

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

Regular Second Appeal No.3482 of 2015 (O&M)

Date of decision: 27.7.2015

M/s Laxmi Enterprises and another

... Appellants

Versus

The Punjab State Electricity Board (now PSPCL) and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Pankaj Jain, Advocate,
for the appellants.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

The suit was filed against a demand notice served by the Punjab State Electricity Board on the plaintiff on 3.5.2006 when clubbing of load was not permissible. The suit has been dismissed in both the courts. Hence, this appeal has been preferred against the appellate decree declining the relief of permanent injunction.

2. The learned Additional District Judge (A), Gurdaspur in the judgment and decree dated 30.4.2015 has found from the evidence on record that during the course of checking, the Enforcement Staff of the respondents found the electricity load of both the separate connections were intermixed and were run from one premises. The checking reports were

exhibited on record as P4 and P5. It was in this situation that the Board

decided that both the connections are to be clubbed as per its rules and regulations and therefore raised the demand in question. The first appeal court also found on facts from a perusal of the order of the Disputes Settlement Committee that one connection was being used by the father and the other by the son by leasing out a portion of the plot to the son by carving out from the other plot. In this view, the court of first appeal has rejected the appeal and affirmed the findings of the court of first instance.

3. Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations, 2007 were promulgated, according to Mr.Jain, on 1.1.2007. In the new Regulations, Regulation 28 prescribes the procedure to be followed in clubbing of loads on terms and conditions. Where a consumer was found to have more than one connection in the same premises in the same or different names, the Board would act according to the new Regulations in force. Regulation 28.2 prescribes that the consumer will be treated as a distinct entity and deemed to be in independent establishment if one or more of the events laid down in the provision takes place. Since the demand notice was raised at a time when clubbing of load was not allowed, the appellant can derive no benefit of Regulations, 2007 which were not in force nor have been shown to operate prospectively.

4. Both the Courts have disagreed with the plaintiff and dismissed the suit for the reason that clubbing was not permissible as per rules and the then prevailing law. It is another matter that the suit was filed later on 11.5.2007 against memo No.1570 dated 21.4.2006 and the demand on account of clubbing was raised again on 27.4.2007 with reminders in

between. Obviously, the prayer in the suit was made to draw benefit of the new Regulations. However, since the action against the plaintiff/appellant had begun prior to the promulgation of the regulations, then the earlier regulations would hold the field and govern the rights and liabilities of the parties.

5. Today at the hearing, Mr. Pankaj Jain relies on Regulation 28 in his grounds of appeal and submits that judicial notice should be taken of the Regulations. That may be right, but the Regulations were known to the appellant since 2007 and they could have taken appropriate steps to produce it in evidence in the trial court or as additional evidence under Order 41 Rule 27 CPC before the appeal Court and, therefore, I would not permit Mr. Jain to raise this issue in the second appeal when not earlier raised. The regulations have been mentioned in the grounds of appeal even without filing an application under Order 41 Rule 27 CPC before this Court to lead them as additional evidence. The question is not whether the regulations have to be taken judicial notice of but that they were not cited before the courts below for trial as an issue or as supplementary material and thus no opinion on them has been formed and for this reason as well, it is not possible to entertain the plea in second appeal based on the regulations for the first time. Besides, no prejudice has been caused to the appellant by anything done by the Board in adhering to the law then extant with respect to prohibition of clubbing supply load and the suit itself appears to be wholly misconceived which dragged on and on in two courts for 8 years against only a demand notice served by the Board on the plaintiffs before the new regulations came into force. The cause of action, if any, and the

right to sue, if any, did not accrue to the plaintiffs. The civil court is not the appropriate forum for redressal of such a grievance with respect to supply of electricity.

6. For the foregoing reasons, I am unable to persuade myself to interfere in this matter and would commend the dismissal of the appeal as not meriting admission for regular hearing. No substantial question of law arises in this case.

7. The appeal is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

July 27, 2015

Paritosh Kumar