

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

RSA No. 1376 of 2015 (O&M)

Date of decision: 12.10.2015

Uttar Haryana Bijli Vitran Nigam Limited and another

... Appellants

versus

Anand Cold Store and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

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

K.Kannan, J.

The only point urged by the counsel for the Electricity Corporation is the Court's below having considered a legal defence that a recovery notice issued was not capable of being challenged in a civil Court by virtue of bar contained under Section 145 of the Electricity Act.

It was said to be a case of the defective meter that had been tampered resulting in a lower consumption by 30% and more. If the bar which the counsel pleads were to be under Section 145 of the Electricity Act, the said provision excludes the jurisdiction of the Civil Court which is a challenge to an order passed under Section 126 or an order in appeal under Section 127. Section 126 that allows for an assessment for unauthorized use itself contemplates a procedure for issuing a provisional assessment allowing for an opportunity to file an objection and requiring to pass an order on such objection within the time stipulated. It is that order which will be subject of appeal under Section 127. If the Electricity Corporation itself would commit a breach of the statutory provision in not following the procedure detailed in Section 126, the Civil Court will have jurisdiction to quash a notice which is unauthorized and which is in violation of the provisions of the Act.

From the narration of the facts it would appear that the plaintiff had originally resorted to a consumer action before the District

Consumer Forum and the State Consumer Disputes Redressal Commission (in short “State Commission”) had observed that no action was possible under the Consumer Protection Act and protected the plaintiff's remedy to be brought by means of civil suit. It was this suit which was decreed. If the reference to an adjudication before the Civil Court was itself wrong, the direction by the State Commission must have been subjected for a further challenge in a higher Forum.

Assuming that the direction by the State Commission did not rule out a scope for a challenge to the civil remedy by the Corporation, it ought to have been urged before the trial Court itself. Two Courts have observed that no argument was even made by the Electricity Corporation as regards the Civil Court's jurisdiction. The Court, therefore, proceeded to examine the case on merits about the so-called defective meter and found the same as not having been established. The defendant did not press for the exclusion of jurisdiction before the Court below, it cannot be urged for the first time here in 2nd appeal. The defendant must be taken as having forfeited its right. Even assuming that the jurisdictional issue could be brought before this Court, I will find that an act which is in violation of the statutory provision would itself be a justification for a challenge in the Civil Court for the protection to a defendant against interference by a Civil Court decree will apply only to acts done under the provisions of the enactment and not to acts in derogation thereof. I will find the act of the Corporation to be in defiance of the procedure prescribed under Section 126 and the Civil Court was, therefore, competent to adjudge in favour of the plaintiff, the manner it did.

The 2nd appeal is without any merit and is dismissed.

(K.KANNAN)
JUDGE

12.10.2015

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