

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 3930 of 2003 (O&M)

Date of Decision: 23.01.2015

The Haryana Vidyut Prasaran Nigam (HVPN)

.....Appellant

Vs.

Ishwar Dayal

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. N.S. Shekhawat, Advocate,
for the applicant-appellant.

AMIT RAWAL, J. (ORAL)

CM No. 9910-2003

There is a delay of 243 days in re-filing the present appeal.

For the reasons, mentioned in the application, delay of 243 days
in re-filing the present appeal is condoned.

CM stands disposed of.

CM No. 9911-C-2003

Application is allowed, as prayed for.

RSA-3930-2003

As per previous order dated 19.09.2014, respondent has refused
to accept notice.

2. The present appeal filed by the appellant-defendant against the
judgment and decree dated 18.04.2002, of the lower appellate Court
whereby the suit of the respondent-plaintiff for permanent injunction
restraining the appellant-defendant from disconnecting the electric

connection on the ground that the appellant-defendant had erroneously added a sum of ₹57,933/- in the electricity was allowed.

3. Learned counsel for the appellant-defendant submits that the suit of the respondent-plaintiff *ex facie* was not maintainable, in view of the provisions of Section 24 (i) of the Indian Electricity Act, 1910. The trial Court after examining the aforesaid provisions, dismissed the suit. However, the lower appellate Court though found that the impugned bill for the demand of sum of ₹57933/- on the basis of alleged checking report dated 10.10.1997 and audit party report dated 11.03.1998, without associating the respondent-plaintiff which was against his back, was illegal and invalid. Be that as it may, the fact remains that the appellant/defendant had investigated the premises of the respondent-plaintiff and checked the meter and found that the seal of the meter was tampered and therefore, found that it was a case of alleged theft.

4. He further submits that the checking report was not challenged by the respondent-plaintiff and in the absence of the checking report, the injunction and inherent relief for declaration could not have been granted and even the respondent-plaintiff was required to deposit some amount of fine, which is mandatory requirement of law. Having not done so, the present appeal involves following substantial questions of law:-

“(i) Whether the respondent-plaintiff is entitled to file a suit without exhausting all the remedies under the law?”

“(ii) Whether the Civil Court has the jurisdiction to entertain and try a suit, which is specifically barred by the statute?”

5. Learned counsel for the appellant-defendant has argued that the lower appellate Court has illegally and erroneously noticed that no notice was given to the respondent-plaintiff. The demand of ₹57,933/- raised in the bill itself as a notice and in case respondent-plaintiff had any grievance in this regard, to put, he could have availed the remedy as per Section 24 (i) of the Indian Electricity Act, 1910. Therefore, the findings of the lower appellate Court are not sustainable. The question of law as referred above are also in favour of the appellant-defendant and against the respondent-plaintiff.

6. Accordingly, the appeal is allowed and judgement and decree of lower appellate Court is set aside.

(AMIT RAWAL)
JUDGE

January 23, 2015
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