



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31<sup>ST</sup> DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

REGULAR SECOND APPEAL NO.379/2021 (DEC/INJ)  
C/W.

REGULAR SECOND APPEAL NO.381/2021 (DEC/INJ)  
REGULAR SECOND APPEAL NO.380/2021 (DEC/INJ)  
REGULAR SECOND APPEAL NO.382/2021 (DEC/INJ)

**REGULAR SECOND APPEAL NO.379/2021:**

**BETWEEN:**

1. MR. M. SEEDIABBA,  
S/O M. IBRAHIM,  
MUSLIM,  
AGED 72 YEARS,  
R/AT ALANKAR GUDDA,  
TALAPADY,  
MANGALURU TALUK-575001.
2. MR. M.K.MOHAMMED ANIFA,  
S/O M. ABUBAKKAR HAJEE,  
MUSLIM,  
AGED 60 YEARS,  
R/AT MINAZ COTTAGE,  
AMRITH NAGAR,  
PANDESHWAR,  
MANGALURU-575 001.

... APPELLANTS

(BY SRI. SHIVARAMA BHAT O., ADVOCATE)

**AND:**

1. MANGALORE ELECTRICTY SUPPLY COMPANY,  
LIMITED (MESCOM), MANGALORE,  
REPRESENTED BY ITS CHIEF EXECUTIVE  
ENGINEER, ATAVARA,  
MANGALURU-573118.
2. ASST. EXECUTIVE ENGINEER (ELEC),  
NO.1, SUB-DIVISION,  
MESCOM, ATAVARA,  
MANGALURU-573118.

... RESPONDENTS

(BY SRI. H.V.DEVARAJU, ADVOCATE FOR R1 AND R2)

THIS R.S.A. IS FILED UNDER SECTION 100 OF CPC, 1908 AGAINST THE JUDGEMENT AND DECREE DATED 01.04.2021 PASSED IN R.A.NO.9/2021 ON THE FILE OF THE III ADDL. SENIOR CIVIL JUDGE AND JMFC, MANGALURU, D.K. DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 06.01.2021 PASSED IN O.S.NO.613/2013 ON THE FILE OF THE III ADDL. CIVIL JUDGE AND JMFC, MANGALURU, D.K.

**REGULAR SECOND APPEAL NO.381/2021:**

**BETWEEN:**

1. MR. M. SEEDIABBA,  
S/O M. IBRAHIM,  
MUSLIM,  
AGED 72 YEARS,  
R/AT ALANKAR GUDDA, TALAPADY  
MANGALURU TALUK,  
REPRESENTED BY HIS GPA HOLDER  
MR. M.K.MOHAMMED ANIFA,  
S/O MR. M. ABUBAKKAR HAJEE,  
MUSLIM,

AGED 60 YEARS,  
R/AT MINAZ COTTAGE,  
AMRITH NAGAR, PANDESHWAR,  
MANGALURU - 575 001  
AS PER GPA DATED 12-11-2018

2. MRS. MUMTAZ,  
D/O MR. M.K.MOHAMMED ANIFA,  
MUSLIM,  
AGED 50 YEARS,  
R/AT MINAZ COTTAGE,  
AMRITH NAGAR, PANDESHWAR,  
MANGALURU - 575 001. ... APPELLANTS

(BY SRI. SHIVARAMA BHAT O., ADVOCATE)

**AND:**

1. MANGALORE ELECTRICITY SUPPLY COMPANY  
LIMITED (MESCOM), MANGALORE,  
REPRESENTED BY ITS CHIEF EXECUTIVE  
ENGINEER, ATTAVARA  
MANGALURU-573118.
- 2 . ASST. EXECUTIVE ENGINEER (ELEC)  
NO.1, SUB-DIVISION  
MESCOM, ATTAVARA  
MANGALURU-573118. ... RESPONDENTS

(BY SRI. H.C.DEVARAJU, ADVOCATE FOR R1 AND R2)

THIS R.S.A. IS FILED UNDER SECTION 100 OF CPC, 1908  
AGAINST THE JUDGMENT AND DECREE DATED 01.04.2021  
PASSED IN R.A.NO.10/2021 ON THE FILE OF THE III  
ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, MANGALURU,  
D.K, DISMISSING THE APPEAL AND CONFIRMING THE  
JUDGMENT AND DECREE DATED 06.01.2021 PASSED IN  
O.S.NO.612/2013 ON THE FILE OF THE III ADDITIONAL CIVIL  
JUDGE AND JMFC, MANGALURU, D.K.

**REGULAR SECOND APPEAL NO.380/2021:**

**BETWEEN:**

1. MR. M. SEEDIABBA  
S/O M. IBRAHIM  
MUSLIM  
AGED 72 YEARS  
R/AT ALANKAR GUDDA, TALAPADY  
MANGALURU TALUK

REPRESENTED BY HIS GPA HOLDER  
MR. M.K. MOHAMMED ANIFA  
S/O MR. M. ABUBAKKAR HAJEE  
MUSLIM  
AGED 60 YEARS  
R/AT MINAZ COTTAGE  
AMRITH NAGAR, PANDESHWAR  
MANGALURU - 575 001.  
AS PER GPA DATED 12-11-2018.

2. MRS. MIZAZ  
D/O MR. M.K.MOHAMMED ANIFA  
MUSLIM  
AGED 30 YEARS  
R/AT MINAZ COTTAGE  
AMRITH NAGAR, PANDESHWARA  
MANGALURU - 575 001.

... APPELLANTS

(BY SRI. SHIVARAMA BHAT O., ADVOCATE)

**AND:**

1. MANGALORE ELECTRICITY SUPPLY COMPANY  
LIMITED (MESCOM), MANGALORE  
REPRESENTED BY ITS CHIEF EXECUTIVE  
ENGINEER, ATTAVARA  
MANGALURU-573118.

2. ASST. EXECUTIVE ENGINEER  
(ELE), NO.1, SUB-DIVISION  
MESCOM, ATTAVARA  
MANGALURU-573118. ... RESPONDENTS

(BY SRI. H.V.DEVARAJU, ADVOCATE FOR R1 AND R2)

THIS R.S.A. IS FILED UNDER SECTION 100 OF CPC, 1908 AGAINST THE JUDGMENT AND DECREE DATED 01.04.2021 PASSED IN R.A.NO.13/2021 ON THE FILE OF THE III ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, MANGALURU, D.K., DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 06.01.2021 PASSED IN O.S.NO.610/2013 ON THE FILE OF THE III ADDITIONAL CIVIL JUDGE AND JMFC, MANGALURU, D.K.

