



RSA-1863-1993 (O&amp;M)

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

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**RSA-1863-1993 (O&M)  
Reserved on:-15.10.2025  
Pronounced on : 27.10.2025**

Punjab State Electricity Board and Another

....Appellants

VERSUS

Madan Lal

....Respondent

**CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU**

Present: Ms. Jarnail Kaur Dhaliwal, Advocate for the appellants.

Mr. Surinder Garg, Advocate for the respondent.

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**MANDEEP PANNU, J.**

1. Present Regular Second Appeal has been filed by the appellants—defendants PSEB and another against the respondent—plaintiff Madan Lal, assailing the concurrent findings recorded by both the Courts below, whereby the suit filed by the plaintiff—respondent was decreed by the learned trial Court vide judgment and decree dated 26.10.1990, which was subsequently affirmed by the learned Additional District Judge, Sangrur vide judgment and decree dated 06.05.1993.

**Brief Facts**

2. Briefly stated, the facts of the case are that the plaintiff filed a suit for declaration and mandatory injunction to the effect that the demand of ₹13,920/— raised by the defendants vide memo dated 02.06.1989 as additional charges is illegal, arbitrary and discriminatory, and further sought a direction to the defendants to adjust the said amount which was deposited by him under protest.



3. The case set up by the plaintiff was that he had obtained an electric connection of 20 BHP from the defendant–PSEB at Baretta Mandi, and an electric meter was installed in his premises by the Board. The plaintiff regularly paid the electricity bills issued by the defendants. The meter reader of the PSEB used to visit the premises of the plaintiff every month for recording the reading, and defendant no.2 used to issue bills on the basis of such readings. It was further alleged that the meter reader was also duty bound to check the operation of the meter and the condition of its seals at the time of taking readings. The average monthly consumption of the plaintiff was about 1800 units. The Junior Engineer of the defendants also used to inspect the meter. It was further pleaded that the meter installed in the plaintiff's premises was found to be defective, and accordingly, the plaintiff made a representation to defendant no.2 for its checking. The said meter was checked by the authorised representative of defendant no.2, who issued orders for its change on 19.05.1989, having found all seals intact. The meter in question had been installed in September 1988, and since then had been checked by the meter inspector two or three times. However, on 31.05.1989, certain officers of the PSEB, accompanied by police officials, visited the plaintiff's premises and suspected tampering with two M&T seals of the meter. Consequently, the meter was removed for testing and the connection was disconnected. The defendants demanded a sum of ₹9,320/– as penalty in addition to other charges. It was also stated by defendant no. 2 that the case would be reviewed after testing of the meter. The plaintiff, having no other option to continue his business, deposited the demanded amount under protest. Thereafter, the defendants issued notice no. 1256 dated 02.06.1989, raising a supplementary demand of ₹13,920/– which, according

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to the plaintiff, was wholly illegal, arbitrary and discriminatory. It was further pleaded that there were four M&T seals on the meter and the body of the meter could not be removed by tampering only two seals, which, in fact, were never tampered with. No notice was issued to the plaintiff for inspection of the meter. Hence, the supplementary demand raised by the defendants was claimed to be arbitrary and without jurisdiction.

4. In the written statement filed by the defendants, it was submitted that the suit was not maintainable and had not been properly valued for the purposes of Court fee and jurisdiction. It was further pleaded that the civil Court had no jurisdiction to entertain the matter and that the plaintiff was estopped by his own act and conduct from filing the suit. On merits, it was averred that the consumer was duty bound to ensure that no seal of the meter was broken except by an authorised representative of the Board. It was admitted that the meter reader visited the premises monthly and the bills were duly paid by the plaintiff; however, it was clarified that the duty of the meter reader was confined to recording readings only. It was further alleged that on 31.05.1989, the Assistant Electrical Engineer, Flying Squad, PSEB, Khanna, along with other PSEB officials and police, inspected the plaintiff's premises and found that all four M&T seals of the meter were tampered with. It was, therefore, a clear case of theft of electrical energy. The connected load was found to be 15.400 KW. The meter was removed, sealed in cardboard with two paper seals, and checked in the presence of the plaintiff's representative, who signed the checking report. It was denied that the meter was removed merely for testing purposes. The plaintiff, vide application dated 02.06.1989, expressed readiness to deposit the penalty and accordingly deposited ₹13,920/-. It was denied that the amount was paid under protest. The amount was demanded after

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overhauling the account of the plaintiff for a period of three years from the date of theft, in accordance with the directions issued by the Flying Squad, PSEB Khanna. On the request of the plaintiff, his supply was restored after the payment of the penalty. It was, therefore, prayed that the suit be dismissed.

