

PUNJAB AND HARYANA HIGH COURT**Before: Rajbir Sehrawat, J.**

RSA No. 3933 of 2017(O&M)

Decided on: 30.08.2017

Dakshin Haryana Bijli Vitran Nigam Ltd. and others

Appellants

Versus

Jaswant @ Jaibir

Respondent

Present: Mr. Pawan Kumar Longia, Advocate for the appellants.

A. Code of Civil Procedure, 1908 (V of 1908), Section 9 – Jurisdiction of civil Court – Exclusion of -- Interpretation of -- Civil court has jurisdiction to try all disputes relating to property, office or even other matters which affect civil rights of citizen -- Jurisdiction of the civil court can only be barred by making another provision of statutory law which; expressly or by necessary implication; takes away the jurisdiction of the civil courts -- While considering the question of exclusion of the jurisdiction of civil court it has to be kept in mind that presumption would be in favour of the existence of the jurisdiction of civil court; so far as the civil matters are concerned -- While interpreting a provision excluding the jurisdiction of the civil court; such provision has to be given restrictive interpretation so as to retain the jurisdiction of the civil court in determination of civil rights of the citizens -- Therefore, the Courts are not supposed to interpolate words and phrases into that provision which purportedly excludes the jurisdiction of the civil court.

(Para 24,25)

B. Code of Civil Procedure, 1908 (V of 1908), Section 9 – Electricity Act, 2003 (36 of 2003), Section 126, 127, 145, 153, 154 – Theft of electricity – Assessment of penalty -- Jurisdiction of civil Court – Section 145 of the Act does not prescribe that the jurisdiction of civil court shall be excluded regarding those matters; regarding which the Special Court constituted under Sections 153 and 154 of the Act are empowered to decide -- Hence mere fact that the Special Courts have been constituted under Sections 153 and 154 of the Act, *per se*, is not the ground for exclusion of the jurisdiction of the civil court in itself.

(Para 26)

C. Electricity Act, 2003 (No.36 of 2003), Section – 126, 127, 145, 153, 154 – Theft of electricity – Mens-rea -- Power of Assessing officer -- Special Court – Jurisdiction of civil court -- Element of mens rea is an essential condition for allegation of theft as defined u/s 135 of the Act -- If mens rea is not there then the matter would fall u/s 126 of the Act then the officer would proceed in the matter of assessing the amount to be charged from the consumer and then provision of Sections 126 & 127 of the Act would be followed; resulting into exclusion of jurisdiction of civil court u/s 145 of the Act -- Held, once the theft is alleged, then the assessing officer/authorised officer cannot pass any order against the consumer demanding any specific amount, since in that situation the liability against consumer is to be determined by Special Court -- If any such order of assessment/penalty is passed and purported to be enforced against a consumer then the consumer has every right to avail

the remedy of civil suit by challenging such order/demand raised by the department/licensee/supplier -- In such a situation, the jurisdiction of the civil court shall not be barred by virtue of Section 145 of the Act.

(Para 27-29, 36, 37)

D. Code of Civil Procedure, 1908 (V of 1908), Section 9 – Electricity Act, 2003 (No.36 of 2003), Section 126, 127, 145 – Theft of electricity -- Remedy of appeal – Jurisdiction of civil court -- in view of the provision of Section 9 of CPC which gives a plannery power to the civil courts to try any suit and also provisions of Order I Rule I of CPC gives a right to any person to bring a civil suit if he perceives, as aggrieved of any action of the officer or any other person, as violating his civil rights -- Simply because a consumer can be suggested to avail remedy of appeal u/s 127 of the Act, against an otherwise unauthorised, order, is no ground to hold that he cannot avail the remedy of civil suit by invoking civil jurisdiction of a civil court.

(Para 36)

E. Code of Civil Procedure, 1908 (V of 1908), Section 9 – Electricity Act, 2003 (No.36 of 2003), Section 126, 127, 145 – Theft of electricity -- Remedy of appeal – Jurisdiction of civil court -- If an unauthorised order of assessment/penalty is passed by the department/licensee/supplier, despite having alleged and initiated proceedings of theft; then the consumer cannot be said to have alternative remedies under Section 127 of the Act -- Therefore, he cannot be denied the right of filing the civil suit against such an illegal assessment/demand/penalty notice on the ground that he can avail an alternative remedy of appeal under Section 127 of the Act.

(Para 37)

F. Code of Civil Procedure, 1908 (V of 1908), Section 9 – Electricity Act, 2003 (No.36 of 2003), Section 126, 127, 145, 153, 154 – Theft of electricity – Assessment of -- Jurisdiction of civil Court – Since the Special Court cannot be initiated at the instance of the consumer and the civil liability as determined by the Special Courts has been restricted to be determined only 'against' the consumer and only for the loss/damages caused to the department and even without following the procedure of a civil court, therefore, mere existence of the Special Court does not, by implication, exclude the jurisdiction of the civil court, in a case where the assessing officer/licensee/supplier has passed an illegal or unauthorised order of demand despite having referred the matter to the police or the Special Court for determination of the same.

(Para 31, 36, 37)

Cases referred:

1. M/s Bharat Auto Care vs. Punjab State Electricity Board and another, 2012(5) R.C.R. (Civil) 64.
2. U.H.B.V.N., Panipat and others vs. Vinod Kumar, 2009(4) R.C.R.(Civil) 199.
3. Kapoor Singh vs. Punjab State Power Corporation Limited and others, 2015(2) R.C.R.(Civil) 891.
4. Darshan Singh vs. Punjab State Power Corporation Ltd. and others,

2017(3) R.C.R.(Civil) 35.

5. The Executive Engineer and another vs. M/s Sri Seetaram Rice Mill; 2012(3) Civil Court Cases 68.

JUDGMENT

RAJBIR SEHRAWAT, J. –

1. The only question involved in this appeal for consideration by the Court is whether the jurisdiction of the Civil Court is barred under Section 145 of the Indian Electricity Act, in the cases where the demand of the electricity board/department is of the charges based on alleged theft covered under Section 135 of the Electricity Act and further whether the consumer can be suggested the alternate remedy of appeal under Section 127 of the Act in such a case.

