

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

**Regular Second Appeal No.2317 of 1985 (O&M)
Date of Decision: February 04, 2015.**

Punjab State Electricity Board, Patiala and others

.....**APPELLANT(s).**

VERSUS

Raj Paul Handa

.....**RESPONDENT(s).**

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. B.S. Wasu, Advocate with
Mr. J.S. Wasu, Advocate
for the appellant (s).

Mr. O.P. Goel, Sr. Advocate with
Mr. Ranjit Singh Kang, Advocate
for the respondent.

SURINDER GUPTA, J.

The present appeal has been filed against the concurrent judgments of the Courts below whereby the suit filed by the respondent-plaintiff seeking the relief of permanent injunction to restrain the appellants-defendants from realising a sum of ₹12,533.85ps as average from 04.09.1980 to 11.12.1981 for the electric connection bearing account No.M-15/110-A, on the basis of reading from the month of June 1979 and the relief of mandatory injunction directing the appellants-defendants to restore the electric supply of connection No. M-15/110-A, was allowed.

The case of the respondent-plaintiff as it emanates on the perusal of lower Court's record was that he was served with a memo and bill demanding ₹5333.85ps along with additional security of ₹7200 and ₹10 as

registration fee. He challenged this demand with the plea that electric meter was installed on 04.09.1980 in the premises of respondent-plaintiff. The average consumption comes to 1999 to 2236 units from 01.12.1977 to 01.08.1980, whereas the average of meter installed on 04.09.1980 came to 2230 to 2430 units but the appellant raised the demand by taking average consumption as 3102 units per month.

The appellants-defendants contested the claim of the respondent-plaintiff inter-alia pleading that on 12.11.1981 on checking, Assistant Executive Engineer Flying Squad detected that meter cupboard seal was missing. M&T seals were tampered with and were without spot welding. The respondent-plaintiff had indulged in theft of energy. His electric connection was disconnected and on overhauling of his account, he was asked to pay ₹3891.55ps as consumption charges by taking average consumption as 3102 units per month, ₹1852.30ps as electricity duty, ₹590 as costs of the meter, ₹10 as reconnection fee and ₹7200 as enhanced security.

The then Sub Judge First Class, Ludhiana vide judgment dated 20.01.1983 decreed the suit of the respondent-plaintiff and the appeal filed by the appellants-defendants was also dismissed by Additional District Judge, Ludhiana.

I have heard learned counsel for the parties and perused the paper-book and record of the Courts below with their assistance.

Learned counsel for the appellants-defendants has argued that it was a case of tampering of the meter and theft of electric energy. The officials of the Flying Squad of the Board found the seals of the meter tampered. On the basis of the report of Flying Squad, the account of respondent-plaintiff was over-hauled and he was asked to pay consumption

charges on average basis by taking the consumption of June, 1979 as base. A person, who had indulged in theft of energy, is not entitled to the discretionary relief of injunction and both the Courts have not looked into this aspect and had allowed the relief of injunction only because the meter removed from the spot, was not sent to laboratory for testing. He has further argued that no testing of meter was required when the broken seals and scratches were apparent on the meter.

Learned counsel for the respondent-plaintiff has argued that the appellant board has its own Meter Testing Laboratory for checking the tampered meters and the seals. The meter in question was installed only on 04.09.1980 with the reading of 9505 which depict that this meter was removed from some other place, as such, the possibility of scratches etc. over the meter at its previous place of installation, could not be ruled out.

Admittedly, no check meter was installed at the premises of respondent-plaintiff for recording actual consumption and difference of electric energy recorded by alleged tampered meter and check meter. After removal, meter was not sent for testing. It is also admitted that the meter when installed at the premises of respondent-plaintiff, was having reading 9505 which shows that it was an old meter, removed from some other premises. The possibility of the scratches being already on the meter cannot be ruled out. The appellants-defendants have come up with a specific case of theft of energy, which was required to be proved on file by leading cogent and convincing evidence. The Electricity Board has its own Meter Testing Laboratory, which is final authority to check the meter and give the report whether the meter/seals have been tampered or not. In the absence of any report of the Meter Testing Laboratory, the Appellate Court has rightly

reached the conclusion that the plea of appellants-defendants regarding tampering of the meter, cannot be believed.

Another factor which weighed before the Court below was that after the installation of new meter, there was no increase in the consumption of electricity and the consumption was lesser than 3102 units which shows that the earlier consumption, which was recorded by the meter removed by Flying Squad was not recording consumption of electric energy on lower side.

The argument of learned counsel for the appellants-defendants that a person, who has indulged in theft of electric energy, is not entitled to the discretionary relief has substance, but in the instant case, for declining this relief, the appellants-defendants were required to prove on record that respondent-plaintiff had indulged in theft of electric energy. The appellants failed to discharge the onus heavily placed on it.

On perusal of paper book and record of the Courts below, I find no legal or factual infirmity in the judgments passed by the Courts below.

No substantial question of law requiring determination arises in this appeal, which has no merits, as such, is dismissed.

It is, however, made clear that nothing observed herein shall debar the appellants from claiming any amount due, arrears, enhanced/revised amount of security or other charges beyond the disputed amount of ₹5333.85ps as are recoverable under the instructions/rules of the appellant board issued from time to time.

February 04, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE