

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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RSA No.521 of 2022 (O&M)
Reserved on : 20.03.2023
Date of Decision : 11.04.2023

UHBVNL through its Executive Engineer & Anr. Appellants

VERSUS

Goodluck Agro Private Limited & Ors. Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Surinder K. Mahajan, Advocate for the appellants.

ALKA SARIN, J.

CM-1572-C-2022

This is an application under Section 5 of the Limitation Act, 1963 for condonation of delay in filing the appeal.

For the reasons mentioned in the application, the same is allowed and delay of 62 days in filing the appeal is condoned.

RSA-521-2022

The present regular second appeal has been preferred by the defendant-appellants against the concurrent finding of facts recorded by both the Courts below vide judgments and decrees dated 30.07.2018 and 12.10.2021.

The brief facts relevant to the present *lis* are that the plaintiff-respondents filed a suit against the defendants for declaration, damages and permanent injunction. It was the case set up by the plaintiff-respondents that they had taken an electric connection in January 2005 for mushroom farming and the connection was released as a horticulture power connection. All the necessary expenses for the poles, wires, transformers etc. were paid by the plaintiff-respondents. However, the bills received were as per the industrial tariff instead of horticulture tariff and as a result it became unviable to run the mushroom farm. The plaintiff-respondents made efforts to get the electricity charges as agricultural tariff but to no avail and that even though the plaintiff-respondents did not use any electricity but the defendant-appellants have been charging them on MMC basis and to save the electricity connection the plaintiff-respondents deposited Rs.25,000/- and Rs.2,94,169/- but the defendant-appellants kept sending bills by charging industrial tariff against electricity connection. It was averred that vide Sales Circular No.2 of 2001 it has been specifically ordered that “when mushroom cultivation is undertaken in agricultural land in rural area, then it would be charged at agricultural metered connection rate for which the farmer would seek a separate metered connection”. As per the plaintiff-respondents they approached District Consumer Disputes Redressal Forum, Panipat and challenged the bill issued by the defendant-appellants on the ground that they had been charged as an industrial consumer whereas their status was a horticulture/agriculture consumer. The case before the Consumer Forum was decided in favour of the plaintiff-respondents however on appeal the State Commission decided the appeal against the plaintiff-respondents. In

between, on 21.02.2011, the defendant-appellants disconnected the electricity supply of the plaintiff-respondents and removed the transformer, wires etc. without prior notice. It was averred that the plaintiff-respondents sought information under the RTI Act and in response it was stated that an amount of Rs.2,42,335/- was payable. However, on 25.01.2016 the plaintiff-respondents received another reply in which an amount of Rs.76,29,629/- was demanded which is illegal, null and void and not binding on the plaintiff-respondents. Hence, the present suit praying for a decree for declaration to the effect that the bill for an amount of Rs.76,29,629/- is illegal, null and void and not binding upon the rights of the plaintiff-respondents with a decree for mandatory injunction directing the defendant-appellants to restore the horticulture/agriculture connection of the plaintiff-respondents. A decree for damages on account of removal of electricity poles, wires and transformer etc. by the defendant-appellants illegally and forcibly was also sought and also a decree for permanent injunction restraining the defendant-appellants from recovering the amount considering them as industrial consumer and from taking any action on this account.

The defendant-appellants filed written statement and submitted that the plaintiff-respondents had applied for release of an electricity connection for ST connection and had deposited the required security under the industrial category and connection of LS industrial category with sanctioned load of 198.058 KW with contract demand of 220 KV was sanctioned and that the plaintiff-respondents consumed electric energy in the industrial category and accordingly were charged as per the industrial tariff

and an amount of Rs.76,29,629/- was due which the defendant-appellants are legally entitled to receive and the plaintiff-respondents are liable to pay the same.

Replication was not filed and on the basis of the pleadings of the parties, the following issues were framed by the Trial Court :

1. Whether the plaintiff is entitled to the relief of declaration with consequential relief of permanent injunction as prayed for ? OPP
2. Whether the present suit is not maintainable ? OPD
3. Whether the plaintiffs have no cause of action and locus standi to file the present suit ? OPD
4. Whether plaintiffs have suppressed true and material facts from the Court ? OPD
5. Whether plaintiffs are estopped by their own act, conduct, omission and admissions to file and maintain the present suit ? OPD
6. Relief.

The Trial Court decreed the suit of the plaintiff-respondents vide judgment and decree dated 30.07.2018. Aggrieved by the judgment and decree of the Trial Court, an appeal was preferred by the defendant-appellants which appeal was dismissed by the First Appellate Court vide judgment and decree dated 12.10.2021. Hence, the present regular second appeal.

Learned counsel for the defendant-appellants has contended that the Courts below have erred in decreeing the suit of the plaintiff-respondents. It is submitted that since the plaintiff-respondents had applied for an industrial connection they were charged in that category. It is also contended that the State Commission having decided the case against the plaintiff-respondents, the present suit was barred.

In the present case both the Courts below have arrived at concurrent findings of fact that the defendant-appellants had failed to prove that the plaintiff-respondents had applied for an electric connection in the industrial category. The defendant-appellants did not even produce the record pertaining to the plaintiff-respondents and the Courts below rightly concluded that in the absence of the record, which was with the defendant-appellants, it could not be held that the plaintiff-respondents had applied in the industrial category. Further, the Courts below have relied upon a circular issued by the defendant-appellants whereunder if mushroom farming is carried out on agricultural land in rural areas, then it would be charged at agricultural metered connection rates. The First Appellate Court inter-alia held that :

“18. From the concurrent reading of the sale circular Ex.P9 and afore-said finding given by the Hon'ble High Court is apparent on case file that according to the sale circular dated 11.01.2001 when Mushroom farming is undertaken in agricultural land in rural areas then agricultural rates have to be charged. It is not the case

of the defendants that the Mushroom farming was not being carried out in revenue estate of village Patti Kalyana. It is also not the case of the defendants that the said circular dated 11.01.2001 had been withdrawn by the defendant Nigam thereby dis-entitling the plaintiff to claim the benefit of the same. Significantly, in the year 2009, the Government came out with another circular and removed all doubts whatsoever and categorically decided that the horticulture and fisheries connection had to be included in the agricultural metered category and all existing connections had to be shifted to the agriculture feeders at the cost of consumers. Though the sale circular of the year 2009 was not in existence when the plaintiffs had taken the connection but the same is indicative of the intent of the Government to charge the mushroom farming connection in the agriculture/horticulture category.”

The Courts below have also relied upon an earlier decision by this Court in the case of **Dr. Vivek Gupta vs. Uttar Haryana Bijli Vitran Nigam Ltd. [2018 (1) RCR Civil 104]** wherein the interpretation of the same Sales Circular was also under consideration. The case of Dr. Vivek Gupta (*supra*) also related to mushroom farming and counsel for the defendant-appellants has not been able to show that the said decision has been altered or set aside.

The argument of counsel for the defendant-appellants that the suit was barred as the State Commission had already decided the case against the plaintiff-respondents is also to be rejected. The decision by the State Commission was not on the merits but it held that the complainant (plaintiff-respondents herein) were not consumers under the Consumer Protection Act, 1986.

Counsel for the defendant-appellants has not been able to highlight any material irregularity or illegality in the concurrent findings of fact recorded by both the Courts below.

In view of the discussion above, no question of law, much less any substantial question of law, arises for determination by this Court in the present case. The present appeal is wholly devoid of any merit and is dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

11.04.2023
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(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO