

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

**RSA No.3206 of 2012 (O&M)
Date of Decision: 28th August, 2015**

Punjab State Electricity Board

.....Appellant

Vs

Luxmi Rice Mills

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Parminder Singh-I, Advocate
for the appellant.

Mr. Vikas Mohan Gupta, Advocate
for the respondent.

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

RAJ MOHAN SINGH, J.

[1.] This is defendant's appeal against the judgment and decree dated 28.01.2012 passed by Additional District Judge, Patiala vide which judgment and decree dated 31.10.2008 passed by Civil Judge (Senior Division), Patiala was upheld. Plaintiff-respondent filed a suit for recovery of Rs.33,30,222/- on the ground that plaintiff is a partnership firm duly registered under Indian Partnership Act. Plaintiff was running a rice sheller at Village Ghanaur, Tehsil Rajpura, District Patiala. Rice Shelling Industry is a seasonal industry and, therefore, had taken seasonal industrial consumer connection for the supply of power to its rice sheller. The

shelling season of the crop got over in April, 1997. Plaintiff moved an application on 20.05.1997 for disconnection of power supply to consumer connection No.MS-37. Though, his prayer was allowed but disconnection was only done on 31.05.1997, when the fire incident took place in the premises of the industry of plaintiff.

[2.] In the intervening night of 30.05.1997-31.05.1997, there were high velocity winds and due to the impact joint of LT cable got loosened, entangled and started giving sparks and the cable fell down on the heaps of paddy husk lying just near the wall of the building and caught fire. Due to high winds the fire entered the building of rice sheller, destroying the building, machinery and whole of the husked rice and other properties.

[3.] On complaint to the office of Chief Electrical Inspector, inquiry was conducted. According to the report submitted by Chief Electrical Officer, cause of fire was held to be the joint in LT cable and faulty fittings by the officials of the defendant-Board. Plaintiff suffered loss on account of negligence of Department. The loss ultimately brought down to Rs.23,45,227/- as on 1st June, 1997. After issuing notice to the defendant, the suit was filed.

[4.] The defendant-appellant contested the suit, thereby taking all customary pleas. Board has admitted that plaintiff had applied for disconnection on 20.05.1997 and disconnection was done on 31.05.1997 as per rules. The defendant relied upon the inquiries conducted by two of its officers, namely, Engineer Jit Sinigh Salaria

DW-1 and Kuldeep Singh, Superintending Engineer and submitted that as per their inquiries though the fire incident had been admitted but it was due to negligence of mill employees.

[5.] After filing of replication, following issues were framed by the trial Court:-

1. Whether plaintiff is entitled to recover the suit amount along with interest? OPP
2. Whether the civil courts at Patiala has got no jurisdiction to try the present suit? OPD
3. Whether plaintiff's firm is a validly registered firm under the Indian Partnership Act, if so its effect? OPP
4. Whether the suit of the plaintiff is bad for non joinder of necessary parties? OPD
5. Whether plaint is liable to be rejected due to non compliance of mandatory provisions of Order 7 Rule 1 (j) of CPC? OPD
6. Relief.

[6.] After returning necessary findings under different issues, trial Court decreed the suit of the plaintiff by passing a decree of recovery of Rs. 15,00,000/- on account of loss suffered by the plaintiff due to fire. The negligence was attributed to the defendant-Board. The plaintiff was also held entitled to simple interest @ 6 % per annum from the date of filing of the suit on the decretal amount of Rs.15,00,000/- till final realization.

[7.] Feeling aggrieved with the aforesaid judgment and decree of the trial Court the defendant-Board unsuccessfully assailed the decision before the Lower Appellate Court wherein appeal was dismissed on 28.01.2012.

[8.] Learned counsel for the appellant has formulated following substantial questions of law in the present appeal:-

- i) Whether the findings of the courts below are against the facts on record?
- ii) Whether the joint inspection report Ex.DW1/B made by Additional SE (Operation) along with AE and XEN and report DW1/C and report EX.DW1/E have been disbelieved illegally by the courts below?
- iii) Whether the fire incident took place due to the negligence of the officials of the defendant?
- iv) Whether the appellate Board can be foisted with the liability to compensate qua the fault of the sheller itself?

