

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

RSA No.3248 of 2015 (O&M)

Date of decision : 07.09.2015

M/s Atul Enterprises

...Appellant

Versus

Dakshin Haryana Bijli Vitran Nigam Ltd. and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Ashwani Talwar, Advocate &
Ms. Sanamjeet Kaur, Advocate for the appellant.

Mr. Pawan Kumar Longia, Advocate for respondents.

AMIT RAWAL, J. (Oral)

Challenge in the present appeal is to the impugned judgment and decree of the Lower Appellate Court, whereby judgment and decree passed by the trial Court dated 24.08.2013 granting the injunction and declaration has been set aside.

Mr. Ashwani Talwar, learned counsel appearing on behalf of appellant submits that suit for declaration to the effect that the bill for the month of May, 2010 of ₹4,27,790/- and amount of ₹1,85,041/- charged in the bill for the month of March, 2008 on the average basis since July 2007 had illegally been charged by the Dakshin Haryana Bijli Vitran Nigam Ltd. (DHBVN) and injunction was sought for grant of electricity connection in the

name of the plaintiff, without making any payment of the impugned bills, which actually had been raised against M/s A.M. Enterprises. He further submits that appellant-plaintiff had inducted M/s A.M. Enterprises, as tenant, who without seeking his consent applied, for electric connection and after using premises & electricity left the premises without payment of electric charges.

The defendants raised the demand claiming the arrears from the plaintiff which was not permissible, in view of law laid down in Hon'ble Gujarat High Court in *2011 (2) CivCC 556 Abhisar Developers Vs. Torrent Power Ltd.*, wherein it has been clearly laid down that electricity charges can be recovered from the person who was in occupation of the premises as lessee. He further submits that Lower Appellate Court has committed illegality and perversity, in reversing the well reasoned judgment and decree of the trial Court by holding that suit of the appellant was not maintainable as he had not applied for the electricity connection and thus submits that following substantial question of law arises for adjudication:-

- i) Whether the Id. Appellate Court below has totally misconstrued and misread the evidence brought on record and thus the impugned judgment and decree is perverse and liable to be set aside?
- ii) Whether the plaintiff/appellant could not be fastened the liability of its lessee especially when the electricity connection in favour of the lessee was released by the respondents without seeking any approval/concurrence of the appellant?
- iii) Whether the respondents are bound in law to release the electricity connection in favour of the appellant on completion of formalities but without insisting upon the deposit of outstanding dues of the lessee of the appellant?
- iv) Whether the respondents have themselves violated the instructions of the

Nigam and allowed the arrears to accumulate without taking any coercive steps against the lessee of the appellant and thus it is the lessee alone from which the recoveries can be affected by the Nigam?

v) Whether the internal audit Department could raise the demand which has been blindly accepted by the respondents without associating the lessee?

vi) Whether the judgment and decree of the lower appellate court is perverse and the same being not in accordance with law?

He further submits that in pursuance to the findings rendered by the Lower Appellate Court, the appellant had applied for fresh connection on 29.04.2015 but owing to the findings rendered by the Lower Appellate Court, the Electricity Department could not have granted fresh connection, till the arrears of electricity consumed by M/s A.M. Enterprises-lessee are not cleared.

Mr. Pawan Kumar Longia, learned counsel appearing on behalf of respondents submits that PW1-plaintiff in cross-examination, admitted that he never applied for fresh connection, prior to the filing of the suit. He further submits that there is no illegality and perversity in the finding rendered by the Lower Appellate Court, as there was no specific demand raised by the Board, therefore, suit was not only premature, but not maintainable, much less, no substantial question of law arises for adjudication.

I have heard learned counsel for parties and appraised the paper book.

There is no dispute to the ratio decidendi culled out by Hon'ble Gujarat High Court in Abhisar Developers case (Supra) inasmuch as that electricity charges can be recovered from lessee. It is a matter of record that M/s A.M. Enterprises was tenant of M/s Atul Enterprises and after consuming electricity, left the premises. The Electricity Board had raised the demand as

noticed above, vide bills though against M/s A.M. Enterprises, but the fact, remains that electricity connection is allotted to the premises and, therefore, until and unless the arrears are not cleared, the Electricity Department would not have entertained application for fresh connection or grant new connection. It is a matter of record that appellant-plaintiff, had though, after decision rendered by the Lower Appellate Court, applied for fresh electric connection, but apprehension as shown to this Court, that same would not be granted for want of clearance to the previous dues. In my view has force, for, the reasons that Electricity Department would not issue electricity connection until and unless arrears due from the premises in the name of M/s A.M. Enterprises, are not cleared.

In my view, the findings rendered by Lower Appellate Court are not only perverse, but erroneous is hereby set aside and the judgment & decree rendered by the trial Court is restored.

In view of aforementioned observation, question of law noticed above are also answered in favour of the appellant-plaintiff and against respondents-defendants.

Accordingly, appeal is allowed.

07.09.2015

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**(AMIT RAWAL)
JUDGE**