2. The facts of this case are that the respondent herein had filed a suit for permanent and mandatory injunction to the effect that defendants be restrained from disconnecting the electricity supply of the meter installed in his premises and they be also restrained from recovering the impugned penalty of Rs.1,49,200/-; which was imposed by defendant No. 1(appellant herein) vide memo dated 27.01.2006. It was pleaded by the plaintiff/respondent herein that he was having a domestic electricity connection of Atta Chakki bearing no. M-18SP in his premises at village Matarsham Tehsil and District Hisar since 1982. On 15.01.2006 the above said electric meter got fire due to some electric fault/voltage fluctuation and the meter was burnt. The plaintiff's neighbour Nand Lal had seen the burning of the meter and informed the plaintiff about the same. Number of persons from neighbourhood, even the Sarpanch and Panches of the village also gathered there. The plaintiff went to inform the lineman of the area alongwith his uncle to village Kurri. But the lineman was not available and then another line-man came to the village and he inspected the site and asked the plaintiff to report the matter to the J.E. of the Adampur area. Thereafter, the matter was reported to the said J.E.. On 16.01.2006 in the morning the J.E. had come and inspected the site and an application in writing was given on the same day which was entered in the complaint register of the defendants. Thereafter, the defendants asked the plaintiff to purchase a new meter and the new meter was purchased through a mediator tea vendor who was having a tea stall outside the office of the defendants. An amount of Rs.2,100/- was charged from him and the new meter was sent to the laboratory for testing the same on 17.01.2006 itself.

3. It was further pleaded in the plaint that Kapoor Singh J.E. told the plaintiff that his connection was operating an Atta Chakki and therefore, the SDO, D.N.Khatkar, Avneet Singh and one Rai Sahab are demanding Rs.25,000/- from the plaintiff and that if payment is not made by him to them then a case for theft of electricity would be registered against him. The plaintiff requested the above said Kapoor Singh that he was not at fault when meter had been burnt. It was further pleaded that the above said D.N.Khatkar came to the village on 19.01.2006, threatened and demanded Rs. 25,000/- from the plaintiff. Plaintiff became terrified and paid Rs. 12,500/- to Kapoor Singh, J.E. On 19.01.2006, in the presence of Ram Pyara and Munshi Ram and after taking Rs.12,500/- Kapoor Singh asked the plaintiff to visit Hisar office on

26.01.2006 and there the signature of the plaintiff was obtained on some printed papers. Thereafter, Kapoor Singh threatened that if the balance of Rs.12,500/- is not paid then he would be helpless as the above said persons were demanding the full amount of bribe. The plaintiff expressed his inability to make more payment. Thereafter, a false report was prepared by the officials that M and P seal of meter were found missing and rivets found tampered. It was claimed by the plaintiff that neither meter was tampered nor seal was tampered by him. The meter was burnt-out due to the electricity supply/voltage fluctuation. On 28.01.2006, the plaintiff received a letter dated 27.01.2006 by which the penalty of Rs.1,49,200/- had been imposed.

4. It was further pleaded that challenging this illegal demand the plaintiff had moved the District Consumer Dispute Redressal Forum, Hisar (for short, 'the Forum'). The Forum held the deficiency in service and negligence on the part of the defendants and the complaints were accepted and the checking report dated 19.01.2006 and the notice regarding penalty dated 27.01.2006 were quashed and the defendants were directed to restore the electricity supply of the Atta Chhaki in the premises of the plaintiff. However, on appeal the State Consumer Commission, held that the plaintiff does not fall in definition of a consumer, therefore, the order passed by the Forum was reversed. Resultantly, the plaintiff had to come in civil suit challenging the illegal order of penalty and also seeking injunction against disconnection of the electricity supply.

5. In the mean time, a case of theft of electricity was registered against the plaintiff vide FIR No. 239/2006 at Police Station Sadar, Hisar. The plaintiff was granted anticipatory bail in the case. Thereafter, the plaintiff had also filed a criminal complaint against the above said D.N.Khattar and Kapoor Singh etc. on 08.04.2006. It is another thing that this complaint was later on dismissed by the Court. However, in the FIR case related to theft of electricity also the plaintiff was acquitted by the criminal court.

6. It was pleaded by the plaintiff in the suit that all the defendants, in connivance with each other, fabricated the story and the checking report dated 09.01.2006 and 22.01.2006 in order to pressurize the plaintiff to extort the money. Otherwise, there had been no theft of electricity in this case.

7. The respondents filed written statement in the case. It was alleged that the plaintiff was having a small category connection. However, he was using it for commercial purpose. It was further submitted in the written statement that plaintiff himself burnt the meter only to remove the evidence of breaking of the seals of the meter by him.

8. It was further claimed that the meter was checked on 19.01.2006 by Sh. D.N.Khattar, A.E.M&P, after receiving information on telephone from an unknown person, regarding the committing of theft of energy by the plaintiff. The said premises was found locked on 19.01.2006. After checking, the plaintiff moved an application in the office of SDO, Operation, Sub Division Adampur, for changing the meter. M & P had desired that the said meter may be sent to M & T lab vide memo dated 24.01.2006. On 24.01.2006 the meter of the plaintiff was got checked in the lab in the presence of the plaintiff. During checking, all M & T seals of the meter were found missing and both the rivets were found tampered and meter block terminal of the meter was found burnt. Hence, it was claimed to be a clear case of theft of electricity. It was further

claimed that a notice for compounding the offence was served upon the plaintiff vide memo dated 27.01.2006 under Sections 135, 138, 152 of the Indian Electricity Act whereby the answering defendant required the plaintiff to deposit a sum of Rs.84,729/- for the loss caused to the Nigam and further required the plaintiff to deposit a sum of Rs.1,49,200/- for compounding the offence. It was claimed that just to save his skin the plaintiff was levelling mischievous allegations. It was also claimed by the defendants/appellants herein that the Civil Court has got no jurisdiction to try the suit.

9. Parties led their respective evidence.

10. After appreciating the evidence and hearing the parties, the Trial Court dismissed the suit. Issue No. 3 framed by the learned Trial Court was regarding the jurisdiction to try and entertain the suit. However, as recorded by the learned Trial Court; the onus to prove this issue was on the defendants. But during the course of arguments learned counsel for the defendants had not pressed issues No. 2 to 5, which included issue No. 3 regarding jurisdiction. Learned Trial Court also held that simply because the plaintiff had been acquitted by the criminal court that does not bind the civil court against recording a finding against the plaintiff regarding theft of electricity in exercise of its civil jurisdiction.

11. Aggrieved by the judgment and decree passed by the learned Trial Court the plaintiff filed an appeal before the Additional District Judge, Hisar. The Additional District Judge, Hisar allowed the appeal filed by the plaintiff and ordered the suit of the plaintiff be decreed. The defendant Nigam was restrained from disconnecting the electricity supply to the plaintiff on the basis of impugned report and also restrained from effecting any recovery on the basis of impugned memo of penalty. Besides appreciating the evidence, the learned Appellate Court also recorded that when the meter of the plaintiff was not removed on 19.01.2006 because his premises was found locked and prior to joint checking report dated 24.01.2006 the plaintiff had made a report to the defendants Nigam that his meter has been burnt then on what basis the defendants were alleging that they had detected theft of electric energy at the premises of the plaintiff. It was further recorded by the learned Appellate Court that it appears that the officials of the defendants Nigam were acting hand-in-glove with each other just to protect the illegal actions of their officials and to harass the plaintiff for the purpose of framing him in the so called case of theft of electricity energy. When the meter of the plaintiff was burnt before sending it to the lab then there could not have been a situation with the department to conclude, without noticing the accuracy of the meter, that the theft of the electricity was being committed by the plaintiff particularly so when in the checking report Ex:D-1 it is mentioned that a complaint was received by them about the meter of the plaintiff going burnt. Learned Appellate Court has also recorded that no other argument was urged before him. This also shows that the point regarding jurisdiction was also not raised before the learned Appellate Court.

12. Aggrieved by the judgment and decree passed by the learned Appellate Court, the defendants have come in appeal before this Court. Reason for the defendants to come in appeal appears to be the judgments of this Court holding that the civil court has no jurisdiction to try a case relating to theft of electricity.

13. While arguing the case, learned counsel for the appellants has restricted his argument only to the question that the civil court has no jurisdiction to try a case when notice of recovery of loss due to consumption or penalty is given by the department on account of theft of electricity by the consumer. To support his argument learned counsel for the appellants has relied upon the judgments of this Court reported in **2012(5) R.C.R. (Civil) 64 titled as M/s Bharat Auto Care vs. Punjab State Electricity Board and another, 2009(4) R.C.R.(Civil) 199** reported as **U.H.B.V.N., Panipat and others vs. Vinod Kumar** and also the judgment passed by this Court and reported in **2015(2) R.C.R.(Civil) 891** titled as **Kapoor Singh vs. Punjab State Power Corporation Limited and others**. As an alternative, learned counsel for the appellants has also relied upon the judgment of this Court reported in **2017(3) R.C.R.(Civil) 35** titled as **Darshan Singh vs. Punjab State Power Corporation Ltd. and others** to contend that, in any case, if the Special Court created under the Electricity Act are not competent to decide the civil matter then the consumer can challenge the order made under Section 135(d)(e) by filing appeal under Section 127 of the Act.

14. For the appreciation of the controversy involved in this case, it is necessary to have reference to the relevant Sections of the Indian Electricity Act, 2003. The relevant provisions of the Indian Electricity Act, 2003(for short, 'the Act') are reproduced herein below:-

126. Assessment.-

1. If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

2. The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

3. The person, on whom an order has been served under sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.

4. Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

5. If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of

inspection.;

6. The assessment under this section shall be made at a rate equal to twice the tariff applicable for the relevant category of services specified in sub-section (5).

Explanation:- For the purposes of this section,--

- a. "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;
- b. "unauthorised use of electricity" means the usage of electricity—
 - i. by any artificial means; or
 - ii. by a means not authorised by the concerned person or authority or licensee; or
 - iii. through a tampered meter; or
 - iv. for the purpose other than for which the usage of electricity was Authorized ; or
 - v. for the premises or areas other than those for which the supply of electricity was authorised.

127. Appeal to appellate authority.-

1. Any person aggrieved by a final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.

2. No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to * [half] of the assessed amount is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

3. The appellate authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.

4. The order of the appellate authority referred to in subsection (1) passed under sub-section (3) shall be final.

5. No appeal shall lie to the appellate authority referred to in sub-section (1) against the final order made with the consent of the parties.

6. When a person defaults in making payment of assessed amount, he, in addition to the assessed amount shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent. per annum compounded every six months.

135. Theft of electricity.-

1. Whoever, dishonestly,-

- a. taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or

service wires, or service facilities of a licensee or supplier, as the case may be; or

- b. tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or
- c. damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity; or
- d. uses electricity through a tampered meter; or
- e. uses electricity for the purpose other than for which the usage of electricity was authorised, so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use-

- i. does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;
- ii. exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station:

Provided also that if it is proved that any artificial means or means not authorised by the Board or licensee or supplier, as the case may be, exist for the abstraction, consumption

or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

1A. Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity:

Provided that only such officer of the licensee or supplier, as authorised for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity:

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty-four hours from the time of such disconnection:

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment.

2. Any officer of the licensee or supplier as the case may be, Authorized in this behalf by the State Government may—

- a. enter, inspect, break open and search any place or premises in which he has reason to believe that electricity has been or is being, used unauthorisedly;
- b. search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been or is being, used for unauthorised use of electricity;
- c. examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub-section (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts there from in his presence.

3. The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

Provided that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

4. The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.

Section 143. (Power to adjudicate): --- (1) For the purpose of adjudging under this Act, the Appropriate Commission shall appoint any of its Members to be an adjudicating officer for holding an inquiry in such manner as may be prescribed by the Appropriate Government ,after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty. (2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry, and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of section 29 or section 33 or section 43, he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

145. Civil court not to have jurisdiction.-

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in section 126 or an appellate authority referred to in section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Section 153. (Constitution of Special Courts): --- (1) The State Government may, for the purposes of providing speedy trial of offences referred to in 1 [sections 135 to 140 and section 150], by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas, as may be specified in the notification. (2) A Special Court shall consist of a single Judge who shall be appointed by the State Government with the concurrence of the High Court. (3) A person shall not be qualified for appointment as a Judge of a Special Court unless he was, immediately before such appointment, an Additional District and Sessions Judge. (4) Where the office of the Judge of a Special Court is vacant, or such Judge is absent from the ordinary place of sitting of such Special Court, or he is incapacitated by illness or otherwise for the performance of his duties, any urgent business in the Special Court shall be disposed of – (a) by a Judge, if any, exercising jurisdiction in the Special Court; (b) where there is no such other Judge available, in accordance with the direction of District and Sessions Judge having jurisdiction over the ordinary place of sitting of Special Court, as notified under subsection (1).

154. Procedure and power of Special Court.-

1. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under sections 135 to 140 and section 150 shall be triable only by the Special Court within whose jurisdiction such offence has been committed.

2. Where it appears to any court in the course of any inquiry or trial that an offence punishable under sections 135 to 140 and section 150 in respect of any offence that the case is one which is triable by a Special

Court constituted under this Act for the area in which such case has arisen, it shall transfer such case to such Special Court, and thereupon such case shall be tried and disposed of by such Special Court in accordance with the provisions of this Act:

Provided that it shall be lawful for such Special Court to act on the evidence, if any, recorded by any court in the case of presence of the accused before the transfer of the case to any Special Court:

Provided further that if such Special Court is of opinion that further examination, cross-examination and re-examination of any of the witnesses whose evidence has already been recorded, is required in the interest of justice, it may re-summon any such witness and after such further examination, cross-examination or reexamination, if any, as it may permit, the witness shall be discharged.

