secunderabad.

\_\_\_\_\_ plaintiff

1. S.P.C.P. D.C.L.,  
Rep. by its Managing Director,  
Having their corporate office at Singareni Bhavan,  
Red Hills, Hyderabad.
2. Asst. Divisional Engineer,  
Operations D, XVIII, James street  
City V, Secunderabad.
3. Asst. Accounts Officer,  
ERO-VI/Paradise,  
Secunderabad.
4. Sri. Radheshyam s/o; Not known to plaintiff,  
aged about 50 years, proprietor,  
M/s. Sailors Inn Restaurant, R/O: 19/1,  
Paigah colony, S.P. Road, Secunderabad.

\_\_\_\_\_ Defendants

Claim: - Suit filed for declaration to declare that the notices dated 26/7/08 and 26/9/08 issued by the defendants 1 to 3 as null and void.

2) consequently grant injunction restraining the defendants from disconnecting electricity supply to the suit schedule property.

Valuation: - Suit is valued for Rs 61,810/- and a court fee of Rs 2626/- is paid u/s 24 (D) and for prayer No. 2 suit is valued at Rs 5000/- and a court fee of Rs 411/- is paid u/s 26 (C) of A.P. C.F. and S.V. Act.

plaint presented on: 29/9/08  
plaint numbered on: 29/9/08

This suit is coming for final hearing before me in the presence of Sri. C. Balagopal, Advocate for the plaintiff and M/s. K.R. Koteswara Rao, Advocate for Defendants No. 1 to 3 and Sri. K. Prabhakar Rao, Advocate for defendant No. 4 and the matter having stood over for consideration till today the court doth order and decree as follows:-

- 1) That the suit of the plaintiff be and the same is hereby dismissed.
- 2) That the plaintiff do pay to the defendants a sum of Rs. 6/- towards costs of the suit.

Given under my hand and seal of this court this the 22nd day of December, 2010.

K. Shankar  
Jr. Civil Judge  
City Civil Court, Secbad  
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Memo of costs

	for plaintiff	for D <sub>1</sub> to 3	for D <sub>4</sub>
1. stamp on plaint	Ry. 2626-00		
2. do power	Ry. 2-00	Ry. 4-00	Ry. 2-00
3. do procen	Ry. 200-00		
4. Adv. fees	-		
5. Miscellaneous } charges }	-		
<b>TOTAL:</b>	<u>Ry. 2828-00</u>	<u>Ry. 4-00</u>	<u>Ry. 2-00</u>

*K. Shankar*  
 1 Jr. Civil Judge  
 City Civil Court, Sec'bad

SCHEDULE OF PROPERTY

All That premises bearing NO. 1-8-169, situated at prenderghast Road sec-bad. bounded by

- North : Road
- South : Ram tech software company
- East : Road
- west : Chaitanya Junior College.

~~City Civil Court, Sec'bad~~  
~~1 Jr. Civil Judge~~  
 1 Jr. Civil Judge  
 City Civil Court, Sec'bad.

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P.C. SUPERINTENDENT

C. Balagopal  
IN THE COURT OF THE I ADDL  
CHIEF JUDGE, C.C.C. SEC'YAD  
CENTRAL PHOTO COPY SECTION

PCA.No..... 283/11  
Presented on..... 19.1.11  
C.F. Called on..... 19.2.11  
Charges Deposited on..... 24.2.11 Rs. 20/-  
Receipt No.....  
Made Ready on..... 25.2.11  
Copy Delivered on..... 26.2.11

C. C. Superintendent