**REGULAR SECOND APPEAL NO.382/2021:**

**BETWEEN:**

1. MR. M.K. MOHAMMED ANIFA  
S/O MR. M. ABUBAKKAR HAJEE  
MUSLIM  
AGED 60 YEARS  
R/AT MINAZ COTTAGE  
AMRITH NAGAR, PANDESHWAR  
MANGALURU - 575 001  
AS PER GPA DATED 12-11-2018
2. MRS. MIZAZ  
D/O MR. M.K.MOHAMMED ANIFA  
MUSLIM  
AGED 30 YEARS  
R/AT MINAZ COTTAGE  
AMRITH NAGAR, PANDESHWAR  
MANGALURU - 575 001. ... APPELLANTS

(BY SRI. SHIVARAMA BHAT O., ADVOCATE)

**AND:**

1. MANGALORE ELECTRICTY SUPPLY COMPANY LIMITED (MESCOM), MANGALORE REPRESENTED BY ITS CHIEF EXECUTIVE ENGINEER, ATTAVARA MANGALURU-573118.
2. ASST. EXECUTIVE ENGINEER (ELEC) NO.1, SUB-DIVISION MESCOM, ATTAVARA MANGALURU-573118. ... RESPONDENTS

(BY SRI. H.V.DEVARAJU, ADVOCATE FOR R1 AND R2)

THIS R.S.A. IS FILED UNDER SECTION 100 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 01.04.2021 PASSED IN R.A.NO.11/2021 ON THE FILE OF THE III ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, MANGALURU, D.K, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 06.01.2021 PASSED IN O.S.NO.611/2013 ON THE FILE OF THE III ADDITIONAL CIVIL JUDGE AND JMFC, MANGALURU, D.K.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 16.10.2025 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE H.P.SANDESH

**CAV JUDGMENT**

These second appeals are filed challenging the distinct orders passed by the Trial Court and the First Appellate Court. The parties in the respective suits are one and the same and dispute between the parties is also one and the same since the similar issue involved in the matter. Hence, taken up all the appeals together for the convenience of the Court. These appeals are filed against the concurrent finding of the Trial Court as well as the First Appellate Court.

2. Heard the learned counsel appearing for the respective parties.

3. The factual matrix of the case of the appellants while invoking the civil jurisdiction in the plaint in respect of electricity connection taken up by the plaintiffs in respect of his premises, it is contended that the demand notices issued by the defendants in all the cases are null and void and opposed to law and unenforceable. The relief is sought for declaration and permanent prohibitory injunction contending that plaintiff No.1

had gifted the premises of Mizaz Complex situated at Pandeshwar, Mangalore in favour of plaintiff No.2 vide gift deed dated 31.12.2011. It is also the case of the plaintiffs that even prior to the execution of gift deed in favour of plaintiff No.2, electricity connection was obtained to the said premises under tariff LT-2(a) as per RR number which is morefully mentioned in each plaint in respect of the said building. On the strength of said gift deed, plaintiff No.2 had acquired the ownership and being its owner, has let out the said premises to the tenant by name Mr.Labib. The said tenant is running a ladies hostel in the premises on the strength of lease agreement dated 01.07.2013.

4. The plaintiffs' case is that defendant No.2 and their vigilance squad have inspected the premises on 16.07.2013. During said inspection, defendant No.2 has informed the workers of the plaintiffs that the premises being used as a hostel, the tariff to be applicable is LT-3 and not LT-2(a). Defendant No.2 and their officials appears to have been drawn mahazar in their office subsequently and also appears to have prepared a report. It is on the strength of the said report dated 16.07.2013,

defendant No.2 had issued demand notice under separate reference number which is morefully mentioned in the each plaint demanding plaintiff No.1 to pay the amount as mentioned in the respective notices as penalty on account of usage of the electricity under the tariff LT-2(a) instead of LT-3. It is also stated in the said demand notice that 15 days time was given to file objection to the said notices and if objection was not filed within the stipulated period, then plaintiff No.1 shall pay the amount shown in the demand notice as fine amount. Further, if fine amount is not paid within 30 days from the date of notice, the electricity connection of the said premises will be disconnected without any further notice. Hence, the plaintiffs filed the objections to those notices. It is the contention of the plaintiffs that defendant No.2 has assessed the quantum of energy and difference in fixed charges is not in accordance with the norms prescribed under law and as such, the present suit is filed seeking the relief of declaration and also for permanent prohibitory injunction.

5. In pursuance of the suit summons in all the suits, defendants appeared through their counsel and filed the written statement by defendant No.2 and the same is adopted by defendant No.1 filing a memo to that effect. It is contended that the suit is frivolous one and the same is filed knowing fully well that this Court has got no jurisdiction to entertain the dispute alleged in the plaint. The entire plaint averments are denied. It is contended that defendant No.2 and their vigilance squad have inspected the premises in the presence of plaintiffs and also drawn mahazar in their presence and copy of the same was also served on plaintiff No.1. It is further contended that the plaintiffs have admitted that in the premises, a ladies hostel is being run by the tenant of plaintiff No.2, hence, the tariff which is applicable to the premises of the plaintiffs is LT-3 and not LT-2(a). Thus, they have done back billing in accordance with law and have issued demand notices which are under challenge. It is contended that notice issued by the defendants are perfectly in accordance with law and the same are also enforceable. Hence, prayed the Court to dismiss the suits.

6. The Trial Court having considered the pleadings of the parties, framed the following similar Issues in all the suits:

1. *Whether the plaintiffs prove that the demand notice issued by the defendants is not in accordance with norms?*
2. *Whether the plaintiffs prove that the demand notice issued by defendants is null and void and unenforceable?*
3. *Whether the plaintiffs are entitled for the relief of permanent prohibitory injunction?*
4. *What order or decree?*

*Additional Issue:*

1. *Whether the Court has jurisdiction to entertain this suit?*

7. The plaintiffs in support of their respective cases examined plaintiff No.1 as PW1 and got marked the documents particularly the sanction letter dated 01.01.2009 and produced the demand notice, objections filed in respect of the claim and electricity bill payment receipts and copy of the inspection report and he was also subjected to the cross-examination. On the

other hand, the Assistant Executive Engineer of MESCOM was examined as DW1 and he was also cross-examined. The Trial Court having considered both oral and documentary evidence placed on record answered Issue Nos.1 to 3 as negative and Additional Issue as affirmative holding that this Court has no jurisdiction to try this suit and dismissed the suit filed by the plaintiffs invoking Section 145 of the Electricity Act, 2003 ('the said Act' for short) in coming to the conclusion that there is a bar.

8. Being aggrieved by the respective judgments and decrees of the Trial Court, the appeals are filed before the First Appellate Court. The First Appellate Court also having considered the common grounds urged in all the appeals, framed the following similar Points:

- 1. Whether the finding of the Trial Court holding that the suit of the plaintiffs is not maintainable in view of Section 145 of the Electricity Act, 2003 is correct?*
- 2. Whether the appellants have made out grounds to produce documents by way of additional evidence*

*as sought in I.A.No.III filed under Order 41 Rule 27 r/w 151 of CPC?*

*3. Whether the judgment and decree of the Trial Court is unsustainable under law and requires interference by this Court?*

*4. Whether the appellants are entitled to the relief as sought for?*

*5. What order?*

9. The First Appellate Court having considered the respective provisions and also the principles laid down in the judgments referred by the respective parties, answered Point No.1 as affirmative in coming to the conclusion that the civil Court has no jurisdiction to entertain the suit. The Trial Court rightly held that the suit of the plaintiffs is not maintainable in view of Section 145 of the Electricity Act and thus, the Trial Court not committed any error in dismissing the suit. The contention of the appellants that judgment and decree of the Trial Court is unsustainable under law is not accepted and answered other Points for consideration as negative and

dismissed the appeals including the application filed under Order 41 Rule 27 read with Section 151 of CPC. Being aggrieved by the concurrent finding of the Trial Court as well as the First Appellate Court the present second appeals are filed before this Court.