5. From the pleadings of the parties, the learned trial Court framed the following issues:

1. Whether the demand of ₹13,920/- is illegal and void? OPP
2. Whether the plaintiff is entitled to declaration and injunction as prayed for? OPP
3. Whether the civil Court has no jurisdiction to try the present suit? OPD
4. Relief.

6. Both the parties have led their respective evidence.

#### **Findings of the learned trial Court**

7. The trial Court, after examining the pleadings, evidence, and arguments of both sides, held that the plaintiff had successfully proved that he had made an application to the PSEB for checking and changing the defective meter much prior to the alleged inspection by the Flying Squad. The records showed that the meter was defective and orders for its replacement had already been issued.

8. The Court observed that the Flying Squad conducted the raid and raised a demand without consulting the concerned SDO or Junior Engineer and without verifying the record regarding the defective condition of the meter. The officials failed to produce any report or evidence showing that the plaintiff had tampered with the M&T seals. It was also noted that the meter reader, who visited the premises regularly, never reported any tampering or irregularity.



9. The Court further observed that the plaintiff's electricity consumption was consistent, ranging between 1200 to 1500 units per month, which negated the allegation of theft of energy. The testing of the meter was not done in the presence of the plaintiff or any authorized representative, and the report of the Flying Squad could not be relied upon. The Court held that the demand raised by the defendants by overhauling the plaintiff's account for three years on the plea of theft of energy was illegal, arbitrary, and void.

10. Accordingly, Issue No. 1 was decided in favour of the plaintiff, declaring the demand of ₹13,920/- as illegal. On Issue No. 2, it was held that the plaintiff was entitled to the declaration and injunction as prayed for. On Issue No. 3, the Court held that since the demand itself was illegal, the civil Court had jurisdiction to entertain the suit. Consequently, under Issue No. 4 (Relief), the suit was decreed in favour of the plaintiff, directing that the amount deposited under protest be adjusted and the illegal demand be set aside.

### **Findings of learned lower appellate Court**

11. The lower appellate Court, after hearing the arguments of both sides and examining the record, found no merit in the appeal preferred by the appellants-PSEB. The learned counsel for the appellants contended that it was a case of theft of energy and that the findings of the trial Court on Issues Nos. 1, 2, and 3 were erroneous. However, the appellate Court held that this contention was not supported by any evidence on record.

12. It was observed that the respondent-plaintiff, who was running a flour mill (chakki), was a regular consumer of electricity and had never defaulted in payment of bills. The plaintiff had moved an application (Ex. P2) to the PSEB on 27.04.1989 seeking replacement of a defective meter, and although orders for its



change were made, no action was taken by the appellants. The Court further held that the Flying Squad conducted the raid and disconnected the supply without consulting the concerned SDO or Junior Engineer, and without verifying the earlier complaint or application of the plaintiff regarding the meter's defectiveness.

13. The appellate Court also noted that the meter reader visited the premises monthly and had never reported any tampering of seals or irregularity. Once the plaintiff had formally reported that his meter was defective, it was the duty of the electricity authorities to get it checked or replaced. Instead, the Flying Squad's inference of theft was held to be unjustified.

14. The Court observed that the average monthly consumption of the plaintiff ranged between 1200 to 1700 units, which showed a consistent pattern of usage and ruled out any direct or pilfered supply of electricity. Therefore, it was concluded that the case was not one of theft or pilferage of energy, and the penalty imposed by the PSEB was illegal and unwarranted.

15. The findings of the learned trial Court on Issues Nos. 1, 2, and 3 were held to be just and proper, and were accordingly affirmed. The appeal was found to be without substance and was dismissed, though without any order as to costs, given the peculiar circumstances of the case.

16. Feeling aggrieved by the above said concurrent findings of the Courts below, the present Regular Second Appeal has been filed by the appellants–PSEB, which was contested by the respondent–plaintiff.

### **Submissions of learned counsel for the appellants**

17. It has been argued by the learned counsel for the appellants that the findings recorded by both the Courts below are erroneous, perverse and based on conjectures and surmises, without properly appreciating the documentary and oral

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evidence brought on record. It is submitted that the Courts below have failed to consider that the Flying Squad of the PSEB, along with other officials, had conducted an inspection of the premises of the respondent on 31.5.1989, and found that all four M&T seals of the meter were tampered with, which clearly constituted a case of theft of electrical energy under the Rules, Instructions and Commercial Circulars of the Board.

18. It is further contended that the lower Courts have erred in holding that the meter reader was duty bound to check the tampering of seals. It is argued that the duty of the meter reader is only to record the readings, and not to check the tampering or manipulation of seals. The Flying Squad, during a surprise inspection, had detected the tampering, and the meter was checked in the presence of the plaintiff-consumer himself. The plaintiff had thereafter admitted the pilferage of energy and voluntarily deposited a sum of ₹13,920/- with the Board towards penalty, and hence, no cause of action arose in his favour for filing the present suit.

19. The learned counsel further argued that the findings of both the Courts below that the demand raised by the Board was illegal are wholly unsustainable. The amount of penalty was imposed strictly in accordance with the Rules, Instructions, and Circulars of the Board, and the same was lawfully recovered from the consumer.

20. It is also submitted that the Courts below failed to appreciate that the civil Court has no jurisdiction to entertain such disputes arising out of acts of assessment or detection of theft of energy by the Electricity Board. The learned counsel relied upon the judgment of this Court in ***RSA No. 4181 of 2016, titled Mahesh Kumar versus Sub-Divisional Officer and another, decided on***



**14.05.2025**, wherein it has been specifically held by the Division Bench of this Court that the jurisdiction of the civil Court is barred under Section 145 of the Electricity Act, 2003 in matters relating to assessment and imposition of penalty for unauthorized use or theft of electricity.

21. Hence, it is submitted that the findings of both the Courts below are liable to be set aside and the suit of the plaintiff deserves to be dismissed.

**Submissions of learned counsel for the respondent**

22. Learned counsel for the respondent/plaintiff, on the other hand, has supported the judgments and decrees passed by both the Courts below and argued that the findings recorded therein are based on proper appreciation of evidence and do not call for any interference by this Court in the present Regular Second Appeal. It is contended that the allegations of theft of energy levelled by the appellants were never proved either through cogent documentary or oral evidence, and both the Courts below have rightly held that the demand raised by the appellants was illegal, arbitrary and without jurisdiction.

23. It is further submitted that the judgment relied upon by the learned counsel for the appellants, i.e. ***Mahesh Kumar versus Sub-Divisional Officer and another (RSA No. 4181 of 2016)***, has no application to the facts and circumstances of the present case. The said case pertains to the bar of jurisdiction of the civil Court under Section 145 of the Electricity Act, 2003, whereas the present dispute relates to an alleged act of theft of energy that took place in the year 1989, much prior to the coming into force of the Electricity Act, 2003.

24. It is argued that during the relevant period, the provisions of the Electricity Act, 1910 and the Electricity (Supply) Act, 1948 were applicable, and under those enactments, no provision existed barring the jurisdiction of the civil



Court. Consequently, the civil Court was fully competent to entertain and adjudicate upon the dispute.

25. The learned counsel further submits that both the trial Court and the lower appellate Court have, on the basis of evidence, rightly held that the meter was defective, that the Flying Squad did not follow proper procedure, and that there was no evidence to prove any dishonest abstraction of energy. Hence, the concurrent findings of fact recorded by the Courts below are well-reasoned and call for no interference by this Court.

### **Findings of this Court**

26. I have carefully considered the respective contentions of the Ld. Counsels for the parties and gone through the records.

27. On the question of theft of electricity, this Court finds no reason to disturb the concurrent findings recorded by the courts below. Both the trial court and the lower appellate court carefully considered the pleadings and oral testimony and concluded that the allegation of dishonest abstraction of energy was not proved on the record. The trial court accepted that the plaintiff had complained of a defective meter and had moved Ex. P-2 for its checking and change and the meter showed an erratic pattern of operation and that the meter-reader who visited the premises monthly never reported any tampering and that the Flying Squad did not consult the concerned SDO/JE or follow an adequate checking procedure before drawing the inference of theft. The appellate court similarly noted the plaintiff's regular consumption pattern (about 1,200–1,700 units monthly), the absence of any contemporaneous report of seal-tampering by the meter-reader, and the failure of the Flying Squad to take procedural steps which would have been expected if deliberate pilferage had been found. In that factual background the Courts below



rightly held that the demand by way of penalty raised after an overhaul of three years' accounts was illegal, arbitrary and void, and that the deposit made by the plaintiff ought to be adjusted. Having reviewed the record and the reasoning of the courts below, this Court concurs with those findings the case for theft has not been established on the evidence.

