

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

Regular Second Appeal No.2499 of 2013 (O&M)

Date of decision: **18**.09.2015

Mankaran Singh

... Appellant

versus

Dakshin Haryana Bijli Vitran Nigam, through Executive Engineer,
Operator Division, DHBVN, Tohana, District Fatehabad, and
another.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: None.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J.

CM No.6733-C of 2013

For the reasons stated in the application, delay of 38
days in refiling the appeal is condoned.

Application stands disposed of.

Regular Second Appeal No.2499 of 2013

1. The plaintiff, who successfully challenged the notice and the proceedings initiated by the defendants on allegations of theft of electricity energy, suffered a reversal of the judgement of the appellate court in the appeal filed by the Corporation. The plaintiff is the appellant before this court.

2. It is the admitted case that the plaintiff had been served with notice of illegal abstraction of electrical energy after an inspection done at the premises of the plaintiff. DW1, who was the Assistant General Manager (Enforcement), had given evidence to the effect that the plaintiff's premise premises had been checked on 17.12.2009 and it was detected at that time the direct supply of electricity from the HT lines had been made by the plaintiff and there had been a theft of electricity. The check-report was also filed in court. Notice of theft was issued under Section 135 of the Electricity Act and it would appear that proceedings are also pending before the Special Court. The suit was filed on the basis that the assessment which had been made was done without notice and in violation of the provision under Section 126 of the Electricity Act. The civil court of first instance had decreed the suit but the appellate court found that there was a marked difference between wrong assessment and could be brought for final assessment under Section 126 with a right of appeal under Section 127 of the Electricity Act, on the one hand and a theft committed by a person that results in illegal abstraction of electrical energy and in such an event, no prior notice is necessary. When the notice was issued for theft, the options open are to accept the same by paying a compounding fee and avoid criminal prosecution or contest the prosectuon before the Special Court. In the manner of assessment of civil liability, the Special

Court before which the case of theft could be prosecuted would also have the power to assess such liability and the person, who is prosecuted, will have a right to join issues and contest the assessment of civil liability. Admittedly, the plaintiff did not adopt such a course and the appellate court had correctly referred to the decision of the Supreme Court in *Executive Engineer and another Versus M/s Sri Seetaram Rice Mill-2012 (3) Civil Court Cases 68* and held that the situations covered under Section 126 and Section 135 of the Electricity Act are different.

3. The appellate court has correctly appreciated the issue and has come to the correct conclusion. The point of law involved in the case is the distinction in the manner of imputation of unauthorized load being a violation of contract of supply and the applicability of the relevant provisions of the Electricity Act. The lower appellate court has correctly found that in case of theft there was no scope for serving any prior notices. The detection of theft itself is a surprise act of the Enforcement Wing on duty and it will make meaningless the entire exercise if the person were to be served with notice. The appeal is without any merit and it is dismissed.

(K.KANNAN)
JUDGE

18.09.2015

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