10. It is contended in the respective appeals that both the Courts have committed an error in considering both oral and documentary evidence placed on record and also ignored the relevant material evidence and erroneously comes to the wrong conclusion that the suit is not maintainable before the civil Court. It is further contended that the First Appellate Court ought to have held that the Trial Court erred in dismissing the suit of the plaintiffs on technical ground instead of concurred the same. It is contended that the First Appellate Court in the earlier occasion has passed an order that the civil Court had jurisdiction to try the matter when the application was allowed filed under Order VII Rule 11 of CPC and remitted back the matter for fresh consideration setting aside the order. In spite of the said order, once again the Trial Court committed an error in coming to the

conclusion that the suit itself is not maintainable. When the First Appellate Court already held that the suit is maintainable, the subsequent order passed by the Trial Court is nothing but disobeying the order of the First Appellate Court. Both the Courts have not understood the pleadings of the plaintiffs. The First Appellate Court also seriously erred in dismissing the application filed under Order 41 Rule 27 of CPC. The finding on the Additional Issue is contrary to the earlier judgment passed by the First Appellate Court. On this ground alone, the First Appellate Court ought to have allowed the appeal and set aside the order of the Trial Court. It is further contended that the Trial Court ought not to have overlooked the order of the First Appellate Court when earlier, the First Appellate Court held that the suit is maintainable. Hence, the said finding of the Trial Court as well as the First Appellate Court is contrary to the established principles of law. The First Appellate Court ought to have held that the Trial Court has highly erred in holding that the evidence of the plaintiffs is material about the merits of the case, instead of that not only held that the suit is not maintainable but also answered Issue Nos.1 and 2 as negative by the Trial Court and

hence, First Appellate Court erroneously concurred the same and hence, contend that these second appeals have to be considered on merits by framing substantive questions of law.

11. This Court at the time of admission, having heard the learned counsel for the appellants and on perusal of the material on record, framed the following substantive questions of law:

1. *Whether the Trial Court and the First Appellate Court committed an error in misinterpreting Section 145 of the Electricity Act, 2003 (for short, 'the Act') unmindful of the fact that the dispute essentially was regarding the tariff head under which the plaintiffs were to be charged for the consumption of electricity?*
2. *Whether the Trial Court after remand of the respective appeals by the First Appellate Court, was justified in holding that the suit is not maintainable in view of Section 145 of the Act?*
3. *Whether the dispute in the present suit related to any assessment under Section 126 or 127 of the*

*Act so as to attract the ouster of the jurisdiction of the Civil Court under Section 145 of the Act?*

*4. Whether the plaintiffs had to be charged under tariff LT-2(a) or LT-3 having regard to the nature of the usage of the premises which was charged with electricity?*

12. In all the second appeals, the same substantive questions of law were framed and hence, all the appeals are taken up together for the convenience of the Court since similar issues are involved.

13. The learned counsel for the appellants in his argument would vehemently contend that all the matters can be taken up together since common issues involved between the parties and parties are also one and the same and the said fact is not disputed by the respondents' counsel also.

14. The learned counsel for the appellants would vehemently contend that the demand notice was issued claiming that tariff applicable is under LT-3 and same is erroneous and contend that LT-2(a) is applicable not LT-3 hence, the very

demand notice is erroneous and thus, filed the civil suit seeking the relief of declaration and permanent prohibitory injunction and the defendants cannot prove the same, admittedly, the premises is being run by the hostel and the same was let out to the tenant. The counsel also would vehemently contend that permission was given to utilize the same on LT-2(a) and erroneously claimed LT-3 and hence, civil Court has to decide the issue involved between the parties. The counsel also would vehemently contend that the same will not come within the purview of Section 126 of the Electricity Act as contended by the respondents/defendants. The counsel reiterated the grounds which have been urged in the appeal memo and would vehemently contend that at the earlier, the First Appellate Court held that the suit is maintainable and Section 145 will not come in the way of consideration of the matter and once again erroneously held that there is a bar under Section 145 of the Electricity Act and hence, the order has to be set aside and the matter has to be remitted back to the Trial Court for fresh consideration holding that Section 145 will not come in the way.

15. The learned counsel for the appellants, in support of his arguments, relied upon the judgment reported in **(1993) 3 SCC 161** in the case of **SHIV KUMAR CHADHA vs MUNICIPAL CORPORATION OF DELHI AND OTHERS** and referring this judgment, the counsel would vehemently contend that the Trial Court committed an error in coming to the conclusion that the suit is not maintainable. The counsel brought to notice of this Court paragraph 24 wherein discussion was made that the situation will be different where a statute purports to curb and curtail a pre-existing common law right and purports to oust the jurisdiction of the Court so far remedy against the orders passed under such statute are concerned. In such cases, the Courts have to be more vigilant, while examining the question as to whether an adequate redressal machinery has been provided, before which the person aggrieved may agitate his grievance. The counsel also brought to notice of this Court paragraph 25 of the said judgment wherein it is held that orders passed under such statutes inspite of the bar placed on the power of the Court can be examined on jurisdictional question. The counsel also brought to notice of this Court paragraph 30

wherein also discussion was made that it need not be said that primary object of filing a suit challenging the validity of the order of demolition is to restrain such demolition with the intervention of the Court. In such a suit, the plaintiff is more interested in getting an order of interim injunction. It has to be pointed out repeatedly that a party is not entitled to an order of injunction as a matter of right or course. Grant of injunction is within the discretion of the Court and such discretion is to be exercised in favour of plaintiff only if it is proved to the satisfaction of the Court that unless the defendant is restrained by an order of injunction, irreparable loss or damage will be caused to the plaintiff during the pendency of the suit.

16. The counsel also brought to notice of this Court the discussion made by the Apex Court invoking Section 9 of CPC wherein held that statute, instead of creating any right or liability and providing uno flatu final remedial forum, merely curbing or regulating pre-existing common law right or liability and providing forum for redressal against order passed under statute to the exclusion of civil Court's jurisdiction in the matter. Held

that Court's jurisdiction to go into question whether the order was a nullity being vitiated by jurisdictional error not barred even though appellate forum provided under Section 343 of Delhi Municipal Corporation Act against order of demolition or stoppage of unauthorized constructions and bar of Court jurisdiction provided under Section 347-E of the Act, suit questioning the appellate order would be maintainable on ground of jurisdictional error. The counsel referring this judgment also would vehemently contend that the Court has to take note of even inspite of any appeal provision, take note of suit itself is maintainable on the jurisdictional error. The counsel referring this judgment would vehemently contend that it is not the case of the defendant that it is a case of theft of electricity and only dispute is with regard to the tariff is concerned whether LT-2(a) is applicable or LT-3 is applicable. When said issue is involved between the parties, bar under Section 145 will not come into initiation of suit.

17. The counsel also relied upon the judgment of this Court reported in **ILR 1996 KAR 2916** in the case of

**KARNATAKA ELECTRICITY BOARD AND ANOTHER vs M/S. SHAH KANJI DEVJI OIL MILLS** and the said judgment is with regard to the earlier electricity dispute for Karnataka Electricity Board Recovery of Bills Act, 1976 and held that against KEB on following certain procedure, but does not bar civil Court's jurisdiction to entertain suit and also discussed Section 9 of CPC and further held that electricity theft of over Rs.6 lakhs without following procedure under the KEB Recovery of Dues Act, 1976 and without demand notice held that civil Court's jurisdiction not barred as there is no statutory bar.