28. Before the enactment of the Electricity Act, 2003, the field was governed by the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948, together with administrative circulars and instructions issued by the State Electricity Boards. Neither of those Acts contained any express provision barring the jurisdiction of the civil courts. Consequently, the question of exclusion of jurisdiction had to be determined by applying the general principle contained in Section 9 of the Code of Civil Procedure, 1908, i.e. that the civil court has jurisdiction to try all suits of a civil nature unless such jurisdiction is expressly or impliedly barred by statute. However, in *PSEB v. Ashwani Kumar (1997 (5) SCC 120)*, the Hon'ble Supreme Court analysed this very issue in depth. The Court noted that although Section 9 CPC confers wide jurisdiction on civil courts, that jurisdiction can be excluded by necessary implication if the relevant statute or departmental scheme provides an effective statutory mechanism for redressal of grievances. The Court observed that the Electricity Board had issued a series of statutory instructions and circulars for example, Circular No. 111/80 (20 December 1980), Circular No. 111/84 (5 December 1984) and Circular No. 26/89 (7 August 1989), which created a structured internal machinery for review and appeal of assessments, including committees comprising the Superintending Engineer, Executive Engineer, Chief Accounts Officer, and other officers empowered to



consider and decide consumer objections regarding theft assessments and overhauling of accounts.

29. The Supreme Court held that where such an administrative appellate or review forum exists, the consumer must first exhaust the departmental remedy provided under those circulars. The civil court should not ordinarily entertain a suit seeking declaration or injunction in matters that could have been effectively resolved by that statutory mechanism. The rationale was that the Board's circulars formed part of the statutory framework under the Electricity (Supply) Act, 1948, and hence, by necessary implication, the civil-court's jurisdiction stood excluded to that extent. However, the Court did not lay down a blanket bar against civil suits in all electricity matters. It clarified that civil-court jurisdiction would survive in limited situations particularly where the departmental machinery failed to follow fundamental procedural fairness, or where the dispute involved an independent civil right not covered by the Board's statutory procedure.

30. Thus, in *Ashwani Kumar's case (supra)*, the Civil Court retained its general jurisdiction under Section 9 CPC but that jurisdiction was excluded by necessary implication in cases where the Electricity Board had already framed effective appellate/review procedures for grievances arising out of assessments, penalties, or theft-related demands. The consumer was required to approach those authorities first and only in exceptional cases involving violation of natural justice or lack of statutory remedy could the civil Court intervene.

31. This position continued to apply until the Electricity Act, 2003 came into force. The 2003 Act then replaced the earlier regime and inserted an express bar under Section 145, clearly ousting civil-court jurisdiction in specified matters relating to assessment, disconnection, and theft of energy.



32. Applying the said principle to the facts of the present case, this Court finds that the alleged act of theft and the impugned demand arose out of events in 1989, when the 2003 Act was not in force. The departmental circulars relied upon by the appellants were only administrative instructions and did not provide a judicial or quasi-judicial mechanism comparable to a statutory forum. Moreover, both the courts below have found that the Flying Squad acted without consulting the competent officers, failed to observe the prescribed procedure, and did not provide the plaintiff an opportunity of hearing. These are clear instances of procedural illegality and breach of fairness, bringing the dispute squarely within the jurisdiction of the civil court.

33. In such circumstances, even under the law declared in *Ashwani Kumar's case (supra)*, the exclusion of civil-court jurisdiction cannot be inferred. The Supreme Court in that judgment itself recognized that where “the fundamental fairness of procedure has been violated”, or where the departmental instructions themselves are not followed, the consumer may approach the civil court for declaratory relief.

34. Furthermore, it is significant that the departmental circulars relied upon in *Ashwani Kumar's case (supra)* were intended to operate prospectively, and the earliest of them (Circular No. 111/84 and Circular No. 26/89) primarily dealt with the procedure for internal review and recovery, not with ousting civil-court jurisdiction. The existence of such internal remedy cannot automatically deprive a citizen of access to a civil court, unless the statute itself provides an express bar — which, as of 1989, did not exist. Therefore, this Court holds that the civil court rightly exercised jurisdiction to entertain and decide the plaintiff's suit.



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The later decision in *Mahesh Kumar's case (supra)*, which interprets Section 145 of the Electricity Act, 2003, is wholly inapplicable as it deals with a post-2003 statutory bar. The said provision has no retrospective operation and cannot be invoked to nullify proceedings that arose under the earlier statutory regime.

35. Accordingly, the plea of the appellants that the jurisdiction of the civil court was barred is rejected.

### **Conclusion**

36. In light of the above discussion, this Court finds that both the courts below have returned well-reasoned and concurrent findings based on the evidence on record. The allegation of theft of electricity has not been proved, and the demand raised by the appellants was illegal and without authority. The civil court was fully competent to entertain the suit in view of the law prevailing at the relevant time.

37. Accordingly, the present Regular Second Appeal is dismissed. The judgments and decrees of the courts below dated 26.10.1990 and 06.05.1993 are hereby affirmed.

38. Pending application(s), if any, also stands disposed of.

October 27, 2025  
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**(MANDEEP PANNU)**  
**JUDGE**

Whether speaking/non-speaking : Speaking  
Whether reportable : Yes/No.