3. The Special Court may, notwithstanding anything contained in subsection (1) of section 260 or section 262 of the Code of Criminal Procedure, 1973 (2 of 1974), try the offence referred to in sections 135 to 140 and section 150 in a summary way in accordance with the procedure prescribed in the said Code and the provisions of sections 263 to 265 of the said Code shall, so far as may be, apply to such trial:

Provided that where in the course of a summary trial under this subsection, it appears to the Special Court that the nature of the case is such that it is undesirable to try such case in summary way, the Special Court shall recall any witness who may have been examined and proceed to rehear the case in the manner Provided by the provisions of the said Code for the trial of such offence:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding five years.

4. A Special Court may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to, any offence tender pardon to such person on condition of his making a full and true disclosure of the circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof, and any pardon so tendered shall, for the purposes of section 308 of the Code of Criminal Procedure, 1973 (2 of 1974), be deemed to have been tendered under section 307 thereof.

5. The Special Court shall determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft if determined whichever is less and the amount of civil liability so determined shall be recovered as if it were a decree of civil court.

6. In case the civil liability so determined finally by the Special Court is less than the amount deposited by the consumer or the person, the excess amount so deposited by the consumer or the person, to the Board or licensee or the concerned person, as the case may be, shall be refunded by the Board or licensee or the concerned person, as the case

may be, within a fortnight from the date of communication of the order of the Special Court together with interest at the prevailing Reserve Bank of India prime lending rate for the period from the date of such deposit till the date of payment.

Explanation: For the purposes of this section, "civil liability" means loss or damage incurred by the Board or licensee or the concerned person, as the case may be, due to the commission of an offence referred to in sections 135 to 140 and section 150.

15. A bare perusal of Sections 126, 127 and 135 of the Act show that Sections 126 and 127 of the Act deal with the unauthorized use of the electricity and constitute a complete code for passing the assessment orders in the case of unauthorized use of electricity. On the contrary, Section 135 of the Act deals with the matters related to theft of electricity. Both these are distinct matters contained in different chapters of the Act. The position in this regard has already been clarified by the Hon'ble Supreme Court reported in ***The Executive Engineer and another vs. M/s Sri Seetaram Rice Mill; 2012(3) Civil Court Cases 68*** which is reproduced herein below:-

15. Upon their plain reading, the marked differences in the contents of Sections 126 and 135 of the 2003 Act are obvious. They are distinct and different provisions which operate in different fields and have no common premise in law. We have already noticed that Sections 126 and 127 of the 2003 Act read together constitute a complete code in themselves covering all relevant considerations for passing of an order of assessment in cases which do not fall under Section 135 of the 2003 Act. Section 135 of the 2003 Act falls under Part XIV relating to 'offences and penalties' Section is of 'theft of electricity'. The Section opens with the words 'whoever, dishonestly' does any or all of the acts specified under clauses (a) to (e) of Sub-section (1) of Section 135 of the 2003 Act so as to abstract or consume or use electricity shall be punishable for imprisonment for a term which may extend to three years or with fine or with both. Besides imposition of punishment as specified under these provisions or the proviso thereto, Subsection (1A) of Section 135 of the 2003 Act provides that without prejudice to the provisions of the 2003 Act, the licensee or supplier, as the case may be, through officer of rank authorized in this behalf by the appropriate commission, may immediately disconnect the supply of electricity and even take other measures enumerated under Sub-sections (2) to (4) of the said Section. The fine which may be imposed under Section 135 of the 2003 Act is directly proportional to the number of convictions and is also dependent on the extent of load abstracted. In contradistinction to these provisions, Section 126 of the 2003 Act would be applicable to the cases where there is no theft of electricity but the electricity is being consumed in violation of the terms and conditions of supply leading to malpractices which may squarely fall within the expression 'unauthorized use of electricity'. This assessment/proceedings would commence with the inspection of the premises by an assessing officer and recording of a finding that such consumer is indulging in an 'authorized use of electricity'. Then the assessing officer shall provisionally assess, to the best of his judgment, the electricity charges payable by such consumer, as well as pass a

provisional assessment order in terms of Section 126(2) of the 2003 Act. The officer is also under obligation to serve a notice in terms of Section 126(3) of the 2003 Act upon any such consumer requiring him to file his objections, if any, against the provisional assessment before a final order of assessment is passed within thirty days from the date of service of such order of provisional assessment. Thereafter, any person served with the order of provisional assessment may accept such assessment and deposit the amount with the licensee within seven days of service of such provisional assessment order upon him or prefer an appeal against the resultant final order under Section 127 of the 2003 Act. The order of assessment under Section 126 and the period for which such order would be passed has to be in terms of Sub-sections (5) and (6) of Section 126 of the 2003 Act. The Explanation to Section 126 is of some significance, which we shall deal with shortly hereinafter. Section 126 of the 2003 Act falls under Chapter XII and relates to investigation and enforcement and empowers the assessing officer to pass an order of assessment.

16. Section 135 of the 2003 Act deals with an offence of theft of electricity and the penalty that can be imposed for such theft. This squarely falls within the dimensions of Criminal Jurisprudence and mens rea is one of the relevant factors for finding a case of theft. On the contrary, Section 126 of the 2003 Act does not speak of any criminal intent and is primarily an action and remedy available under the civil law. It does not have features or elements which are traceable to the criminal concept of mens rea.

17. Thus, it would be clear that the expression 'unauthorized use of electricity' under Section 126 of the 2003 Act deals with cases of unauthorized use, even in absence of intention. These cases would certainly be different from cases where there is dishonest abstraction of electricity by any of the methods enlisted under Section 135 of the 2003 Act. A clear example would be, where a consumer has used excessive load as against the installed load simpliciter and there is violation of the terms and conditions of supply, then, the case would fall under Section 126 of the 2003 Act. On the other hand, where a consumer, by any of the means and methods as specified under Sections 135(a) to 135(e) of the 2003 Act, has abstracted energy with dishonest intention and without authorization, like providing for a direct connection bypassing the installed meter. Therefore, there is a clear distinction between the cases that would fall under Section 126 of the 2003 Act on the one hand and Section 135 of the 2003 Act on the other. There is no commonality between them in law. They operate in different and distinct fields. The assessing officer has been vested with the powers to pass provisional and final order of assessment in cases of unauthorized use of electricity and cases of consumption of electricity beyond contracted load will squarely fall under such power. The legislative intention is to cover the cases of malpractices and unauthorized use of electricity and then theft which is governed by the provisions of Section 135 of the 2003 Act.

18. Section 135 of the 2003 Act significantly uses the words 'whoever, dishonestly' does any of the listed actions so as to abstract or consume electricity would be punished in accordance with the provisions

of the 2003 Act. 'Dishonesty' is a state of mind which has to be shown to exist before a person can be punished under the provisions of that Section."

16. Viewed in the light of the above said propositions expounded by the Hon'ble Supreme Court, it is clear that unauthorized use of electricity is altogether a different matter and has to be dealt with by assessing officer. That assessment has to be made by the assessing officers as to the amount to be charged from consumer. Such order passed by the assessing officer is appealable order. Hence the consumer can question such assessment in the remedies available to him under the Act and the rules framed thereunder. On the other hand, Section 135 of the Act defines the theft. For theft the consumer is required to be prosecuted for the offence of theft of electricity. The department is required to make a case of theft and report it to the police or to send it to the competent court of criminal jurisdiction as a complainant. It is for the competent court of criminal jurisdiction to see whether such person has committed theft of the electricity or not. There is no complication in the procedure so far mentioned. However, the problem arises when the officers of the department lodged the FIR for criminal prosecution and also passes an order of alleged assessment of liability of the consumer and serves a demand notice upon such consumer; asking him to deposit that amount on account of electricity consumed by him through the theft and/or as penalty. In this situation, the question is whether the assessing officer has any authority to decide the liability of consumer for electricity consumed through alleged theft and/or the penalty therefor. And if not then whether the consumer can be left remedy-less by denying him the jurisdiction of the civil court as per the provision of Section 145 of the Act. Second aspect is, can a consumer be asked to avail the remedy provided under Section 127 of the Act; even in the cases where the department alleges the theft of electricity and not the unauthorized use of the electricity as prescribed by Section 126 of the Act.

17. Learned counsel for the appellants has pointed out that Section 154 of the Act has provided for Special Court to deal with the matters of the theft of electricity. It is his argument that since Section 154(5) of the Act also provides for determining the '*civil liability*' against the consumer, therefore, the jurisdiction of the civil court is barred and the Special Court constituted by Section 153 and 154 of the Act would be the sole competent authority to determine the civil issues between the parties. To support his argument he has relied upon the judgments mentioned above; rendered by this Court.

18. However, this Court does not find itself in agreement with the submission of learned counsel for the appellants. For the reasons mentioned in the following paragraphs, I fail to agree and beg to differ with my sister and brother Judges, holding in the above said cases that the jurisdiction of the civil court stands excluded by the provisions of Sections 145 and 154 of the Act.

19. A perusal of the judgment of ***U.H.B.V.N., Panipat and others (supra)*** shows that there is absolutely no discussion regarding the respective scope of Sections 126, 127 and 135 and other connected sections of the Act. On the basis of the bare language of Section 145 of the Act, the jurisdiction of the civil court has been held to be barred. Hence this judgment has not considered and decided the respective applicable sections of the Act. Therefore, it is of no help to the appellants as a precedent. In the case of ***M/s Bharat Auto Care (supra)***,

the Court mentioned the provisions of the Act and while dealing with the scope of Section 145 of the Act, the Court relied upon the judgment of the Delhi High Court to the effect that although there is no specific provision in Section 145 of the Act for exclusion of the jurisdiction of the civil court to entertain any proceeding in respect of any matter which the Special Court is empowered by the Act to determine, however, in the view of Delhi High Court; the adjudication about the civil liability in theft cases was, impliedly, excluded from the jurisdiction of civil court; in view of the provision of Sections 153 and 154 of the Act, where a Special Court has been given jurisdiction to determine '*civil liability*'.

20. In view of the above, the Court held that the impugned orders had been passed by the assessing officer by following procedure under Section 126 of the Act and therefore, civil court would have no jurisdiction before the plaintiff exhaust all remedies provided under Section 127 of the Act. Additionally, the Court also held that the jurisdiction of the civil court would be barred in view of the provisions of Section 154(5) of the Act. The reasonings given in the judgment are mutually destructive and contradicted each other.

21. In the next judgment of the ***Kapoor Singh's case(supra)*** the Court has held that the Special Court constituted under this Electricity Act has a dual responsibility to examine the case, from both the angles, one of theft and one of civil liability and to pass orders accordingly. In effect, the reliance of the Court in this case was also upon the fact that Special Court had been constituted to try the matters relating to theft of electricity and therefore, the jurisdiction of the civil court stands excluded. However, this judgment does not deal with the issue as to whether the assessing officer can pass order of liability against the consumer even in a case of alleged theft and if at all such order is passed, how that order could be questioned by the effected consumer.

22. Lastly, in the judgment in ***Darshan Singh's case(supra)*** the Court took a little bit different view and held that although Section 154 of the Act does not strictly deal with any situation for enabling the consumer to challenge the order passed by departmental officers for recovery on account of theft whereas Section 145 of the Act barred jurisdiction of civil court. Finding that the consumer cannot be left remedy-less, the Court held that even in cases of theft of electricity under Section 135 of the Act, the consumer can file an appeal under Section 127 of the Act and that such appeal would not be without jurisdiction. However in this case the question regarding exclusion of the jurisdiction of the civil court was not strictly decided by the Court. Still further, the interpretation given in this case runs against even the bare provision of Section 154 of the Act; which gives power to decide the '*civil liability*' to the Special Court.

23. The Code of Civil Procedure (for short, 'CPC') gives the plannery power and jurisdiction to civil court to try all kind of suits of civil nature except specifically barred under some other statutory provision of law. The relevant provision of CPC as contained in Section 9 is reproduced herein below:-

9. Courts to try all civil suits unless barred .- The Courts shall (subject to the provisions herein contained) have jurisdiction to try all Suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation 1.—As suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation II—For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.

24. A bare perusal of this provision shows that the civil court has jurisdiction to try all disputes relating to property, office or even other matters which affect civil rights of citizen. The jurisdiction of the civil court can only be barred by making another provision of statutory law which; expressly or by necessary implication; takes away the jurisdiction of the civil courts.

25. However, before proceeding further it is necessary to be reminded that while considering the question of exclusion of the jurisdiction of civil court it has to be kept in mind that presumption would be in favour of the existence of the jurisdiction of civil court; so far as the civil matters are concerned. Secondly, while interpreting a provision excluding the jurisdiction of the civil court; such provision has to be given restrictive interpretation so as to retain the jurisdiction of the civil court in determination of civil rights of the citizens. Therefore, the Courts are not supposed to interpolate words and phrases into that provision which purportedly excludes the jurisdiction of the civil court. The provision has to be read as it is and to be given a literal meaning, of course, while reading the statute as a whole. Lastly, if the jurisdiction of the civil court is specifically excluded in particular matter, by name, then such provision excluding the jurisdiction of the civil court has to be given primacy.

