

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2082 of 2015 (O&M)

Date of Decision.31.10.2015

Resham Singh

.....Appellant

Versus

DHBVN and another

.....Respondents

Present: Ms. Jigyasa Tanwar, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

-. -

K. KANNAN J. (ORAL)

1. Delay of 6 days in refiling the appeal is condoned.
2. The suit was a challenge to a notice of theft served on the plaintiff stating that in a surprise inspection by the squad on 18.01.2012, it was found that the plaintiff had committed theft of electricity by breaking the wire and taking electricity unauthorizedly. The suit was filed contending that there had been no theft and the alleged checking was said to have been done at a time when the plaintiff was away from the village visiting his son during his illness and that the notice issued was incompetent. The trial Court observed that there had been no valid notice and it brought in its judgemnt a procedure which is prescribed under Section 126 of the Electricity Act for unauthorized user of electricity and held that the provisions relating to Section 126 had not been followed. The Appellate Court reversed the judgment holding that there was a pointed distinction in procedure of Section 126 and Section 135 of the Electricity Act, for while Section 126 contemplated a situation

of unauthorized user and need for provisional assessment with the right of appeal under Section 127 and Section 135 contemplated an action for theft of energy. There were two options open for consumer either to pay the compounding fee and prevent prosecution of the criminal case or to take a defence of no theft in the Special Court if the case is transferred for prosecution of the case of theft. The suit challenging a notice under Section 135 with no statutory defect pointed out was incompetent and the lower Appellate Court, therefore, observed that the Electricity Act provided a complete Code in itself and the institution of civil suit itself was not competent. The Court also made references to judgments of the Supreme Court as well as this Court to point out that the assessment of civil liability would be competent by the Special Court in the proceedings for theft under Section 153 of the Electricity Act and the trial Court had confused it with reference to the assessment as possible only under Section 153 of the Electricity Act failing to note that the memo was issued for an assessment of theft and allowed for scope for a consumer to make the payment and prevent action for prosecution. It had nothing to do with the assessment of civil liability as contemplated under Section 153(4) of the Electricity Act. The appeal was correctly allowed and there is no merit at all in the second appeal.

3. The second appeal is dismissed as involving no substantial question of law for consideration and the only legal point that is involved has been correctly dealt with by the lower Appellate Court.

(K. KANNAN)
JUDGE

October 31, 2015
Pankaj*