

RSA No. 1371 of 2015 (O&M)

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

RSA No. 1371 of 2015 (O&M)

Date of Decision: November 27, 2015

Dakshin Haryana Bijli Vitran Nigam & another

...Appellants

Versus

Ashok Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vinod Kumar Arya, Advocate
for the appellants.

AUGUSTINE GEORGE MASIH, J. (Oral):

CM No.3880-C of 2015

Prayer in this application is for condonation of delay of 17 days in filing the appeal.

For the reasons mentioned in the application which is duly supported by the affidavit of Vikas Kumar, SDO, Maruti Industrial Area, Sub-Division, DHBVN, Sector 18, Gurgaon, the same is allowed. Delay of 17 days in filing the appeal, stands condoned.

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Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Gurgaon, dated 12.11.2013, by which, the suit of the respondent-plaintiff for declaration to the effect that the billing from the month of December, 2008, till the month of July, 2011, is wrong and arbitrary and that the amount of ₹3,03,287/- and ₹68,521/-, charged additionally in the bills

without any show cause notice, is liable to be quashed, alongwith prayer to refund of amount mentioned in the suit, has been decreed, appeal against which preferred by the appellant-defendants stands dismissed by the Additional District Judge, Gurgaon, on 19.12.2014.

It is the contention of the learned counsel for the appellants that the Courts below have proceeded to hold that the principles of natural justice have not been complied with as the appellant-defendants have not issued any show cause notice to the respondent-plaintiff before imposing the penalty and no opportunity of hearing was given to him. The meter was not checked in the presence of the said respondent-plaintiff or his authorized representative and his signatures were not obtained on the checking report. Further, it has been held that the meter was not checked in accordance with law and rules led by the Electricity Act and the sales circular issued by the appellant-defendants, which cannot be sustained as Dr. Ashish who was running the poultry farm which was owned by the respondent-plaintiff, has put his signatures at the time of checking of the meter before the Competent Authority as per Ex.D-1. He, thus, contends that the judgments and decree passed by the Courts below cannot sustain and deserve to be set aside.

This contention of the learned counsel for the appellants cannot be accepted in the light of the fact that the witness who had appeared on behalf of the appellant-defendants, namely, Jitendra Kumar (Commercial Assistant), DW-1, who has neither in his

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examination-in-chief nor in his cross-examination stated that the meter was checked in the presence of the authorized representative of the respondent-plaintiff. In the cross-examination also, he was unable to state as to whether the meter was checked in the presence of the respondent or his representative. In the absence of any evidence which would show that the meter was indeed checked in the presence of the respondent-plaintiff or his authorized representative, the findings recorded by the Courts below cannot be faulted with.

Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record which do not call for any interference of this Court as there is no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

CM No.3881-C of 2015

In view of the order passed in the main appeal, the present application for stay has become infructuous.

Disposed of as such.

(AUGUSTINE GEORGE MASIH)
JUDGE

November 27, 2015
Harish