IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2678 of 2013 (O&M)

Date of decision : July 28, 2015

Dakshin Haryna Bijli Vitran Nigam Ltd. through its Executive Engineer and another

......Appellants

Versus

Ashok Yadav

...... Respondent

CORAM : HON'BLE MR.JUSTICE GURMIT RAM

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1. To be referred to the Reporters or not? No / Yes
2. Whether the judgment should be reported in the Digest? No / Yes

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Present : Mr. Sandeep Vermani, Advocate
for the appellants.

Mr. Rahul Gautam, Advocate
for the respondent.

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<u>GURMIT RAM, J.</u>

1. This Regular Second Appeal is preferred by the appellants/defendants against judgment and decree dated 22.12.2012 passed by the Court of learned District Judge, Gurgoan vide which the appeal preferred by the plaintiff was accepted and the defendants were directed to

pay interest at the rate of 24% per annum on the amount of Rs.4,34,236/- from the date of its deposit till the date same is refunded to the plaintiff by the defendants.

2. The case of the respondent-herein (plaintiff) before the learned trial Court in nut-shell was that he had an electricity connection No.SH001-1443 for domestic purpose at his residence with sanctioned load of 2 K.W.. One day his meter was got burnt due to fluctuation in power supplied by the appellants-herein (defendants). He made a complaint to appellant No.2-herein (defendant No.2) in this connection on 16.04.2009 whereupon staff of the appellants-herein (defendants) came to his rented shop on the next day and issued a memo No.841 dated 23.04.2009 raising a demand of ₹4,34,236/- on the basis of false checking dated 17.04.2009. The staff of the appellants/defendants instead of changing the burnt meter of respondent/plaintiff had made a false case of theft of energy against him, since he did not pay any gratification to them and hence was the present suit to declare the abovesaid checking report and memo as illegal, unlawful etc. etc. and for the refund of the amount of ₹4,34,236/- with interest at the rate of 24% per annum from the date of its deposit till its realization.

3. On notice defendants did not appear and as such, they were proceeded ex-parte before the learned trial Court.

4. The learned trial Court after hearing learned counsel for the plaintiff and going through the record as well decreed the suit to the effect that checking report dated 17.04.2009 as well as assessment memo No.841 dated 23.04.2009 are illegal and violative of the instruction of the appellants/defendants. The defendants were directed to re-connect the electricity connection of the plaintiff as per rules and to refund the deposited

amount of ₹4,34,236/-, if any, vide judgment and decree dated 13.08.2012.

5. The plaintiff preferred an appeal against this judgment and decree dated 13.08.2012 before learned District Judge, Gurgaon, which was accepted with costs and the interest at the rate of 24% per annum from the date of the deposit of the amount of ₹4,34,236/- till the same is refunded to the plaintiff was awarded vide impugned judgment and decree dated 22.12.2012. The judgment and decree of learned trial Court to this extent was also modified.

6. The appellants/defendants feeling aggrieved from the abovesaid judgment and decree dated 22.12.2012 have come up in the instant appeal, notice of which was given to the respondent-plaintiff.

7. Learned counsel for both the parties were heard and record was also perused.

8. At the time of arguments, learned counsel for the appellants/defendants has contended that matter in issue in the instant appeal is with regard to the rate of interest only as awarded by learned Appellant Authority vide the impugned judgment and decree dated 22.12.2012. So the scope of this appeal is limited to this extent only.

9. Learned counsel for the appellants/defendants has contended that the case in hand was a case of theft of energy and not of any incorrect bill and as such provisions of instruction No.6.10 (Ex.PW1/7) are not applicable to the case in hand. It is further his contention that learned Appellate Court vide the impugned judgment and decree dated 22.12.2012 has granted the interest at the rate of 24% per annum which is quite illegal, exorbitant as well as on the higher side. Herein he has also submitted that

provisions of instructions Ex.PW1/7 are applicable in case of an incorrect bill.