The aforesaid questions are so interconnected that their answers are found in joint discussions here as under:-

[9.] Learned counsel for the appellant contends that findings recorded by the Courts below are contrary to the record. Precisely, regarding this grievance, question No.1 has been formulated. Learned counsel states that complaint moved to Chief Electrical Inspector was a managed affair as he was not appointed by any competent authority. Even the report Ex. P-5 which is available on

record at page No.552 shows that there was strong wind on the fateful day. Red and yellow wires were entangled and LT fuse went off and thereafter, fire took place. Learned counsel further relied upon the role of MLA depicted in the report, to contend that the conclusion of Chief Electrical Inspector is based on the complaint which was routed through MLA and therefore, influence of MLA cannot be ruled out. In the report, factum of cable joint has been admitted and it was also found in para No.1 that joint was loose. The fact of strong wind is also admitted. The Chief Electrical Inspector as per Electricity Act of 1910 is an independent Body. The role of Chief Electrical Inspector can be appreciated in terms of qualifications, powers and functions of the Chief Electrical Inspector in the Rules of 2006 under Electricity Act 2003. The Chief Electrical Inspector has well defined qualifications having powers to inspect the works and electrical installation in his area in respect of which such an Inspector has been deputed by the Central Government to exercise his powers and perform functions under sub-Section-1 of Section 162 of the Act. In view of aforesaid, it does not lie in favour of defendant to contend that the Chief Electrical Inspector has not been appointed by any competent authority in the aforesaid context.

[10.] This fact has also come to fore that six months back the Department changed the wire and they provided the cable joint in LT cable. Providing of joint in LT cable is statedly beyond the comprehension of the plaintiff. According to plaintiff, the cable should

not have any joint in between. Keeping in view the voltage to be provided to industry, cable going from meter room to machinery room if provided with a joint in between may result in hazard in the event of its loosening and that has precisely happened in the case.

[11.] Question No.1 and 2 have their answers in the present context. In the written statement filed by the defendant, denial has been pleaded, regarding the manner in which it has been projected by the plaintiff. The Board contested the claim of the plaintiff on the premise that no fire incident took place due to negligence on its part. Though the incident took place, but the same was claimed to be not on account of any negligence on the part of Board. Board conducted two inquiries of its own. In first inquiry conducted by DW-1 Jit Singh Salaria Ex.DW1/B, plaintiff was not associated in any manner. In the second inquiry got conducted by Superintending Engineer Kuldeep Singh Ex.DW1/E, though it has been projected that plaintiff was associated, but the said report is incomplete on record and is not sufficient to draw any conclusion in respect thereof. In view of aforesaid, report conducted by the Chief Electrical Inspector has to be given precedence over the reports Ex.DW1/B and Ex.DW1/E conducted by the officers of the Board.

[12.] Learned counsel for the respondent has contended that on 26.05.1997, the cable joint gave a spark. A complaint was made by respondent mill. The complaint was registered in the complaint register. Said complaint register was sought to be produced in the

Court, but the defendant-Board intentionally did not produce the same on the alleged ground that complaint register is not traceable. This fact is sufficient to draw adverse inference against the Board that there was a spark in the cable joint from LT line to motor room and that complaint which was made five days prior to the occurrence was not attended by the defendant-Board. Question No.3 is answered against the appellant-Board. Question No.1 and 4 have their own answers in cumulative findings on different issues as discussed above.

[13.] Looking to the entirety of facts and circumstances, this Court feels that no indulgence can be given to the appellant-Board as factum of fire incident is admitted fact on record. Existence of joint in cable from meter room to machinery room of respondent-Mill is also an admitted fact. This is also an admitted fact that there was a strong wind on the fateful day i.e. intervening night of 30.05.1997-31.05.1997. The defendant-Board has contested the claim of the plaintiff only on the ground that Board was not negligent. Report of the Chief Electrical Inspector, non-association of the plaintiff in internal inquiry conducted by DW 1 Jit Singh Salaria vide report Ex.DW1/B, incomplete inquiry report produced by Superintending Engineer Kuldeep Singh Ex.DW1/E, filing of application dated 20.05.1997 for disconnection after season was over by the plaintiff and its ultimate disconnection only on 31.05.1997, defined powers and authority of Chief Electrical Inspector in terms of Electricity

Rules of 2006 and non-production of complaint register of 26.05.1997 by the Board are the relevant features which go in a long way to attribute negligence on the part of the defendant-Board. Consequently, I do not find any ground to interfere in the aforesaid appeal. Accordingly the same is dismissed.

Leaving the parties to bear their own costs.

28th August, 2015
prince

(RAJ MOHAN SINGH)
JUDGE