

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 1166 of 2015 (O&M)
Date of decision 02.07.2015.

Dakshin Haryana Bijli Vitran Nigam Ltd and another

..... Appellants.

versus

Subhash Chand Gupta

..... Respondent.

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. Surender Dhull, Advocate for the appellant.

K.C.PURI, J.

C.M. No.3363-C of 2015.

For the reasons mentioned in the application, delay of 19 days in filing the appeal stands condoned. CM stands disposed of accordingly.

MAIN APPEAL

2. Defendant-appellant-Dakshin Haryana Bijli Vitran Nigam Ltd and another have directed the present appeal against the judgment and decree dated 12.11.2014 passed by Shri Subhash Chander Sroai, learned Additional District Judge, Palwal vide which the appeal preferred by the defendants against the judgment and decree dated 16.04.2013 passed by

Mr. Vijayant Sehgal, the then learned Additional Civil Judge (Senior Division), Palwal, was dismissed.

3. The case of the plaintiff in brief is that plaintiff has filed the suit for declaration against the defendants alleging therein that he is an electricity power consumer (commercial) of defendant No.1 under the control and management of defendant No.2 having a commercial electric connection account No. PP-13/672 at his shop namely M/s Deep Sweets Main Bazar, Palwal, Tehsil Palwal, District Faridabad (now Palwal). Said electric meter of the plaintiff was out of order and plaintiff moved an application to defendant No.1 for changing said meter. After inspection, fact of meter being out of order was appreciated by defendant No.1 and he asked the plaintiff to deposit Rs.1750/- as expenses for changing of meter, which was deposited by plaintiff and meter changing order was also passed by defendant No.1 giving direction to the line Superintendent to change the meter and report. It has been further averred that on 26.11.2007 two persons came to the shop of plaintiff and told him that they are employees of defendant No.1. They also told plaintiff that they have come to change the defective meter and they removed the electric meter and told the plaintiff that they would deposit the defective meter in the store and thereafter new meter can be issued and same would be installed next day and they took away the defective meter. On the next day, plaintiff approached defendant No.1 and told him that his employees had taken the defective meter of his shop yesterday but they have not installed the new meter so far. Defendant No.1 told the plaintiff that no power meter is readily available at present and it would be available in the evening and

will be installed till evening only. On 30.11.2007 when plaintiff asked defendant No.1 to install the new meter then instead of installing a new meter, defendant No.1 illegally handed over the two notices bearing memo No.1213 and 1214 to the plaintiff and asked him to deposit Rs.2,04,370/-. Defendant No.1 threatened plaintiff that if he would not deposit the same then a theft case would be registered against him. Hence the suit.

4. On put to notice, defendants appeared and filed written statement taking preliminary objections viz. suit is not maintainable in the present form ; that plaintiff is estopped by his own act and conduct to file the present suit ; that plaintiff has not come with clean hands and has concealed and suppressed the true and material facts from the court etc. On merits, defendants denied that plaintiff is having a commercial electric connection in his premises and submitted that plaintiff is having a domestic electric connection in his premises bearing account No. PP-13/672 and is a consumer of defendants under the said account number. Anoop Singh Arora C/o Deep Sweet House is tenant of plaintiff Subhash Chand Gupta and the electric connection is running in the name of Subhash Chand Gupta. Defendants denied that electric meter of plaintiff was out of order and plaintiff moved an application to defendant No.1 for changing said meter or that defendant no.1 asked plaintiff to deposit Rs.1750/- as expenses for changing of electric meter All other averments of the plaint were denied being wrong and incorrect.

5. No replication was filed. From the pleadings of the parties, following issues were framed :-

1. Whether the assessment order dated 30.11.07 memo

no.1213 for Rs.144370/- and memo no.1214 for recovery of Rs.60,000/- are illegal, null and void and not binding upon the rights of the plaintiff ?OPP

2. Whether the plaintiff is entitled to a decree for mandatory injunction directing the defendants to refund a sum of Rs.204370/- ? OPP
3. Whether the suit is not maintainable ?OPD
4. Whether the plaintiff has no locus standi and cause of action to file the present suit ?OPD
5. Relief.

6. The parties have led their respective evidence on the aforesaid issues. After appraisal of the same, the trial Court decreed the suit of the plaintiff vide judgment and decree dated 16.04.2013.

7. Feeling dissatisfied with the aforesaid judgment and decree dated 16.04.2013, the defendants directed the First Appeal, which was dismissed by learned Additional District Judge, Palwal vide judgment and decree dated 12.11.2014 after re-appraisal of the evidence.

8. Still feeling dissatisfied with the judgment and decree dated 12.11.2014 and judgment and decree dated 16.04.2013, the present regular second appeal has been directed by the defendants.

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

- i) Whether using electricity from a domestic meter for commercial purpose is amount to theft ?
- ii) Whether when theft is visible from the naked eye it is necessary to send the meter for checking ?
- iii) Whether under Sections 135 and 132 of the CPC, Civil Court has jurisdiction to entertain the suit ?

10. Learned counsel for the appellant has submitted that both the Courts below decreed the suit of the plaintiff only on the ground that the Officer, who has conducted the raid has not been examined. It is submitted that any business done in the ordinary course of business shall be presumed to be correct in view of Section 114 of the Evidence Act. So, both the Courts below have wrongly discarded the report of checking. It is submitted that in case the report of checking is taken as it is, in that case, no case for injunction is made out. Seals of the meter were found tampered. It was a case of theft of energy and no injunction in that respect can be allowed.

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

12. It is settled principles of law that second appeal lies only if any substantial question of law has arisen. In the present case, both the Courts below have discarded the report of checking on various grounds including that person who has conducted the raid, has not been examined. It is not disputed during the course of argument that no officer/official, who is party to the raid has been examined. No reasonable explanation has been given for the same. It was only the member of raiding party, who could have explained whether the theft of energy had actually taken place. Both the Courts below have observed that case of electricity Board was that meter was sealed but the same was not sent to the Laboratory for establishing that fact. No reasoning has been given for not sending the meter to the Laboratory, even during the course of arguments. So, I have no hesitation in

holding that no question of law has arisen in the present case.

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

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

(K.C.PURI)
JUDGE

July 02 , 2015

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