

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

RSA No.2175 of 2010 (O&M)

Date of decision : 11.09.2015

M/s Kundan Mill Board and Paper Mills

...Appellant

Versus

Punjab State Electricity Board and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Vikas Behl, Sr. Advocate with
Ms. Balpreet Kaur Sidhu, Advocate for the appellant.

Mr. K.K. Saini, Advocate for
Ms. Razia Malik, Advocate for PSEB-respondent No.1.

AMIT RAWAL, J. (Oral)

The present appeal is, at the instance of the appellant-plaintiff, against the judgment and decree dated 28.04.2010 of the Lower Appellate Court, whereby judgment and decree of the trial Court dated 13.12.2007 decreeing the suit, has been set aside and the plaint has been rejected.

Mr. Vikas Behl, learned Senior Counsel assisted by Ms. Balpreet Kaur Sidhu, learned counsel appearing on behalf of appellant, submits that suit was filed against the decision of Zonal Committee and the suit on the basis of appreciation of oral and documentary evidence, had been

decreed. The Electricity Board, now the Power State Corporation, challenged the aforementioned judgment and decree by filing appeal and Lower Appellate Court allowed the appeal by relying upon ratio decidendi culled out by Hon'ble Supreme Court in *PSEB VS. Ashwani Kumar, 1997(5) SCC 120*.

He further submits that Hon'ble Full Bench of this Court in *M/s Ranbaxy Laboratories Vs. Punjab State Electricity Board, Patiala and another, AIR 2004 Punjab and Haryana 137*, has held, that aggrieved consumer can challenge the action of Electricity Board under Section 9 of the Code of Civil Procedure. The aforementioned findings were assailed before Hon'ble Supreme Court and vide judgment passed in *Civil Appeal No.5362 of 2005, Punjab State Electricity Board and another Vs. M/s Ranbaxy Laboratories Ltd.*, it has been held that civil suit would be only maintainable in case parties availed the alternative remedy i.e. by approaching the Committee, appointed under the old Act.

He further submits that since appellant had already approached the Committee and, suit was filed challenging the findings of the Committee, therefore, Lower Appellate Court has committed illegality and perversity in allowing the appeal on said limited point only, that suit was not maintainable.

Mr. K.K. Saini, learned counsel appearing on behalf of respondent submits that there is no illegality and perversity and appeal does not involve any substantial question of law to be determined by this Court.

I have heard learned counsel for the parties and appraised the paper book.

The finding rendered, by the Lower Appellate Court is based upon the ratio decidendi culled out by Hon'ble Supreme Court in Ashwani Kumar case (Supra). During the interregnum, there has been change in law inasmuch as that Full Bench judgment rendered by this Court has been set aside, with little modification, that where party had already availed alternative remedy in approaching the competent Committee, the suit in such situation would be maintainable.

The instant case is the case which squarely falls within the ratio decidendi culled out by Hon'ble Supreme Court in Civil Appeal No.5362 of 2005 as the appellant, admittedly, had availed the remedy in approaching the Zonal Committee and, thereafter challenged the findings by filing suit for declaration.

In my view, following substantial question of law arises for determination by this Court:-

1. Whether the civil suit would be maintainable in case the consumer has availed alternative remedy in approaching the Committee under the erstwhile/surplus issued from time to time.

Since as already noticed above, the appellant-plaintiff had also approached before the Zonal committee, in my view the suit was maintainable and, therefore, the Lower Appellate Court ought not to have allowed the appeal on this limited point and rather should have pondered upon the merit and demerits of the controversy between the parties to the lis.

In view of what has been observed above, impugned judgment and decree of the Lower Appellate Court is set aside.

The matter is remitted back to the Lower Appellate Court for

deciding the appeal, afresh, as expeditiously as possible within a period of six months from the date of receipt of certified copy of the order in essence Civil Appeal No.147 of 26.02.2008 is restored to its original number.

Parties through their counsel are directed to appear before Lower Appellate Court on 29.09.2015 before District Judge who may decide the appeal himself or assign to other competent bench.

RSA is allowed.

11.09.2015

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**(AMIT RAWAL)
JUDGE**