18. The counsel also relies upon the judgment reported in **AIR 2004 PUNJAB AND HARYANA 137 FULL BENCH** in the case of **M/S. RANBAXY LABORATORIES vs PUNJAB STATE ELECTRICITY BOARD, PATIALA AND ANOTHER** wherein also held that the dispute between consumer and Board or vice versa, Act does not constitute any Tribunal to resolve said disputes, thus, disputes settlement mechanism established by Board by way of Regulations. Is in nature of departmental remedies, cannot oust jurisdiction of civil Court. The counsel

also brought to notice of this Court in this case also scope of Section 9 of CPC is discussed. The Act does not create any Tribunal so as to resolve the dispute between the consumers and the Board or vice versa. Since the statute has not constituted alternative dispute settlement mechanism, therefore, such alternative dispute settlement mechanism established by the Board by way of regulations is in the nature of departmental remedies which cannot oust the jurisdiction of the civil Court. By virtue of such regulations, the jurisdiction of the civil Court under Section 9 of CPC cannot be barred as the jurisdiction can be barred only by creating statutorily adequate and efficacious alternative remedy. The counsel referring this judgment also would vehemently contend that in view of new enactment of Electricity Act, 2003, no such Tribunal is created and there is no any remedy of alternative dispute mechanism. When such being the case, civil suit is maintainable.

19. The counsel also in support of his arguments relied upon the judgment reported in **AIR 2007 PUNJAB AND HARYANA 57** in the case of **PUNJAB STATE ELECTRICITY**

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AGRICULTURE ENGINEERING WORKS AND OTHERS**

wherein also discussed about Electricity Act, 2003, Sections 145, 126 and 127, bar to civil Court's jurisdiction, applicability, demand notice issued by clubbing separate electricity connections of respondents. Suit for declaration filed that demand notice was illegal, void, without jurisdiction and against principles of natural justice and also against Electricity Rules and not binding on respondent, matter in dispute not covered under Section 126 or 127 of Act, jurisdiction of civil Court could not be said to have been barred. The counsel would vehemently contend that when Punjab and Haryana High Court held that Section 145 will not bar any suit in a case for declaration. The Trial Court as well as the First Appellate Court committed an error in dismissing the suit on the ground that there is a bar and even Trial Court also proceeded to consider Issue Nos.1 and 2 on merits and First Appellate Court did not touch upon the claim of the plaintiffs on merits and only considered the issue of jurisdiction and erroneously confirmed the same.

20. Per contra, the learned counsel appearing for the respondents/defendants would vehemently contend that both the Courts have taken note of statutory bar under Section 145 of Electricity Act and rightly taken note of legislature wisdom in barring the filing of the suit when the demand notice was issued and the same ought to have been agitated before the authority and specific provision is made under Section 126 and even if any aggrieved by the adjudication made under Section 126, the appeal can be filed and instead of adjudicatory process as contemplated under Sections 126 and 127, the present suit is filed. Hence, the Trial Court rightly comes to the conclusion that the suit is barred under Section 145 by answering Additional Issue. The learned counsel also would vehemently contend that though it is not a case of theft of electricity but issue involved is with regard to the tariff is concerned and demand is made invoking LT-3 since admittedly the premises is used for running a hostel and the same is not for domestic purpose and LT-2(a) is applicable, if it is for the domestic purpose and being run the hostel in the premises is a commercial one and hence, rightly issued the demand notice applying LT-3 and the contention of

the plaintiffs that LT-2(a) is applicable cannot be accepted and hence, contend that on merits as well as jurisdiction, the plaintiff is not entitled for the relief.

21. The learned counsel for the respondents in support of his arguments relied upon the judgment reported in **2005(4) KCCR 2594** in the case of **THE EXECUTIVE ENGINEER, KPTCL, NOW GESCOM, BIDAR AND OTHERS vs ISHWARAMMA AND ANOTHER**, wherein this Court held that Section 145 is clear that civil Court not to have jurisdiction. Section 145 of the Act would clearly indicate that no civil Court shall have the jurisdiction to entertain any suit or proceeding in respect of any other matter which the assessing officer referred to in Section 126 or an appellate authority referred to in Section 127 is empowered to determine or act on facts. Held that the demand made by the BESCO cannot be challenged before the consumer redressal forum. The provisions of Section 145 of the Electricity Act would oust the jurisdiction of the civil Court as well as any other forum in adjudicating the claim of the petitioners.

22. The counsel also relied upon the judgment reported in **(2013) 8 SCC 491** in the case of **UTTAR PRADESH POWER CORPORATION LIMITED AND OTHERS vs ANIS AHMAD** and the counsel referring this judgment would vehemently contend that the Apex Court while dealing with the matter taken note of Section 145 of the Electricity Act specifically bars the jurisdiction of the civil Court to entertain any suit or proceedings in respect of any matter which an assessing officer referred to in Section 126 or an appellate authority referred to in Section 127 of the Electricity Act or the adjudicating officer appointed under the Electricity Act is empowered to determine.

23. The counsel also brought to notice of this Court the discussion made in the judgment in paragraph 39 wherein Section 126 of the Electricity Act was discussed which empowers the assessing officer to make assessment in the case of unauthorized use of electricity. In the case on hand is also though permission is given under LT-2(a), the issue involved in the case is only with regard to the tariff is concerned. It is nothing but an unauthorized usage of the electricity for the

commercial purpose running the hostel, hence, taken note of Section 126 of the Electricity Act. The counsel also brought to notice of this Court paragraph 40 of the judgment wherein it is held that Section 145 of the Electricity Act, 2003 bars the jurisdiction of the civil Court to entertain any suit and separate provision of appeal to the appellate authority has been prescribed under Section 127 and Section 135 with regard to theft of electricity also discussed and so also discussed about constitution of Special Court for theft of electricity. The counsel would vehemently contend that this judgment is also aptly applicable to the case on hand.

24. The counsel also relied upon the judgment of the Punjab and Haryana High Court in the case of **R.S.A.No.4181/2016** decided on **14.05.2025** and brought to notice of this Court the Division Bench made discussion with regard to Section 145 of the Electricity Act on the jurisdiction of the civil Court in paragraph 12. The counsel would vehemently contend that an elaborate discussion was made in this judgment in paragraph 21 and also 27 as compartmentalized into different

segments, a deep reading of Section 145 of the Electricity Act and in paragraph 30 and 31 comes to the conclusion that Section 145 categorically says the ouster of the civil Court. Hence, with regard to the civil Court is concerned in paragraph 34 held that the Special Courts become foisted with adjudicatory jurisdiction, thus in respect of statutory subjects, which find mention in Sections 135 to 140 of the Act of 2003 and which also find mention in Section 150 of the Act of 2003. The said Courts considered the issue of theft of electricity and proviso of Section 126 also discussed in paragraph 38. In paragraph 39 also discussed with regard to the ouster of the provisions of Cr.P.C. In the case on hand, it is not the case of theft of electricity but issue involved between the parties is with regard to the unauthorized usage of the electricity. Hence, these judgments are aptly applicable to the facts of the case on hand and hence, this Court cannot find fault with the finding of the Trial Court as well as the First Appellate Court.

25. In reply to the arguments of the learned counsel for the respondents, the learned counsel for the appellants would

submit that both the Courts have committed an error and the principles laid down in the judgments referred by the learned counsel for the respondents are not applicable to the facts of the case on hand, since the issue involved between the parties is not in respect of theft of electricity and hence the judgment of this Court in the case of **Ishwaramma** (supra), is not applicable to the facts of the case on hand. The learned counsel would submit that the judgment of the Apex Court in the case of **Anis Ahmad** (supra) is also not applicable to the case on hand, since the jurisdiction of the Consumer Court was discussed in length. The learned counsel would also contend that the Division Bench judgment of Punjab and Haryana at Chandigarh also do not comes to the aid of the Electricity Board. Hence, the judgment of both the Trial Court as well as the First Appellate Court are required to be set aside.