26. Keeping in view the above principles, if one is to analyse the provision of Section 145 of the Act it is clear that the jurisdiction of the civil court has been barred in respect of the matters regarding which the 'Assessing Officer' have the jurisdiction under Section 126 of the Act or the 'Appellate Authority' has the jurisdiction to decide the appeal under Section 127 of the Act. Still further, this provision excludes the jurisdiction in the matters regarding which the 'Adjudicating Officer' appointed under this Act is empowered to determine. Section 143 of the Act defines the powers of the adjudicating officer appointed by the appropriate Commission to deal with the matters reserved for the determination of adjudicating officers. Hence, it is clear so far as the bare language of Section 145 of the Act is concerned, it bars the jurisdiction of the civil court only in those matters where the assessing officer has the power to assess under Section 126 of the Act, the Appellate Authority has power to hear the appeal under Section 127 of the Act or the adjudicating officer has the power to adjudicate upon under Section 143 of the Act. There is no fourth aspect regarding which the jurisdiction of the civil court is expressly barred by the provision of the Act. Section 145 of the Act does not prescribe that the jurisdiction of civil court shall be excluded regarding those matters; regarding which the Special Court constituted under Sections 153 and 154 of the Act are empowered to decide. Therefore, regarding any matter, which the Special Courts constituted under the provisions of this Act are to decide; the jurisdiction of the civil court is not '*expressly*' barred by provision of Section 145 of the Act. Hence mere fact that the Special Courts have been constituted under Sections

153 and 154 of the Act, *per se*, is not the ground for exclusion of the jurisdiction of the civil court in itself.

27. The next aspect of the matter is whether by any necessary '*implication*'; the provision for Special Court and the powers conferred upon them, or the decision taken by the Special Court exclude the jurisdiction of the civil court?

28. A bare perusal of the provisions contained in the Act shows that in case of allegations of theft, reporting of the theft by officer, licensee or supplier to the police or to the Court, compounding of offence of theft and in case of non-compounding/contest of the offence by the consumer, the determination of offence of theft and the punishment therefore, is contained in altogether a different part and chapter of the Act; which deals with the offence and penalties only. Although certain factors; as mentioned in Section 126 of the Act; defining the unauthorised use, and Section 135 of the Act defining the theft are overlapping, however, the element of mens rea is an essential condition for allegation of theft as defined under Section 135 of the Act. And if mens rea is not there then the matter would fall under Section 126 of the Act; even regarding those aspects which are overlapping in these two provisions. This position has already been explained by the Hon'ble Supreme Court. Hence it is clear that if the officers of the respondents/licensee/supplier are of the opinion that there is no mens rea or the intention to deceive, then they would proceed in the matter of assessing the amount to be charged from the consumer and then provision of Sections 126 & 127 of the Act would be followed; resulting into exclusion of jurisdiction of civil court under Section 145 of the Act.

29. However, if they are of the prima facie view that; even in those matters where factors mentioned in Sections 126 and 135 are overlapping or, on the factors which are exclusively mentioned in Section 135 of the Act, the consumer has had a deceitful intention to extract the electrical energy; then they would be required to make a complaint either to the police or to the Court constituted under this Chapter. If the assessing officer/authorised officer takes a prima facie view that there is theft involved in the matter then the assessing officer would; simply have no jurisdiction to assess the amount of loss on account of theft or the penalty at his own level. The element of mens rea being a *sine qua non* for the purpose of theft; the matter would be exclusively dealt with by the chapter pertaining to offences and penalties. Giving any power to assessing officer to make an order of assessment, even in those cases where the theft is claimed by the assessing officer/authorised officer on behalf of the consumer; would tantamount to give a pre-emptive power/authority to the assessing officer over the Special Courts constituted under the chapters dealing with the offences and penalties. This cannot be the policy of law and this cannot be the philosophy of law. Once the matter is expressly given in the domain of the Special Court then any assessing officer/authorised officer cannot be permitted to pre-empt or to tinker with or in any manner prejudice the jurisdiction of the Special Court constituted under the Act. Hence, it is clear that once the theft is alleged by the department or licensee or supplier then the assessing officer/authorised officer cannot pass any order against the consumer demanding any specific amount, since in that situation the liability against consumer is to be determined by Special Court. Hence, the question would be if still assessing officer/authorised officer passes any order of

assessment/penalties/demand against the consumer then where and what would be the remedy available to such a consumer. While finding answer to this question, it has to be kept in mind that the Court is a Court whether the party before it is the consumer or be it the electricity department/licensee/supplier. Therefore, while considering the question whether the Special Courts constituted under the Act; by implication; exclude the jurisdiction of civil court, it has to be seen whether both the sides have been given equal remedies and opportunities under the provisions of the Act to raise and get their claim adjudicated upon before the Special Courts and get it adjudicate as per the principles meant for civil adjudication.

30. So far as the claim of the electricity department/licensee/supplier in case of theft is concerned, the same has been taken care of by Part XIV of the Act, which deals with the offences and penalties. Chapter 135 of the Act defines theft and authorizes the authorities/officers of the department/licensee/supplier to make report to the investigating agency or to the Court; in case they are prima facie of the view that the consumer has committed theft. To adjudicate upon this complaint of the department/licensee/supplier; Chapter XV of the Act provides a special forum by virtue of Constitution of Special Courts. The Special Court is authorised to determine the guilt of consumer regarding allegation of theft, punish him and also to compensate the department for loss on account of theft of electricity by determining the '*civil liability*' 'against' the consumer on a liquidated scale provided under the Act.

31. At this stage, question is as to what remedy the consumer has got against the illegal and unauthorized demand raised by the department? Does the provision of Section 153 of the Act which provides for constitution of Special Court, bars the jurisdiction of Civil Court? Does the power conferred upon Special Court under Section 154 of the Act provides for civil adjudication, provide remedy to the consumer against illegal demands forced by the department upon him and, therefore, by implication, exclude the jurisdiction of civil court? Section 153 of the Act provides that the State Government can constitute Special Courts "*for trial of offences referred to Sections 135 to 140 and Section 150 of the Act*". Section 153(1) of the Act makes it clear that the Special Courts constitute under the Act have been created only to adjudicate upon the offences referred to in Sections 135 to 140 and Section 150 of the Act; as specifically mentioned in the Act. Therefore, matters where the assessing officer claims to be authorised to pass the order under Section 126 of the Act and the matters claimed to be covered under Section 143 of the Act where the adjudicating officer is authorised to adjudicate upon a matter, do not fall in the scope of the Special Court constituted under Section 153 of the Act. Hence, the provision of Section 153(1) of the Act do not provide for exclusion of the jurisdiction of the civil court, regarding the matters where the alleged order of assessment or penalty is passed by assessing officer claiming though wrongly, his authority to pass such order under Section 126 of the Act.

