

In the High Court of Punjab and Haryana at Chandigarh

.....

R.S.A. No.232 of 2015 (O&M)

.....

Date of decision:9.4.2015

Gian Chand

.....Appellant

v.

Dakshin Haryana Bijli Vitran Nigam Ltd. and another

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. S.S. Sahu, Advocate for the appellant.

.....

Inderjit Singh, J.

This regular second appeal has been filed by the appellant-plaintiff against Dakshin Haryana Bijli Vitran Nigam Limited (hereinafter referred to as 'the Nigam') and SDO Operation, Sub Division (City), DHBVNL-respondents-defendants aggrieved against the impugned judgment and decree dated 1.8.2013 passed by the learned Additional Civil Judge (Senior Division), Ratia, vide which the suit filed by the plaintiff has been dismissed and the appeal filed by Gian Chand-plaintiff was also dismissed vide impugned judgment and decree dated 5.11.2014 passed by learned District Judge, Fatehabad.

I have heard learned counsel for the appellant-plaintiff and have gone through the record.

From the record, I find that Gian Chand-plaintiff filed civil suit

against the Nigam and SDO Operation-defendants for declaration with consequential relief of permanent injunction on the allegations that Chanan Ram father of the plaintiff had taken an electricity connection bearing account No.C-231-0025 and after the death of Chanan Ram, the plaintiff has been making payment of the bills regularly. On 11.11.2009, the officials of the defendant-department came in the flour-mill of the plaintiff and told him that as per the instructions of the Nigam, new meters were replaced in place of old meters and the officials of the defendant-department took such meter with them and after 15 days, a new meter was installed at the premises of the plaintiff. During this period, the flour-mill was closed. On 12.2.2010, the officials of the defendant-department again came in the flour-mill and disconnected the electricity connection without giving any notice to him upon which the plaintiff went to the office of defendant No.2 and asked about the disconnection of electricity. Then, the officials of defendant No.2 got signatures of the plaintiff on some blank forms and gave two notices bearing No.264 and 265 dated 1.2.2010 to him on the basis of which the defendants had demanded a sum of ₹4,44,944/- as loss money and ₹3,00,000/- as compounding fee. Said notices are illegal, against law, arbitrary, null and void and are liable to be cancelled on the grounds that neither the plaintiff had indulged in theft of electricity nor he used unauthorized load; no checking had taken place in the presence of the plaintiff nor any notice prior to the same was issued to him and no opportunity of hearing was given to him. The plaintiff never tampered with the meter and seals and no checking from M&T Lab. was conducted in the

presence of the plaintiff. The penalty is also illegal, against the law and against the circular of the Nigam.

On the other hand, the defendants in the written statement mainly taken the plea that on 11.11.2009 alleged checking was conducted by Diwan Chand, AGM (Enforcement) and Ganga Ram, JE and at the time of said checking, the plaintiff-Gian Chand was present at the spot. During checking, the MCB seals were not found and the load was also out of order. The meter was removed for checking from M&T Lab. and checking report LL-1 was prepared. The plaintiff put his signatures on the checking report after admitting the contents of the same as correct and received copy of the same. Thereafter, a notice was issued to him to check the meter in M&T Lab. and the said meter was checked in M&T Lab. in his presence on 21.1.2010 and both the firm seals were found tampered with and were re-affixed with adhesive. The meter was also found broken and the same was also re-affixed with adhesive. On the basis of said checking report, two notices dated 1.2.2010 were issued regarding depositing of ₹4,44,944/- as loss money and ₹3,00,000/- as compounding fee, but instead of paying the penalty amount, he had filed the complaint before the Consumer Forum, which was accepted by the Consumer Forum. The defendants also filed an appeal against the order dated 1.4.2010 before the State Consumer Disputes Redressal Commission, Panchkula, which was accepted and the order of the Consumer Forum was set aside. Defendant No.2 issued a notice dated 24.6.2010 directing the plaintiff to deposit an amount of ₹4,61,095/- as the previous penalty was charged on the basis of 15 KW load, but the actual

[4]

load was 22.4 KW at the time of checking.

The plaintiff examined witnesses and tendered into evidence some documents and closed his evidence.

On the other hand, the defendants examined Diwan Chand SDO as DW-1, Ganga Ram, JE as DW-2, Dulla Ram Verma, SDO as DW-3 and produced checking report, memos, assessment report etc.

The learned lower Court after appreciating the evidence and after hearing learned counsel for the parties reached to the conclusion that if at all, the defendant-department had got signatures of the plaintiff on some blank forms, then he had full opportunity to move to the higher authorities for bringing this misconduct to their notice. The Court also held that the plaintiff except his bald statement did not examine any one else to prove that his signatures were obtained on blank forms. The Court also disbelieved the plaintiff as he stated that he was not present at the time of checking, but the Court held that he had pleaded that the meter was removed in his presence. The Court also relied upon the joint checking report Ex.DA on the file. The plaintiff has not disputed his signatures. Mere fact that no written notice was given prior to the checking is of no consequence when the plaintiff was present at the M&T Lab. when the meter was got checked. As per the evidence on record, the meter and the seals were found tampered. The findings of the learned Additional Civil Judge (Senior Division), Ratia, have been upheld by the first appellate Court i.e. learned District Judge, Fatehabad. The findings are concurrent and as per law. No substantial question of law arises in this regular second appeal. There is nothing on

record to show that the findings are perverse or against the law.

Therefore, finding no merit in this regular second appeal, the same is dismissed.

April 9, 2015.

(Inderjit Singh)
Judge

hsp