

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

RSA No.307 of 1990 (O&M).
Date of Decision: 30.09.2015.

Gursewak Singh and anotherAppellants.

VERSUS

The Punjab State Electricity Board, Patiala and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Present: Mr. Amandeep Saini, Advocate for the appellants.

Mr. Roshan Lal Sharma, Advocate for the respondents.

SNEH PRASHAR, J.

1. This was regular second appeal filed by appellants-plaintiffs Gursewak Singh and Bharpur Singh (hereinafter referred to as the “appellants”) impugning the judgment and decree dated 31.07.1989 passed in Civil Suit No.141 of 02.04.1987 by learned Senior Sub Judge, Sangrur, dismissing the suit for mandatory injunction and for recovery filed by appellants against respondents-defendants Punjab State Electricity Board, Patiala and others (hereinafter referred to as the “respondents”) which was

upheld by the first appellate Court vide judgment dated 25.10.1989.

2. The facts which need elaboration are that in a suit for mandatory injunction and for recovery, filed by the appellants, they pleaded that two years prior to the filing of the suit a tubewell connection No.REC 450 of 3 HP load was released by the respondents under valid agreement executed between them and Gursewak Singh (appellant No.1) for irrigation of their land measuring 20 Bighas 2 Biswas, situated at Rampura and 33 Kanals 11 Marlas, situated at village Balial (detail of the land is given in the pleadings). As per the agreement, respondent No.2 was required to issue a passbook and appellant No.1 was to pay the electricity charges vide the monthly bills raised by the said respondent. However, neither the passbook was issued nor any bill was received after the release of the connection. When appellant No.1 contacted the officials of respondent No.1-P.S.E.B. he was made to deposit Rs.900/- vide receipt No.93/160 dated 19.02.1987 although no bill was received by him. Subsequently, to their (appellants') surprise, the tubewell connection was disconnected and the cable was removed. Such action of the respondents was challenged as illegal, arbitrary and without any authority.

The appellants approached the Assistant Executive Engineer (defendant No.2) and came to know that a bill of Rs.1294/- was pending against the tubewell connection and the connection had been disconnected due to non deposit of the said amount. Appellant No.1 deposited the due amount alongwith reconnection fee vide receipt dated 04.03.1987. Still respondent No.2 failed to restore the supply.

The appellants alleged that because of want of electric connection, they could not irrigate their standing crops and suffered huge loss and on that count, they demanded damages to the tune of Rs.2400/- from the respondents.

3. The suit was contested by the respondents. In the written statement filed by them, they admitted that the electric tubewell connection bearing account No.REC 450 was issued to appellant No.1 on 28.12.1984 but denied that defendant No.2 had any concern with issuance of the alleged passbook or the bills. At the same time, it was submitted that the passbook was duly issued to appellant No.1 in April, 1985. He was required to pay the monthly electricity charges and accordingly he paid his first bill of Rs.216/- on 19.04.1985 and next bill on 20.05.1985. Subsequent to that from June, 1985 to June, 1987 he did not intentionally deposit the electricity consumption charges. As a consequence to non payment of electricity consumption charges, the tubewell connection was disconnected on 15.10.1986. Appellants deposited Rs.900/- towards part payment on 19.02.1987 and remaining Rs.1295/- on 04.03.1987. Immediately thereafter the connection was restored. Alleging that the appellants were aware of the due dates of payments of charges every month and the tubewell connection was rightly disconnected on account of non payment of the charges which were to be paid on monthly flat rate basis, the respondents prayed for dismissal of the suit.

4. On the rival contentions of the parties, following issues were framed:-

(1) Whether the suit against the defendants 2 and 3 vexatious and false and they are entitled to special costs? OPD.

(2) Whether Shri Bharpur Singh's claim against the defendants is false and vexatious? OPD.

(3) Whether the plaintiffs are entitled to the mandatory injunction and recovery of suit amount? OPP.

(4) Relief.

5. Both the parties adduced evidence in support of their rival contentions.

6. Considering the ocular and documentary evidence produced by the parties and the submissions made on their behalf, learned trial Court dismissed the suit of the plaintiffs vide impugned judgment and decree dated 31.07.1989.

7. Appellants preferred an appeal against the judgment and decree dated 31.07.1989 which was dismissed by learned Additional District Judge, Sangrur vide judgment and decree dated 25.10.1989.

8. Feeling aggrieved, the appellants have filed the instant Regular Second Appeal.

9. The submissions made by Mr. Amandeep Saini, learned counsel representing the appellants and Mr. Roshan Lal Sharma, learned counsel representing the respondents have been considered and record has been perused.