26. Having heard the learned counsel for the appellants and the learned counsel for the respondents and considering the principles laid down in the judgments referred supra, this Court has to analyze the material available on record keeping in view

the substantial questions of law framed by this Court. The substantial questions of law Nos.1 to 3 are with regard to Section 145 of the Act, whether the Trial Court after remand of the appeal in R.A.No.10/2014 by the First Appellate Court, was justified in holding that the suit is not maintainable and whether the dispute in the present suit related to any assessment under Sections 126 or 127 of the Act so as to attract the ouster of the jurisdiction of the Civil Court invoking Section 145 of the Act? Hence, these three substantial questions of law are to be considered together.

**Substantial questions of law Nos.1 to 3:**

27. These substantial questions of law are interconnected with each other with regard to the interpretation of Section 145 of the Act and so also whether the dispute is in respect of assessment under Sections 126 or 127 of the Act so as to attract the ouster of jurisdiction and hence taken up together for consideration in keeping the material available on record.

28. Having considered the factual aspects of the case, it is not in dispute that after the construction of the building, electricity connection was taken. It is not in dispute that the appellants have obtained the electricity under the tariff LT-2(a). It is the case of the appellants that the same is used from the date of connection till the issuance of demand notice in 2013. It is also not in dispute that an inspection was conducted in respect of the premises of the appellants on 16.07.2013 and the inspecting authority came to know that, in the premises, hostel is being run and the same is also not disputed by the appellants. It is the case of the Electricity Board that, tariff applicable is LT-3 and not LT-2(a), since the premises is used for commercial purpose for running a hostel and the same is an unauthorised use of electricity and authorization is given for supply of electricity considering the premises is used for domestic purpose and tariff LT-2(a) is applicable and when the premises is used for commercial purpose for running a hostel, applicable tariff is LT-3. Having considered the inspection report dated 16.07.2013, defendant No.2 issued a notice dated 01.08.2013 demanding plaintiff No.1 to pay the amount as mentioned in the

respective notices as penalty on account of usage of electricity under the tariff LT-2(a) instead of LT-3. It is also not in dispute that demand notices are issued in respect of separate numbers, which have been taken by the plaintiffs for different floors. It is also not in dispute that demand notice was issued and 15 days time was given to file objections and objections were filed within the stipulated period. The demand notice is very clear that if the objection is not filed within the stipulated period, plaintiff No.1 shall pay the amount shown in the demand notice as fine amount and the said fine amount is payable within 30 days from the date of notice. It is stated that electricity connection of the said premises will be disconnected without any further notice.

29. It is also not in dispute that without deciding the issue involved between the parties in terms of the demand notice and objection statement, the plaintiffs had approached the Civil Court by filing a suit seeking the relief of injunction and also declaration to declare that the demand notices are illegal, null and void, opposed to law and unenforceable. It is also not in dispute that when the suit was filed, an application was filed

under Order VII Rule 11 of CPC at the first instance and the said application was allowed and the plaint was rejected on the ground that the suit is not maintainable. The same is challenged before the Appellate Court in R.A.No.10/2014 and the First Appellate Court, vide order dated 11.09.2017, set aside the order of rejection of the plaint and remitted the matter back to the Trial Court for fresh disposal, after framing proper issues, record the evidence of both the parties by giving findings on all the issues. The Trial Court, having considered the order passed by the First Appellate Court in R.A.No.10/2014, framed the issues as to whether the plaintiffs prove that the demand notice issued by the defendants is not in accordance with norms and the same is null and void and unenforceable and whether the plaintiffs are entitled for the relief of permanent prohibitory injunction and also framed an additional issue No.1 whether the Court has jurisdiction to entertain this suit. The Trial Court answered issue Nos.1 to 3 in the negative and answered additional issue No.1 that the Court has got no jurisdiction to try the suit. The Trial Court while answering issue Nos.1 and 2, considered the same together and answered issue No.3

separately along with additional issue No.1. It is also not in dispute that the same is challenged before the First Appellate Court in R.A.No.11/2021.

30. The First Appellate Court, vide order dated 01.04.2021, confirmed the judgment of the Trial Court in coming to the conclusion that the suit is not maintainable and the Trial Court rightly held that there is a bar under Section 145 of the Act and so also made an observation that earlier the First Appellate Court passed an order that the matter requires to be decided by the Trial Court on framing proper issues on such pleas and on the parties going to trial. It is not as though it is impossible for the Trial Court to grant relief as sought for by the plaintiffs in this suit and basically the Civil Courts are empowered with jurisdiction to try a suit of this nature. Therefore, the matter is essentially to be looked into and decided by the Trial Court on framing proper issues and parties going on trial. Having conducted the trial, the Trial Court has given the finding.

31. Having gone through the judgment of the Trial Court and the First Appellate Court, it is clear that the demand notice

was issued against the appellants in terms of demand notices demanding the penalty for usage of electricity for the purpose of running hostel under LT-3 as against LT-2(a). It is also not in dispute that objections are also filed in respect of the said demand notice. It is also not in dispute that before the decision with regard to the demand notice and objections, suits are filed seeking the relief of declaration and injunction. Now the question before this Court is whether it is a theft of electricity or unauthorized usage of electricity.

32. Having considered the demand notice dated 01.08.2013, it is very clear that electricity is used for running a hostel and it is the case of the Electricity Board that LT-3 tariff is applicable and not LT-2(a). When the demand is made for unauthorized usage of power, the question of theft of electricity does not arise having read the demand notices in all the cases. It is contended that when the hostel is being run, the same is for commercial purpose and not for domestic purpose and if it is for domestic purpose, tariff LT-2(a) is applicable and when the commercial usage is made, tariff LT-3 is applicable. Now the

question before this Court is with regard to invoking of Section 145 of the Act by the Trial Court as well as the Appellate Court unmindful of the fact that the dispute essentially was regarding the tariff head under which the plaintiffs were to be charged for the consumption of electricity, whether the Trial Court after remand of the appeal in R.A.No.11/2014 by the First Appellate Court, was justified in holding that the suit is not maintainable in view of Section 145 of the Act and whether the dispute in the present suit related to any assessment under Sections 126 or 127 of the Act so as to attract the ouster of the jurisdiction of the Civil Court under Section 145 of the Act?

33. Now this Court would like to consider the demand notice and on perusal of the demand notice, which is marked as Ex.P.1, it is mentioned that the tariff applicable to your installation will be LT-2(a). In terms of Ex.P.2, a reference is made that unauthorizedly used for commercial purpose and demand notice is issued for a period of two years double the payment and hence it is clear that demand is made for the

unauthorized use of electricity mentioning it as for commercial purpose.

34. Having considered the factual aspects of the case, this Court would like to extract the provisions of Section 145 of the Act, as the issue before this Court is with regard to the jurisdiction is concerned. Section 145 of the Act reads as follows:

***"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."***

35. This Court would also like to refer to Sections 126 and 127 of the Act, as the issue involved is whether the demand notice issued by the Electricity Board comes within the purview

of Section 126 of the Act. Sections 126 and 127 of the Act reads as follows:

**"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 a 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 unauthorized 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 authorised; or

(v) for the premises or areas other than those for which the supply of electricity was authorized.