32. From the provision of Section 154 of the Act, it is clear that it does not provide any remedy to the consumer to institute his claim against the department nor does it provide for any mechanism of civil adjudication as per the principles of civil adjudication of a matter. Section 154 of the Act which defines the powers of the Special Court restrict it to the matters covered under

Sections 135 to 140 and Section 150 of the Act. This section confers upon the Special Courts only the powers of a Sessions Court and uses a non obstante clause only against the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') and not against the Code of Civil Procedure (for short, 'CPC'). Hence, the application of CPC, in the matters relating to other than the offences defined under Sections 135 to 140 and Section 150 of the Act, is not excluded by Section 154 of the Act. Meaning thereby that beyond the determination of the alleged guilt of the person, the accused can very well avail his civil remedies under CPC if his claim is other than the offence specified by abovesaid Sections. Still further a bare perusal of Section 155 of the Act shows that the Special Court shall be deemed to be a Court of Session and shall have all the powers of the Court of Session. Still further it prescribes that the person conducting the prosecution before the Special Court shall be deemed to be public prosecutor. Still further, Section 156 of the Act, which provides for appeal and revisions, also prescribes that High Court may exercise powers against the order of the Special Court as conferred upon it under the Cr.P.C. from an order of the Court of Session. A combined reading of these provisions shows that the Special Court constituted under the Act has not been given any power to act as a Civil Court, has not been given powers to conduct the case as per the provisions of civil court. Hence by any stretch of imagination, neither the Special Courts constituted under the Act are the civil courts nor do these courts determine the civil rights of the parties. These courts are meant, exclusively, to try an accused and to inflict punishment upon such an accused in accordance with the provisions of this Act.

33. A bare perusal of the provisions and scheme of the Act makes it clear that in case the assessing officer sends to a consumer a demand notice for assessed amount and/or penalty and also alleging theft at the same time then the consumer has no remedy to challenge that demand/assessment, although such demand/assessment done by the assessing officer is totally without authority and jurisdiction. The Special Courts are unilateral forums available to the departments/licensee/supplier to get the consumer prosecuted. These courts cannot grant any decree *'in favour'* of the consumer under any circumstances. So far as the prospective; from the point of view of the consumer is concerned, Special Courts have very limited mandate of trying the consumer for the offences specified in the Act and to inflict the punishment upon the consumer. Even if the order passed by the officers/licensee/supplier is totally illegal, the consumer has not been given any remedy of initiating proceedings for challenging such order under any provision relating to Special Courts as constituted under the Act. Nor have the Special Courts, as constituted under this Act, been given power to entertain any pleading initiated by the consumer against an order which he might perceive to be violative of its civil rights. Hence, by any means, the creation of Special Courts, the jurisdiction conferred upon the Special Courts or scope of their authority do not comprehend the determination of a claim of the consumer; as initiated by the consumer and from the point of view of the consumer. Under the provisions of the Constitution of the said Special Courts; the consumer has been totally pushed in the criminal jurisdiction; at the mercy of initiation of the proceedings by the officers/licensee/supplier and a determination thereof as per the case presented by the prosecuting agency/officer of the department/licensee/supplier. He has no alternative under the provisions of this

Act but to await the decision of his fate in a manner as presented and prosecuted by the department and as decided by the criminal court.

34. Much stress has been laid upon the provision of Section 154(5) of the Act to argue that the Special Court has been given power to determine the '*civil liability*' against the consumer or a person; in terms of money for the theft of energy, therefore, the provision of Section 145 of the Act shall have to be read as excluding the jurisdiction of the civil court by implication and interpretation of Section 154 of the Act. However, there is a basic fallacy in the argument. Even the bare perusal of this provision shows that the Special Court can determine the civil liability only '*against*' the consumer. It does not have any power to determine the civil liability '*in favour*' of the consumer. The reason for enacting this provision for fixing the '*civil liability*' '*against*' the consumer is that; this sub-section is required to be invoked only after a person has been convicted of an offence of theft. Therefore, the '*civil liability*' as contemplated under Section 154(5) of the Act is in the nature of additional punishment in terms of money required to be paid to the department, besides the punishment of imprisonment and fine as otherwise provided in the Act. The fact that this determination of civil liability is by way of '*punishment*' is also reflected by the fact that it has been provided by way of '*minimum*' "*monetary*" punishment. The Special Court is not authorised to determine the '*civil liability*' which is not less than or equivalent of amount which is '*two times of the tariff*' for the period of theft. Had it been conceived by the Act as the '*civil liability*', as contemplated in civil jurisdiction then there would not have been any question of fixing minimum liability and even that only against one of the party to the litigation. Although the civil liability, as determined by the Special Court, is declared to be a deemed decree of a civil court, however, this deeming fiction, of treating the civil liability as determining by the Special Court as a decree of civil court, is limited only for the purpose of recovery; as loss or damages; as determined by the Special Court to have been caused to the department by the consumer but as per the predetermined scale. But the bare fact that neither the civil procedure has been followed in determining the said '*civil liability*' nor the same is determined by a civil court, such determination of '*civil liability*' cannot be treated to be a final determination of liability of consumer nor has it been declared by the Act to be the final determination against consumer. Such determination of '*civil liability*' and creation of a deeming fiction of the same as a '*decree*' is limited to enabling the department/licensee/supplier to recover this amount through the means through which a decree is executed. However, this fact itself does not debar a consumer from challenging his liability so determined, even by the Special Court; before a civil court by insisting upon following the civil procedure prescribed by CPC for the citizens of the country and as per the standard of proof applicable in civil law saying otherwise would be violative of Fundamental right of that citizen guaranteed by Article 14 of the Constitution of India. Otherwise, also it is a settled law that whereas the decree passed by the civil court may be binding upon the criminal court but a judgment or order of the criminal court is not binding upon a civil court. Mere fact that order of criminal court has been given a colour or deemed status of decree of civil court does not alter this settled proposition of law. For an order of a Court to have full effect of being a civil decree, the essence is the determination of the same through civil procedure and as per the principles of civil law. Any determination through criminal law cannot have the full effect of or exclude the

determination through civil law for the simple reason that in criminal determination one of the parties, i.e., the accused is always under threat of punishment, he cannot even raise all his pleas for the fear of prejudice to his defence against prosecution and has a right; even to remain silent. Hence a determination through criminal procedure cannot exclude determination through civil procedure. After all a citizen cannot be forced to be subjected to legal asphyxia.