10. As the matter was opened for arguments, learned counsel for the appellants referred to Ex.P1, the report submitted by Advocate Sukhdarshan Singh Bassi, who was appointed as Local Commission by the

trial Court vide order dated 02.05.1987 with the direction to ascertain whether the electric connection installed in the fields of the appellants had been restored. Learned counsel contended that the local commission visited the spot on the same day i.e. 02.05.1987 at about 2:30 p.m. after giving information to counsel for the respondents. In his report Ex.P1, he specifically stated that the electric motor of the tubewell connection was lying disconnected. There was no cable connecting the electric motor with electric connection from the two combined poles. He added that the electric connection had not been restored as there was no cable. Learned counsel asserted that from Ex.P1 report of the local commission, it stands established that the tubewell connection of the appellants had not been restored till 02.05.1987. On account of disconnection of the tubewell connection, the appellants missed three times irrigation of the fields in the month of March which resulted in 15% less production of the crop. PW2 Mohinder Singh Sohi, Agricultural Inspector testified that he had visited the spot on 30.03.1987 and had physically checked the standing crop. As per his report Ex.P2, the crop had suffered damage to the extent of Rs.2400/- and the appellants are entitled to recover the said amount from the respondents because they had failed to connect the electric tubewell illegally for almost two months.

11. Refuting the argument of learned counsel for the appellants, learned counsel for the respondents pointed out that the respondents examined DW1 Subash Chander, L.D.C. of the office of Sub Divisional Officer and on the basis of the entries in the record, he testified that there

were three electric connections in the name of appellant Gursewak Singh. In relation to all three connections, he was a defaulter. After he deposited the due amount against all the three connections on 01.04.1987, his electric tubewell connection was reconnected on 04.04.1987. Learned counsel asserted that there was no delay in reconnection of the tubewell of the appellant and therefore they were not liable to pay any damages.

12. Having considered the rival contentions of learned counsel for the parties, there appears no merit in the claim of the appellants. DW1 Subhash Chander, L.D.C. deposed on the basis of the official record and according to the said record the tubewell electric connection of the appellants was connected on 04.04.1987. The report of Local Commission Sukhdarshan Singh Bassi is of no help to the appellants because as per his statement he visited the spot on 02.05.1987 whereas the instant suit was filed by the appellants on 01.04.1987 and it was under the order of the Court that the electric tubewell connection was reconnected on 04.04.1987. Had there been non compliance of order of the Court, the appellants without any loss of time would have filed an application for initiating contempt proceeding against the respondents for non compliance of the order of the Court. Admittedly, no such application was given by the appellants before the trial Court at any point of time.

In addition to the above, in his report Sukhdarshan Singh, Local Commission stated that the electric motor was not connected with electric connection from the two combined poles but he did not mention whether the electricity connection was installed or not at the tubewell site.

Mere absence of the cable would not support the contention of the appellants that tubewell connection had not been reconnected with the electricity connection by the respondents by then.

13. The appellants produced no evidence to prove when after 02.05.1987 the tubewell connection was reconnected/restored. Since at that point of time the suit filed by the appellants was already pending, they could have easily produced the required substantive evidence to prove the date when their tubewell connection was restored/reconnected after visit of the local commission on 02.05.1987. There being no evidence, the conclusion irresistible is that as proved by the respondents, the electric tubewell connection had been restored-connected on 04.04.1987 under the order of the Court.

14. Coming to the second part of claim of the appellants that because of disconnection of the tubewell connection their crop had been damaged because they could not irrigate the same by operating the tubewell in the month of March, it is apparently an imaginative allegation. Appellant Gursewak Singh failed to prove loss to the crops in his fields because of any act or conduct or lapse on part of the respondents. Otherwise also, even if it is accepted for the sake of arguments that the appellants could not operate the tubewell because of its disconnection, the respondents were justified in doing so when it is established that the appellant No.1 was a defaulter. He had repeatedly committed default in payment of electricity consumption charges qua the tubewell connection bearing account no.REC 450 and the two other electric connections in his name. It had come in his

own statement that there was no electric meter installed on the tubewell electric connection. To the query, that the electricity consumption charges were paid every month on flat rate, he simply showed ignorance. From his own conduct, it is proved that he was required to pay the consumption charges at flat rate but he failed to do so. Thus, the lapse and fault being on part of the appellant and on account of non payment of outstanding arrears the respondents were justified in disconnecting the tubewell connection and were not liable for payment of damages on account of damage, if any, to the crop.

Thus, there being no substantial question of law involved and also there being no merit in the present appeal warranting intervention in the judgment and decree dated 31.07.1989 passed by learned trial Court and affirmed by learned first appellate Court, the instant appeal is dismissed.

(SNEH PRASHAR)
JUDGE

30.09.2015
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