10. On the other hand, learned counsel for the respondent/plaintiff has denied the above contention of learned counsel for the appellants/defendants and has contended that learned Appellate Authority has rightly granted the interest at the rate of 24% per annum on the amount in question and as such, there is no scope for making any interference in this finding of learned Appellate Authority.

11. The whole controversy in the instant appeal revolves around the point as to whether the provisions of instructions Ex.PW1/7 are applicable to the case in hand or not. Instructions Ex.PW1/7 are referred in para No.5 of the grounds of appeal which are as under:-

> "***Payment of an incorrect bill****:*
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> *In accordance with direction printed on the back of the bills presented by the Nigam, the consumer is liable to make payment of the bill received by him within 10/17 days as the case may be from the date of issue notwithstanding any difference or dispute which may arise as to its accuracy. In the event of an error in the bill being admitted the excess amount charged, is adjustable by the Local Offices in the next monthly bills rendered to the consumer.*
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> *2. As per 'Code of practice for payment of Electricity bills by the consumers and procedure for disconnecting consumers for non-payment' approved by the HERC in the event of dispute in billed amount, the consumer may lodge a complaint before the SDO (OP) and pay the average of the last 6 months*

consumption within due date pending settlement of the dispute. The SDO shall resolve the dispute or communicate final decision with reasons within a maximum period of 2 months. The following procedure should be followed in such case.

i) In case no further verification is required and the bill is found to be incorrect, the bill may be corrected and without getting deposited the bill challenge fee prescribed under the schedule of General & Misc. charges and the revised bill should be rendered to the consumer for making payment.

ii) Where any further verification etc. is required the consumer may be asked to deposit the requisite bill challenge fee prescribed under the schedule of General and Misc. charges. If on investigation the bill is found to be incorrect, a revised corrected bill shall be furnished to the consumer indicating the revised due date. Excess amount paid by the consumer, if any, shall be refunded with interest rate @ 2% per month or part thereof for any period reckoned from the date of making ad-hoc payment to the date of making the refund. In case refund is made through adjustment in the subsequent bill the date of issue of the bill in which the amount is adjusted would be treated as the date of refund. The challenge fee deposited by the consumer shall also be refunded.

iii) Likewise if investigation established that the original bill was correct the consumer shall be intimated accordingly and notified to pay the balance, if any, with surcharge as applicable within 7 days.

iv) As under the computerized billing system the surcharge is automatically levied on the amount remained as unpaid on due date and even the revised due date is not taken into account of levy of surcharge, all adjustment of surcharge may be made through SC & AR."

12. From the careful perusal of above discussed provisions of instruction Ex.PW1/7, it is held that this instruction is applicable to the case of any incorrect billing and in that eventuality the appellants/defendants are liable to pay the interest at the rate of 24% per annum, if on enquiry it is found that consumers had to deposit more amount than the actual due amount on the basis of alleged incorrect bill. But the case in hand as abovesaid is not of any incorrect bill, rather it is a case of theft of energy as alleged by the appellants/defendants, though they did not contest this case before both the Courts below.

13. It is an admitted fact that present respondent/plaintiff has to deposit ₹4,34,236/- in excess than the amount he was actually liable to pay, which is quite substantial. The alleged transaction is relating to year April, 2009, so as such the present appellants/defendants are certainly bound to pay interest on the abovesaid amount from the date of its deposit till the date of its refund to the respondent/plaintiff. The grant of interest on this amount at the rate of 24% per annum is also certainly exorbitant. In the case in hand, both the ends of justice would meet if respondent/plaintiff is granted interest at the rate of 9% per annum on the abovesaid amount of ₹4,34,236/- from the date of its deposit till its refund to him by the appellants/defendants.

Keeping in view the above discussion, this appeal is partly accepted. Impugned judgment and decree dated 22.12.2012 passed by learned District Judge, Gurgaon are ordered to be modified as held above in this para. Parties are left to bear their own costs.

A copy of this judgment be sent to the quarter concerned for the compliance.

Since the main appeal has been disposed of, hence pending miscellaneous application, if any, also stands disposed of automatically having been rendered infructuous.

(GURMIT RAM)
JUDGE

July 28, 2015
Gaurav Sorot