

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No.388/2001**

% **22nd February, 2011**

SHEKHAR CHAND Appellant

Through: None

VERSUS

D.V.B. & ORS. Respondents

Through: None

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

VALMIKI J. MEHTA, J (ORAL)

1. This matter is on the Regular Board of this Court since 17.1.2011. Today, this matter is effective item no.5 on Regular Board. None appears for the appellant although it is 12:15 pm. I have therefore perused the record and am proceeding to dispose of the matter.

2. The challenge by means of this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 is to the impugned judgment

and decree dated 28.4.2001 whereby the suit of the plaintiff for declaration and permanent injunction against the respondent, local electricity authority, was dismissed by holding that the plaintiff was indulging in dishonest/fraudulent abstraction of electrical energy.

3. The case of the appellant/plaintiff before the Trial Court was that he was not present when the inspection was conducted and that he was not guilty of theft of electricity. The case of the respondents/defendants was that the meter half seals were found to be fictitious with respect to one meter and with respect other meters, the half seals were tampered.

4. After the pleadings were complete, the Trial Court framed the following issues:-

- “1. Whether there is any privity of contract amongst the plaintiff and the defendant? OPP
2. Whether the plaintiff has no locus-standi to file the suit? OPD
3. Whether the inspection report dated 25.4.2000 is illegal and invalid? OPP
4. Whether the bills issued by the defendants on the basis of the inspection dated 25.4.2000 are illegal and invalid? OPP
5. Whether the plaintiff is entitled to the relief claimed? OPP
6. Relief.”

5. The really important issues are issue nos. 3 and 4 as to whether the inspection dated 25.4.2000 was validly conducted and bills issued

thereupon of theft were validly raised. The Trial court has dealt with these issues in paras 9 and 10 of the impugned judgment and decree and the findings which are given are:-

i) Appellant/plaintiff was very much present when the inspection was conducted. The appellant therefore did not set out the correct case that the inspection was not conducted in his presence.

ii) It was not required that every member of the inspecting team be examined by the respondent/defendant inasmuch as one member of the inspection team was duly examined by the respondent and he was also cross-examined by the appellant.

iii) A rough estimate of time given by the witness cannot be stretched in a fashion so as to disbelieve the witness on the ground that the witness stated that the raid was conducted at around 11/11:40 am for 2/3 hours, however, it was later stated that the inspection team left the site at 4:30 pm that is merely a difference of about one and a half hour.

iv) The appellant/plaintiff was duty bound to lead evidence to show that the connected load as found on the site was not as stated in the inspection report, however, the plaintiff led no evidence to show that the connected load in the form of machinery was not found at site when the inspection was conducted on 25.4.2000. Some of the observations of the Trial court, and with which I agree, read as under:-

“9. Suit filed by the plaintiff revolves around the inspection reports dated 25.4.2000 Ex.PW1/1 & Ex.PW1/2. According to the plaintiff the inspection reports Ex.PW1/1 and Ex.PW1/2 are false and fabricated. As per the case of the plaintiff he was not present at the site when the alleged inspection at the site was conducted by the officials of the defendant. Ld. counsel for the plaintiff Sh.Gandhi on his part directed his much efforts in this direction while taking me through the testimonies of PW.1 in order show that the inspection report Ex.PW.1/1 & Ex.PW.1/2 were false and fabricated and the plaintiff was not even present at the site, when the inspection was allegedly carried out by the officials of the DVB. The case of the defendant has been that the inspection conducted on 25.4.2000 in the premises of the plaintiff was conducted in the presence of the plaintiff and the plaintiff also signed the inspection report at the site. It was so stated in para 3 of the written statement that the provisions FAE bill in respect of tampered meters were prepared at the site alongwith inspection report and handed over to the plaintiff. Thus the stand taken by the defendant that the plaintiff was very much present at the spot when inspection was carried and he was even handed over the bill at site, has been very clear and unambiguous. DW.1 in his testimony has also categorically deposed that the inspection reports Ex.PW.1/1 & Ex.PW.1/2 were prepared at the spot and were also signed by him besides the other members of the team who raided the inspection. He has also categorically deposed that bills Ex.PW.1/3 & Ex.PW.1/4 were prepared at the site and were handed over to the plaintiff. During his cross examination also DW.1 has also categorically deposed that it was the plaintiff only, who had shown the bills to the inspection team and the copy of the bill given at the site marked DW.1/mark A. Even no suggestions came to be given to DW.1 to the contrary to suggest that the plaintiff was not present at the spot when the inspection came to be conducted and reports Ex.PW.1/1 & Ex.PW.1/2 were prepared, though it was bearing the signatures of the plaintiff. At this moment I pause for a moment to observe that the plaintiff who appeared as PW.1, did not deny or disputed his signatures appearing at points A on Ex.PW.1/1 & PW.1/2 which are the inspection reports. Inspection reports Ex.PW1/1 and Ex.PW.1/2 of course filed by the plaintiff at the time of institution of the suit. The plaintiff in his pleadings did not specifically averred that eh signatures appearing on Ex.PW.1/1 & Ex.PW.1/2, which are

the inspections reports and Ex.PW1/3 & Ex.PW.1/4, which are the bills, were obtained at the office of the respondent, though ofcourse as said earlier, the said Ex.PW.1/1 to EX.PW.1/4 were very much available with the plaintiff at the time of the institute of the suit. Besides that the oral version of PW.1 that he had put his signatures on Ex.PW.1/1 & Ex.PW.1/2 at the office of the respondent is totally uncorroborated.

10. Sh.Gandhi, Ld. counsel for the plaintiff in order to assail the testimony of DW.1 contended that but for only one member of the raiding team who was DW.1, the defendant did not produce any other alleged member of the raiding team and even the testimony of DW.1 could not be said to be reliable for the reasons that this witness DW.1 even gave the varied version as regards the time spent by the raiding team at the spot. In his submission during his cross-examination while DW.1 in the first instance deposed that the raid was conducted at about 11/11:40 a.m. and they stayed at the site for 2/3 hours, in the same breath he has stated that they left the site at about 4.30 p.m. and so there was unexplained gap of about 2 hours occurring in such version for the time spent by the raiding team at the spot and that so it was a strong circumstances to not to believe his testimony. The submission made by Sh.Gandhi on this aspect I find to be totally devoid of merit. The rough estimate of time given by the witness cannot be stretched in the fashion as sought for to disbelieve the witness. Any other member of there aiding team having been not produced before the court as a witness by the defendant to my mind is also not fatal in the given facts and circumstances. It is the plaintiff's own case that the raiding team of the defendant did visit the spot. Though the plaintiff alleges that the inspection reports Ex.PW.1/1 & Ex.PW1/2 and the bills Ex.PW.1/3 & 1/4 were false and fabricated, I do not find in the pleadings or in the testimony of PW.1 that the raiding team of the defendant did not carry any inspection at the spot. Plaintiff has also not specifically led any evidence to show that the connected load found by the inspection team as per the reports Ex.PW.1/1 & Ex.PW.1/2 was not found at the time of such inspection."

(Emphasis added)

6. I do not find any illegality or perversity in the impugned judgment and decree which calls for interference by this Court. The Trial Court has arrived at correct findings and conclusions. Once of the half seals were found to be fictitious, and the other seals were found to be tampered, there was no reason why the appellant/plaintiff should not pay the bill raised on the basis of theft of electricity. The appeal, being misconceived, is therefore dismissed, leaving the parties to bear their own costs. Interim orders stand vacated. Trial Court record be sent back.

FEBRUARY 22, 2011
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VALMIKI J. MEHTA, J.