**127. Appeal to Appellate Authority.**– (1) Any person aggrieved by the 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 sub-section (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."*

36. This Court also would like to refer to Section 135 of the Act, i.e., theft of electricity and also Section 153 of the Act,

i.e., constitution of Special Courts for the speedy trial of the offences referred to in Sections 135 to 140 of the Act. Sections 135 and 153 of the Act reads as follows:

**"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 authorized 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 authorized 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 authorized 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 disconnect:*

*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 unauthorized 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 therefrom 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.*

**153. Constitution of Special Courts.**— *(1) The State Government may, for the purposes of providing speedy trial of offences referred to in 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).”*

37. Having considered the above provisions, this Court would like to consider Section 145 of the Act, wherein when the suit is filed before the Civil Courts jurisdiction to consider a suit with respect to the decision of assessing officer under Section 126 or decision of the appellate authority under Section 127, is barred under Section 145 of the Act,. Having read Section 145 of the Act, it is very clear that 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 confirmed by or under this Act.

38. In the case on hand, it has to be noted that a demand notice was issued making the demand that power was used for commercial purpose and hence LT-3 is applicable and not LT-2(a). It is not in dispute that when the demand notice was issued, objection was filed. But competent authority has not taken any decision on the demand and also as well as objection and the suit is filed.

39. This Court also looked into the provisions of Section 126 of the Act, wherein the Act empowers the assessing officer to make assessment in case of unauthorized use of electricity. It provides that 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 unauthorised 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. Hence, an authority is empowered to the assessing officer to make an assessment in the case of unauthorised use of electricity.

40. It is the contention of the Electricity Board i.e., the defendants, that though power was taken for domestic purpose, the same is used for commercial purpose for running a hostel and the same is not disputed. As per Section 126(2) of the Act, the order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises and in the case on hand, the same has been served. Under Section 126(3), an opportunity is given to file objections and it is not in dispute that the plaintiffs have also filed the objections. Section 126(5) also says that if 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 12 months immediately preceding the date of inspection. Section 126(6) says twice the tariff applicable for the relevant category and also for the purpose of this Section, it is also discussed that "assessing officer" means an officer of a State Government or Board or licensee and "unauthorised use of electricity" means the usage of electricity by any artificial means; or by means not authorised by the concerned person or authority or licensee; or through a tampered meter; or for the purpose other than for which the usage of electricity was authorized. In the case on hand, in respect of unauthorised use of electricity, Section 126(6)(iv) is applicable having considered the demand notice for the purpose other than for which the usage of electricity was authorized. Hence, the Court has to take note of the same comes within the purview of Section 126 of assessment. In the case on hand, a provisional assessment is made under Section 126(2) and thereafter given an opportunity to file objections and accordingly objection was filed.

41. Section 127 of the Act is very clear that if any person aggrieved by an order passed under Section 126 may, within 30 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. Hence, it is very clear that if any order is passed under Section 126, an appeal shall lie to the appellate authority referred to in sub-section (1) of Section 127, against the final order. Therefore, it is clear that after notice of provisional assessment to the person indulged in unauthorised use of electricity, the final decision by an assessing officer, who is a public servant and the assessment of unauthorised use of electricity is a quasi-judicial decision and does not fall within the meaning of consumer and also even if it is any offences under Sections 135 to 140, it is very clear having read Section 126 read with Sections 135 to 140 that, it is nothing but unauthorised use of electricity and hence the demand is within the purview of Section 126.

42. Having considered the earlier order passed by the First Appellate Court in R.A.No.10/2014, no doubt, the First Appellate Court, when the impugned order passed under Order VII Rule 11 of CPC was challenged, set aside the order and remanded the matter back to the Trial Court with a direction to frame appropriate issues and pass an order and that does not mean that there is no bar under Section 145. The observation made in the order is very clear that the issue involved between the parties to be considered by framing appropriate issues and then only consider the matter afresh and accordingly, additional issue No.1 is also framed by the Trial Court and considered the same.

43. The learned counsel for the appellants also relied upon the Full Bench judgment passed by the Punjab and Haryana High Court in the case of **M/s. Ranbaxy Laboratories** (supra), wherein, it is held that the dispute between consumer and Board or vice versa, Act does not constitute any Tribunal to resolve said disputes. Thus, disputes settlement mechanism established by Board by way of regulations is in nature of

departmental remedies and cannot oust jurisdiction of Civil Court. It is also observed that the Tribunal is not constituted and the said judgment is not applicable to the facts of the case on hand. In the case on hand, an assessment officer is the competent officer to consider the issue involved between the parties and hence he had invoked Section 126 of the Act for unauthorised usage of electricity for the purpose other than the electricity supply was made and hence the said judgment will not come to the aid of the appellants.

44. The learned counsel for the appellants also relied upon the judgment of the Punjab and Haryana High Court in the case of **M/s.Guru Nanak Agriculture Engineering Works** (supra), wherein demand notice was issued by clubbing separate electricity connections of the respondents and suit for declaration was filed and the matter in dispute was not covered under Sections 126 or 127 of the Act. Hence, the Punjab and Haryana High Court held that the Civil Court's jurisdiction is not ousted. This Court has already taken note of the issue involved between the parties is concerned comes within the purview of Sections

126 or 127 of the Act and also a injunction was granted and the same is also challenged before the Apex Court in **Civil Appeal No.397/2008** and the Apex Court dismissed the appeal coming to the conclusion that the observations made by the High Court shall not come in the way of the Trial Court to decide the question with regard to the jurisdiction of the Civil Court and also an observation is made that since the order under challenge is an interim one, we are not inclined to interfere with the same. Having considered this judgment, it is very clear that the Trial Court has to decide the question with regard to the jurisdiction of the Civil Court. The order was only with regard to the interim order is concerned.

45. In the case on hand also, earlier the First Appellate Court passed an order to frame an issue and decide the issue between the parties and hence the very contention that even after remanding of the appeal in R.A.No.10/2024 by the First Appellate Court, the issue whether it was justified holding that suit is not maintainable in view of Section 145 Act will not come to the aid of the appellants, since the matter is decided on

merits by framing an issue. Hence, the substantial question of law framed by this Court whether the Trial Court after remand of the appeal in R.A.No.10/2014 by the First Appellate Court, was justified in holding that the suit is not maintainable in view of Section 145 of the Act, will not come in the way for disposal of the suit on merits by framing the issue. Hence, substantial question of law No.2 is answered accordingly.

46. The learned counsel for the appellants in support of his arguments also relied upon the judgment of the Apex Court in the case of **Shiv Kumar Chadha** (supra) and brought to the notice of this Court the discussion made with regard to Section 9 of CPC, bar to Civil Court's jurisdiction, wherein it is held that the Court's jurisdiction to go into question whether the order was a nullity being vitiated by jurisdictional error not barred. Even though appellate forum provided under Section 343 of Delhi Municipal Corporation Act against the order or demolition or stoppage of unauthorized constructions and bar of Court's jurisdiction provided under Section 347-E of the Act, suit questioning the appellate order would be maintainable on ground

of jurisdictional error. An observation is made that the situation will be different where a statute purports to curb and curtail a pre-existing common law right and purports to oust the jurisdiction of the Court so far remedy against the orders passed under such statute are concerned. In such cases, the Courts have to be more vigilant, while examining the question as to whether an adequate redressal machinery has been provided, before which the person aggrieved may agitate his grievance.

47. Having taken note of this principle, it is very clear that the Court has to see that whether any remedy is available. In the case on hand, only a provisional assessment is made under Section 126 of the Act and given an opportunity to file objections and then the matter would be considered for passing an order on merits. Hence, there is a remedy against the demand notices and hence this judgment will not come to the aid of the appellants and also while exercising the civil jurisdiction, taken note of Order 39 Rule 3 of CPC in a case where the suit is filed against the order of demolition or

stoppage of unauthorized construction and that is not the case in the case on hand.

48. The learned counsel for the appellants also relied upon the judgment of the Co-ordinate Bench of this Court in the case of **M/S. Shah Kanji Devji Oil Mills** (supra), wherein while considering the issue, particularly taken note of Section 5 of the Karnataka Electricity Board Recovery of Dues Act, 1976, prescribes procedure for filing suit against KEB on following certain procedure, but does not bar the Civil Court's jurisdiction to entertain the suit. A discussion was also made with regard to Section 9 of CPC that without following the procedure under the KEB Recovery of Dues Act, 1976 and without demand, Civil Court's jurisdiction not barred as there is no statutory bar. But in the case on hand, a demand notice was issued and this Court having considered the material on record, comes to the conclusion that when the said assessment is made under Section 126 of the Act and when the demand notice was issued invoking Section 126 of the Act, this judgment also will not come to the

aid of the appellants having considered the factual aspects of the case.

49. Now coming to the aspect of the contention put forth by the learned counsel for the respondents, the learned counsel for the respondents relies upon the judgment of this Court in the case of **Ishwaramma** (supra). No doubt, in this judgment, this Court taking note of Section 145 of the Act categorically held that Section 145 of the Act would clearly indicate that no Civil Court shall have the jurisdiction to entertain any suit or proceeding in respect of any other matter which the assessing officer referred to in Section 126 or an appellate authority referred to in Section 127 is empowered to determine or act. It is also held that demand made by the BESCO cannot be challenged before the Consumer Redressal Forum. The provisions of Section 145 of the Act would oust the jurisdiction of the Civil Court as well as any other forum in adjudicating the claim of the petitioners. This judgment will come to the aid of respondents, wherein not only discussed with regard to the Consumer Redressal Forum and so also the Civil Court. This

Court in the said judgment also taken note of the judgment of the Apex Court in the case of **PUNJAB STATE ELECTRICITY BOARD AND ANOTHER v. ASHWANI KUMAR** reported in **JT 1997 (5) SC 182**, wherein the Apex Court while interpreting the scope of Section 9 of CPC held that by necessary implication the cognizance of the Civil Court as contemplated in the present set of circumstances is ousted. This Court also taken note of paragraph No.10 of the Apex Court's judgment, which reads as follows:

*"10. The question then arises: whether the Civil Court would be justified in entertaining the suit and issue injunction as prayed for? It is true, as contended by Shri Goyal, learned Senior Counsel, that the objections were raised in the written statement as to the maintainability of the suit but the same given up. Section 9 of C.P.C. provides that Civil Court shall try all suits of civil nature, subject to pecuniary jurisdiction, unless their cognizance is expressly or by necessary implication is barred. Such suit would not be maintainable. It is true that ordinarily, the Civil Court has jurisdiction to go into and try the disputed questions of civil nature, where the fundamental fairness of procedure has been*

*violated. The statutory circulars adumbrated above do indicate that a fundamental fairness of the procedure has been prescribed in the rules and is being followed. By necessary implications, the cognizance of the civil cause has been excluded. As a consequence, the Civil Court shall not be justified in entertaining this suit and giving the declaration without directing the party to avail of the remedy provided under the Indian Electricity Act and the Indian Electricity (Supply) Act and the instructions issued by the Board in that behalf from time to time as stated above."*

50. This Court while relying upon paragraph No.10 of the said judgment, taken note of that the said decision is followed by this Court in the case of **B. NARAYANA SWAMY v. THE ASSISTANT EXECUTIVE ENGINEER ELECL. K.E.B. AND ANOTHER** reported in **ILR 1999 KAR 1665** and an identical view is taken by this Court in the case of **KARNATAKA ELECTRICITY BOARD, BANGALORE AND OTHERS v. MESSRS. ORIENTAL TIMBER INDUSTRIES** reported in **1993 (2) Kar.L.J 461**. This Court having taken note of the principles laid down in the judgment of the Apex Court and the

judgments referred supra, comes to the conclusion that Section 145 of the Act by implication would exclude the jurisdiction of Civil Court or any other forum on adjudicating the claim or action of the petitioners and held that Annexure-C cannot be sustained.

51. In the case on hand, when Section 126 of the Act is invoked and made an assessment of preliminary assessment and an opportunity is given in terms of Section 126 sub-clauses and an opportunity is given to file objections, the matter ought to have been adjudicated by the competent authority having considered the grounds urged by the respondents and the same is not done and hence this judgment is aptly applicable to the case on hand.

52. The learned counsel for the respondents also relied upon the judgment of the Apex Court in the case of **Anis Ahmad** (supra), wherein the Apex Court discussed with regard to the scope and ambit of Consumer Protection Act, 1986, wherein definition of the consumer also taken note of and also taken note of the factual aspect of the assessment made under Section 126 of the Act or action taken against those committing

offences under Sections 135 to 140 of the Act considering the assessment in case of various acts of unauthorized use of electricity. It is held that the same cannot be questioned before the Consumer Forum and further held that the Civil Court's jurisdiction to consider a suit with respect to the decision of assessing officer under Section 126 of the Act, or with respect to a decision of the appellate authority under Section 127 is barred under Section 145 of the Act. Therefore, it is clear that after notice of provisional assessment to the person alleged to have been indulged in unauthorized use of electricity, the final decision by an assessing officer, who is a public servant, on the assessment of unauthorized use of electricity is a quasi-judicial decision and does not fall within the meaning of "consumer dispute" under Section 2(1)(e) of the Consumer Protection Act. This Court would like to extract paragraph Nos.39 and 40 of the discussion of the Apex Court, which reads as follows:

*"39. Section 126 of the Electricity Act, 2003 empowers the assessing officer to make assessment in the case of "unauthorised use of electricity". It provides that 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 "unauthorised use of electricity", he shall assess the electricity charges payable by such person or by any other person benefitted by such use.*

*40. Section 145 of the Electricity Act, 2003 bars the jurisdiction of the civil court to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in Section 126. A separate provision of appeal to the appellate authority has been prescribed under Section 127 so that any person aggrieved by the final order made under Section 126, may within thirty days of the said order, prefer an appeal.*

*Therefore, it is clear that after notice of provisional assessment to the person indulged in unauthorised use of electricity, the final decision by an assessing officer, who is a public servant, on the assessment of "unauthorised use of electricity" is a "quasi-judicial" decision and does not fall within the meaning of "consumer dispute" under Section 2(1)(e) of the Consumer Protection Act, 1986."*

53. Having considered the discussion made by the Apex Court invoking Section 126 of the Act as well as detailed discussion of proviso to Section 126(1) to (6) as well as explanation for the purpose of this Section, "assessment officer" as well as "unauthorized use of electricity", in the case on hand, sub-clause (iv) applies i.e., for the purpose other than for which the usage of electricity was authorized. In the demand notice also it is very specific that the power supply was unauthorizedly used for commercial purpose and the same has to be dealt with by the assessing officer under Section 126 of the Act and an opportunity is also provided to the appellants to file objection statement and instead of waiting for the same, have approached the Civil Court when there is a specific bar under Section 145 of the Act.

