

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 1150 of 2013 (O&M)
Date of decision 21.05. 2015.

Veena Verma

..... Appellant.

versus

DHBVNL and others

..... Respondents.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? yes
2. To be referred to the Reporters or not? yes
3. Whether the judgment should be reported in the Digest? yes

Present : Mr. G.K.Chawla, Advocate for the appellant.

K.C.PURI, J.

Plaintiff-appellant-Veena Verma has directed the present appeal against the judgment and decree dated 03.12.2012 passed by Shri Bharat Bhushan Parsoon, the then learned District Judge, Gurgaon vide which the appeal preferred by the plaintiff/appellant against the judgment and decree dated 17.08.2012 passed by Mr. Amberdeep Singh, learned Civil Judge (Junior Division), Gurgaon, was dismissed.

2. The facts in brief are that plaintiff is owner of House No.634/A-12, Patel Nagar, Gurgaon which includes a shop. She has got two

electricity connections i.e. one for domestic use bearing No. AD-3-862 and another is the commercial connection installed in the shop bearing No. AC-3-43. Both these meters were installed on a pole outside the house. It is pleaded that plaintiff was regularly paying bills of electricity consumption. On 26.6.2008, a checking party of the defendants, checked the premises and found seals on the meters intact and the connected load was found in order and there was no irregularity or tampering with the meters. However, a false case of theft was made by the checking party vide report of 26.6.2008 and the power supply was disconnected by the officials of defendants on the same day. It is pleaded that a memo dated 30.6.2008 was served upon the plaintiff imposing penalty of Rs.16,173/- for account No. AD-3-382 and of Rs.65,862/- in respect of account No. AC-3-43. It is further averred that the plaintiff deposited said amount of Rs.16,173/- on 21.07.2008 and Rs.65,862/- on 16.07.2008 under duress and threat of registration of criminal case and also for getting restored the electricity supply. By filing the present suit, plaintiff sought declaration that the checking report of 26.06.2008 and memo dated 30.6.2008 are wrong, illegal, arbitrary, against principles of natural justice and against the provisions of Electricity Act, 2003 (in short-the Act).

3. On put to notice, defendants appeared and filed their joint written statement taking preliminary objections regarding locus standi, estoppel, suppression of material facts etc. On merits, it was averred that at the time of checking of the premises of the plaintiff by their officials, the connected load for the domestic supply was found being used by bypassing

the meter and the non domestic load was being used by direct joining in the outgoing cable. It was alleged that it being a case of theft, notice of assessment and offer for compounding in respect of both the connections was rightly served upon the plaintiff and the said entire amount was paid by the plaintiff. Denying other averments, defendants prayed for dismissal of the suit.

4. From the pleadings of the parties, following issues were framed :-

1. Whether the impugned checking report dated 26.06.2008 and memo No.14 dated 30.6.2008 are wrong, illegal, arbitrary, imaginary, mala fide and are liable to be declared so on the grounds mentioned in para No.6 of the petition ?OPP
2. If issue No.1 is proved, the plaintiff is entitled to decree for declaration and injunction as prayed for ?OPP
3. Whether the plaintiff has no locus standi to file the present suit ? OPP
4. Whether the plaintiff has not come with clean hands and has suppressed the material facts from the court, if so to what effect ?OPD
5. Whether the plaintiff is estopped from filing the present suit ? OPD
6. Relief.

5. The parties have led their respective evidence on the aforesaid issues. After appraisal of the same, the trial Court dismissed the suit of the plaintiff vide judgment and decree dated 17.08.2012.

6. Feeling dissatisfied with the aforesaid judgment and decree dated 17.08.2012, the plaintiff has directed the First Appeal, which was dismissed by learned District Judge, Gurgaon vide judgment and decree

dated 03.12.2012 after re-appraisal of the evidence.

7. Still feeling dissatisfied with the judgment and decree dated 17.08.2012 and judgment and decree dated 03.12.2012, the present regular second appeal has been directed.

8. The appellant in paragraph No.10 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the present regular second appeal :-

- a) Whether the authorities can be given a go by to the statutory provisions of the Act and Rules made there under ?
- b) Whether the checking report signed by the interested witnesses only can be relied upon ?
- c) Whether the order of assessment passed is not against the principal of natural justice and against the statutory provisions of the Electricity Act, 2003 and Rules made thereunder ?
- d) Whether the judgment and decree passed by the Courts below are valid, legal and can with stand legal scrutiny ?

9. Learned counsel for the appellant has again reiterated the arguments addressed before the trial Court as well as First Appellate Court to the effect that no notice under Section 126 of the Electricity Act, 2003 has been served and that appellant has not been heard before imposing the penalty. Notice under Section 135 of the Act is not sufficient to fasten the liability.

10. I have carefully considered the said submission but do not find any force in that submission.

11. It is admitted during the course of arguments that amount in question has already been paid. Now, the request made by the appellant is

for refund of the money. There is concurrent finding returned by both the Courts below that there was tampering with the electric wire over and above the electric meter. So, this Court cannot come to the rescue of a person who is tampering with the wires and using the electric energy in an unauthorized manner. Mere fact that no criminal case has been registered against the appellant, is not a ground to arrive at a conclusion that appellant has not committed theft of electricity. It so seems that being lady the department has not got registered criminal case against her. Notice has already been issued to the appellant by the respondents. The points raised in paragraph No.10 are not the question of law but the questions of facts. So, I have no hesitation in holding that no question of law has arisen in the present case.

12. Consequently, the appeal is without any merit and the same stands dismissed.

13. A copy of this judgment be sent to the trial Court for strict compliance.

(K.C.PURI)
JUDGE

May 21 , 2015
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