

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

Regular Second Appeal No.3291 of 2009 (O&M)

Date of decision: 5.5.2015

Charanjit Ice Factory

... Appellant

Versus

HSEB and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Yogesh Chaudhary, Advocate,
for the appellant.

Mr.Sudhir Hooda, Advocate,
for the respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

Mr.Sudhir Hooda appears for the respondent Board and submits that having gone through the judgment relied upon by the appellants of the Full Bench of this Court in **M/s Ranbaxy Laboratories Limited v. Punjab State Electricity Board, Patiala**, AIR 2004 (Punjab) 137 interpreting and distinguishing the judgment of the Supreme Court in **Punjab State Electricity Board and another v. Ashwani Kumar**, JT 1997 (5) SC 182, it cannot be said that a civil suit did not lie against a notice of assessment issued under regulation framed under Section 49 of the Electricity Supply Act, 1948. The circular relied upon by the appellant was produced as Ex.D5

on the record of the trial Court. The plaintiff-appellant was non-suited by both the Courts by returning concurrent findings that though all the issues on merits were in favour of the appellant but the suit was not maintainable. The cross-objections filed by the Board on other issues on merits have also been dismissed by the first appeal Court. The Board is not in appeal against the rejection of its cross-objections. Therefore, it appears concluded that on merits, the appellant has been able to satisfy both the Courts below. Despite the notice having been declared as illegal and null & void, then the request of the learned counsel for the appellant that the matter be concluded here and not remanded to draw a decree in his favour is not without merit. Instead of delaying the matter further and adding work to the first appeal Court, this Court allows this appeal. The findings of the Courts below that the suit is not maintainable is set aside. As a result, the suit would depend on the merits and findings recorded on the issues which are in favour of the appellant. Therefore, the suit is decreed in toto and the findings of the Courts below on merits are affirmed.

(RAJIV NARAIN RAINA)
JUDGE

May 5, 2015

Paritosh Kumar