35. Hence, from the above facts, it is clear that in case of a illegal demand raised by unauthorised officer of the department/licensee/supplier the consumer has not been given any remedy under the Act. Although, the Special Court has been constituted for trying the offence of theft and to determine the loss caused to the department by way of '*civil liability*' of the accused/convict, however, the Special Courts are not given any powers of civil court. The procedure followed in the Special Court is not the procedure meant for civil courts. The power conferred upon the Special Courts are not the powers conferred upon civil courts and the scope of adjudication as contemplated under the Act; is not the scope, which is of a wide spectrum in case of jurisdiction of a civil court. Hence it has to be held that the constitution of Special Court, the powers conferred upon it or the scope of the matters to be dealt with by these courts do not grant remedy to the consumer to raise civil disputes and get the same adjudicated through civil procedure or '*in his favour*'. The Special Courts constituted under Section 153 of the Act are meant only to try the offences mentioned under Sections 135 to 140 and Section 150 of the Act. Since the scope of the Special Courts is not encompassing into itself the remedies and determination of civil rights of the consumer; which may arise from the illegal and unauthorised orders passed or action taken by the assessing officer or adjudicating officers beyond the scope of their powers, hence, it has to be held that, even by implication, the jurisdiction of the civil court is not excluded/barred, as contemplated under Section 145 of the Act, simply for the reasons of constitution of the Special Courts under the Act.

36. The next question to be considered in this case is *whether the jurisdiction of the civil court can be just side tracked by the courts by suggesting to the litigant an alternative method or alternative remedies of appeal supposedly provided by the Act?* The answer to this question has to be in negative; in view of the provision of Section 9 of CPC which gives a plenary power to the civil courts to try any suit and also provisions of Order I Rule I of CPC gives a right to any person to bring a civil suit if he perceives, as aggrieved of any action of the officer or any other person, as violating his civil rights. Otherwise also, the provision of Section 126 of the Act shows that under this provision it is the "*best assessment judgment*" of the assessing officer; which shall be the basis for adjudication and decision, if an appeal is taken under Section 127 of the Act. Even the period and rate of assessment has been bound down by the provisions of the Act itself. Hence, if a consumer is to take remedy of appeal against the unauthorized orders of the assessing officer the challenge would be restricted in its scope and entitlements. Such restricted scope of rights and adjudication is not a substitute for the plenary determination to which a citizen shall be entitled to, if he brings an independent suit before a civil court. Hence simply because a consumer can be suggested to avail remedy of appeal under Section 127 of the Act, against an otherwise unauthorised, order, is no ground to hold that he cannot avail the remedy of

civil suit by invoking civil jurisdiction of a civil court. Sections 126 and 127 of the Act have to be restricted to their scope as is assigned to them by the provisions of the Act. Language of these provisions cannot be read as having been interpolated with words or phrases to bring within its scope even those cases which are not contemplated by the bare provisions of these sections. Otherwise also holding the order of assessing officer to be appealable under Section 127 of the Act even in case of allegation of theft, would tantamount to give legal sanctity to the action of such assessing officer even in that matter which the Special Court is only authorised to determine under the Act. Hence, in a case which does not strictly fall in the scope of Sections 126 and 127 of the Act, as in case of allegation of theft, a consumer/citizen cannot be denied his right to avail the remedy of civil suit before a civil court by suggesting him an alternative remedy of an appeal under Section 127 of the Act.

37. In view of the above, the answers to the questions posed in the beginning in this case have to be as follows:-

(1) in case the departments/officers/licensee/supplier is of the opinion that a consumer has committed theft as defined under the Act, and they/he initiate proceedings for theft under Section 135 of the Act, then the assessing officer has no authority to pass any order regarding assessment of liability and penalty against a consumer. If any such order of assessment/penalty is passed and purported to be enforced against a consumer by the department/licensee/supplier then the consumer has every right to avail the remedy of civil suit by challenging such order/demand raised by the department/licensee/supplier. In such a situation, the jurisdiction of the civil court shall not be barred by virtue of Section 145 of the Act.

(2) If an unauthorised order of assessment/penalty is passed by the department/licensee/supplier, despite having alleged and initiated proceedings of theft; then the consumer cannot be said to have alternative remedies under Section 127 of the Act. Therefore, he cannot be denied the right of filing the civil suit against such an illegal assessment/demand/penalty notice on the ground that he can avail an alternative remedy of appeal under Section 127 of the Act.

(3) Since the Special Court cannot be initiated at the instance of the consumer and the civil liability as determined by the Special Courts has been restricted to be determined only 'against' the consumer and only for the loss/damages caused to the department and even without following the procedure of a civil court, therefore, mere existence of the Special Court does not, by implication, exclude the jurisdiction of the civil court, in a case where the assessing officer/licensee/supplier has passed an illegal or unauthorised order of demand despite having referred the matter to the police or the Special Court for determination of the same.

38. In view of the above, in the present case the order passed by the assessing officer, imposing penalty of Rs. 1,49,200/- upon the plaintiff, was rightly challenged by the respondent before the Civil Court. The Courts below have rightly decreed the suit filed by the present respondent. The respondent had no remedy available to him to file any claim against such penalty before the Special Court. Therefore, the lower Appellate Court has rightly held that the Civil Court has got the jurisdiction to try the matter and to decide the same.

39. No other argument was raised.

40. In view of the above, the findings and the decree passed by the lower Appellate Court are upheld. The appeal filed by the present appellant is dismissed being devoid of merit.

Appeal dismissed.

PUNJAB AND HARYANA HIGH COURT

Before: Rajbir Sehrawat, J.

RSA No.351 of 2016 (O&M)

Decided on: 29.08.2017

M/s Radha Raman Industries

Appellant

Versus

M/s Manoj Trading Company

Respondent

Present: Mr. Adarsh Jain, Advocate, for the appellant.

A. Code of Civil Procedure, 1908 (V of 1908), Order 30 Rule 10 -- Proprietary concern as plaintiff -- If a proprietary concern, sued against u/O 30 R 10; has got a right to file a cross suit as a defendant under the above said provision -- In such a situation, it shall be totally irrational to hold that the proprietary concern cannot file a suit as plaintiff -- There is nothing to prevent such an entity to come as plaintiff in the first instance -- Suit by the proprietary concern is a suit by its sole proprietor and the suit by the sole proprietor is a suit by his proprietary concern -- Both are the same thing for the purpose of the proceedings before the Court of Law -- A suit by a proprietary concern of sole proprietor or by the assumed business name or style of a person is very much maintainable.

(Para 20, 21)

B. Code of Civil Procedure, 1908 (V of 1908), Order 7 rule 1 -- Proprietary concern as plaintiff -- While filing a suit in the name of proprietary concern or assumed business name the complete details of the owner of the proprietary concern or assumed business name shall be required to be disclosed in the plaint as required Under Order 7 Rule 1 of the Code of Civil Procedure to establish the identity of the owner of the proprietary concern or the assumed business name.

(Para 21)

C. Code of Civil Procedure, 1908 (V of 1908), Order 30 Rule 10 -- Proprietary concern as plaintiff -- In case of proprietary firm, if the relationship between the firm and the proprietor is clear and not in dispute then it does not matter whether the suit is brought in the name of the firm or the proprietor, which is one and the same thing.

(Para 22)

Cases referred:

1. Municipal Council, Tiroda Versus K. Ravindra and Company, 2003 (4)ALL MR 672.