

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

RSA No. 2188 of 2015 (O&M)

Date of decision : 30.7.2015

M.D. Dakshin Haryana Bijli Vitran Nigam Limited
and another

... Appellants

versus

Sehdev Arya

... Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. R. S. Longia, Advocate, for the appellants.

Rajesh Bindal, J.

The defendants are before this Court against concurrent findings of fact recorded by both the Courts below whereby the suit filed by the respondent-plaintiff for declaration, was decreed.

Learned counsel for the appellants submitted that the officials of the appellant Nigam checked the electricity connection of the respondent-plaintiff on 4.9.2008 and found that load was not as per the sanctioned one. As the raiding party was doubtful about the genuineness of the meter seals, the meter was decided to be got tested from the M&T Lab. The checking report was signed by the representative of the plaintiff, namely, Avinash. After following the proper procedure, the meter was got tested. After receiving the report from M&T Lab, the plaintiff was asked to deposit the amount of ₹ 1,92,411/- on account of theft of electricity and compounding charges. For the theft of electricity energy, a complaint was also lodged against the plaintiff with the Police Station, Hisar. It was further submitted that as the meter seals were found to be broken, which fact was testified by the appellants vide Lab Report, Ex.D1, the plaintiff is liable to pay the penalty and compounding charges on account of theft of electric energy. The learned Courts below have failed to appreciate the cogent and convincing evidence led by the appellants.

After hearing learned counsel for the appellants and perusing the paper book, I do not find any merit in the present appeal.

The learned Courts below decreed the suit of the plaintiff mainly on the ground that the appellants failed to prove on record that the checking was got done by adopting proper procedure. The lower Appellate Court has referred to rules and instructions issued under the Electricity Act vide sales circular no. D-43/2007, by the appellant Nigam itself, for conducting inspection of electricity consumption. As per Clause 9 of the said instructions, the inspecting officers shall take along themselves the digital camera/ video or any other recording device and shall record the whole event after reaching the premises till they leave. Clause 11 of the aforesaid instructions provides that the signatures of the consumer or his representative and other persons on the site, if available, should be taken on the checking report and memorandum of seizure should be prepared at the spot. In case of refusal by consumer, it should be recorded in the checking report and the same should be pasted at a conspicuous place in/ outside the premises and a photograph be taken. Clause 12(B)(d) provides that in cases of suspected theft of electricity through tampering of meter or metering equipments or seals, the meter/ metering equipments shall be taken out from the premises in a sealed box duly witnessed by the consumer for requisite testing in the M&T Lab. The designated officer shall issue a letter to the consumer at least one week in advance, informing him about the date of meter testing and requesting him to attend the same.

In the present case, the officers of the appellant Nigam did not follow the aforesaid instructions. They have not recorded the proceedings by any digital camera. The so called representative of the plaintiff, namely, Avinash was not produced by the appellants in the witness box, as the plaintiff refused to accept him as his representative. If the plaintiff was available at the spot as to why his consent/ signatures were not obtained. In case he refused to sign the same, that should have been recorded in the checking report as has been provided in Clause 11 of the aforesaid instructions. But the same was not followed in the present case. No independent witness was associated while conducting the so called proceedings. The plaintiff was not informed about the date of meter testing.

It has come on record that he was never associated in any proceedings. Since the alleged raid is not as per the procedure prescribed by the appellant Nigam itself, the findings recorded by the learned Courts below cannot be said to be perverse. No substantial question of law arises. The appeal is accordingly dismissed. Consequently, the accompanying application is also dismissed.

30.7.2015
vs

(Rajesh Bindal)
Judge