54. The learned counsel for the respondents also relies upon the Punjab and Haryana High Court judgment passed in **R.S.A.No.4181/2016** decided on **14.05.2025**, when the matter was referred to the Division Bench framing a question and in this judgment taken note of that the learned Single Judge

vide order dated 21.12.2016, framed the hereinafter extracted substantial question of law, for rendition of a decision thereons by an appropriate Bench, to be constituted by Hon'ble the Chief Justice and accordingly a Bench was constituted for consideration by the larger bench. In this judgment also a detailed discussion was made by the Division Bench, particularly in paragraph No.34 with regard to the jurisdiction of the Civil Courts discussed with regard to the theft of electricity under Sections 135 to 140 of the Act and also a provision is made to the Special Court to decide the issue involved with regard to the theft of electricity. In paragraph No.38 discussed Section 126 of the Act including the provisions of Section 126 and comes to the conclusion that the jurisdiction of the Civil Court is ousted.

55. Having considered the material available on record and detailed discussion made above and also the relevant provisions and also the substantial question of law No.1 whether the Trial Court and the First Appellate Court committed an error in misinterpreting Section 145 of the Act unmindful of the fact that the dispute essentially was regarding the tariff head under

which the plaintiffs were to be charged for the consumption of electricity, this Court comes to the conclusion that demand is made under Section 126 of the Act and the same is also an unauthorized use of electricity. It is the specific case of the respondents that consumption of electricity is for commercial purpose and not for the purpose for which the sanction was taken and utilized and the same is an issue before the competent authority and the competent assessing officer has to take a decision. It is not in dispute that already demand notice was issued and an opportunity is given as contemplated under Section 126 of the Act and objections also filed before the competent authority and before taking a decision, the plaintiffs have approached the Civil Court seeking the relief of declaration and prohibitory injunction.

56. Having considered in detail the discussion made above and when this Court comes to a definite conclusion that demand is made under Section 126 of the Act and also considering the principles laid down in the judgments referred supra by the Apex Court, though it is not a case of theft of

electricity as contended by the learned counsel for the appellants, but it is a case of unauthorized usage of electricity and dispute is also whether tariff LT-2(a) is applicable or LT-3, as claimed by the respondents/defendants. When such an issue is pending for consideration, detailed discussion was made by this Court, particularly referring the judgment of the Apex Court in the case of **Anis Ahmad** (supra) relied upon by the learned counsel for the respondents, wherein also discussion was made with regard to the theft of electricity as well as invoking of Section 126 of the Act. When the demand is made and the same is a provisional demand and when the decision is not yet taken under Section 126 of the Act, there is no any conclusion by the assessing officer and even if it is concluded, the remedy is also available to the appellants under Section 127 of the Act, since there is a appeal provision. Hence, the Trial Court and the First Appellate Court have not committed any error in misinterpreting Section 145 of the Act. Section 145 of the Act is very clear that if any issue involved between the parties, particularly in respect of assessment made under Section 126 or action taken against those committing the offences, suit is not

maintainable. It is very clear that when the notice of provisional assessment is served to the person alleged to have been indulged in unauthorized use of electricity, the final decision is of the assessing officer, who is a public servant and hence there cannot be any invoking of Civil Court's jurisdiction to consider a suit with respect to the decision of an assessing officer under Section 126 of the Act or with respect to a decision of the appellate authority under Section 127 of the Act and the same is barred under Section 145 of the Act. Section 145 of the Act specifically bars the jurisdiction of the Civil Court to entertain any suit or proceedings in respect of any matter which an assessing officer referred to in Section 126 or an appellate authority referred to in Section 127 of the Act or the adjudicating officer appointed under the Act is empowered by or under this Act to determine the same. Admittedly, only provisional demand is made and an opportunity is given to file objections and objections are also filed and the same is pending for consideration by the assessing officer as empowered under Section 126 of the Act. When such being the case, both the Courts have not committed any error in misinterpreting Section

145 of the Act unmindful of the fact that the dispute essentially was regarding the tariff head under which the plaintiffs were to be charged for the consumption of electricity and in respect of the tariff is concerned, the same has to be adjudicated by the assessing officer and hence this Court answers the substantial question of law No.1 accordingly that both the Courts have not committed any error.

57. Now the question before this Court is with regard to the substantial question of law No.4 whether the plaintiffs had to be charged under tariff LT-2(a) or LT-3 having regard to the nature of the usage of the premises which was charged with electricity and this issue cannot be decided by this Court when this Court comes to the conclusion that the Civil Court's jurisdiction is ousted and also it is an erroneous approach of the Trial Court when answered the Additional Issue No.1. When the Trial Court comes to the conclusion that there is a bar under Section 145 of the Act, considered the issue involved between the parties and the Trial Court ought not to have considered issue Nos.1 and 2. Issue Nos.1 and 2 is very clear that the Trial

Court framed the issue after the remand made by the First Appellate Court in the earlier appeal, wherein issue involved between the parties is framed that whether the plaintiffs prove that demand notice issued by the defendants is not in accordance with the norms and whether the plaintiffs prove that the demand notice issued by the defendants is null and void and unenforceable. The Trial Court framed the additional issue No.1 whether the Court has jurisdiction to entertain the suit and when answered the same that the Court has no jurisdiction to entertain the same, ought not to have answered issue Nos.1 and 2 regarding demand notice and the same has to be adjudicated before the competent officer i.e., assessing officer as contemplated under Section 126 of the Act. The assessing officer is empowered to deal with the same and hence the very finding of the Trial Court answering issue Nos.1 and 2 in the negative is misconceived and fails to take note of the fact that when the Court comes to the conclusion that no jurisdiction and in the absence of any jurisdiction, ought not to have determined the same. Hence, the Trial Court committed an error in deciding issue Nos.1 and 2 when the Court comes to the conclusion that

the Civil Courts have no jurisdiction. When such a finding is given, the question of entertaining whether tariff LT-2(a) is applicable or LT-3 is applicable ought not to have been decided and hence I answer substantial question of law No.4 accordingly regarding the nature of usage of the premises, which was charged with electricity whether it is as per LT-2(a) or LT-3 and the same has to be considered by the assessing officer under Section 126 of the Act and if any person is aggrieved by the decision of the competent authority i.e., assessing officer, ought to have questioned the same before the Appellate authority as contemplated under Section 127 of the Act. Hence, the order of the Trial Court is required to be set aside to such an extent and the matter has to be adjudicated by the assessing officer, since the demand notice was issued and objection is also filed and objections of the appellants is also not considered and adjudicated and before the adjudication, a suit is filed and hence it is appropriate to set aside the order of the Trial Court in respect of issue Nos.1 and 2 is concerned and the matter requires to be considered by the assessing officer and take a decision in accordance with law. The assessing officer shall not

be influenced with the findings of the Trial Court in respect of issue Nos.1 and 2 to decide the issue of whether tariff LT-2(a) is applicable or LT-3 is applicable.

58. In view of the discussions made above, I pass the following:

ORDER

- (i) The second appeals are allowed in part.
- (ii) The judgment and decree of the Trial Court in coming to the conclusion that there is a bar under Section 145 of the Act is upheld and confirmed.
- (iii) The findings of the Trial Court and the First Appellate Court in respect of issue Nos.1 and 2 is hereby set aside.
- (iv) The assessing officer, as empowered under Section 126 of the Act, is directed to decide the issue involved between the parties in accordance with law, without being influenced with the findings of the Trial Court in respect of issue Nos.1 and 2.

- (v) The matter is pending for adjudication from long time and hence, the assessing officer is directed to adjudicate the issue as early as possible.
- (vi) The parties are directed to appear before the assessing officer on 25.11.2025 without expecting any notice from the assessing officer.

**Sd/-  
(H.P. SANDESH)  
JUDGE**

SN/MD