

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

RSA No.3625 of 2015 (O&M)

Date of decision: 03.08.2015

**The S.D.O., Op. Sub. Div. Dakshin Haryana Bijli Vitran Nigam and
another**

.....Appellants

Versus

M/s Tech Plast India

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

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

Ritu Bahri, J.

CM No.8822-C of 2015

For the reasons mentioned in the application, same is allowed and
delay of 27 days in filing of the appeal is condoned.

RSA No.3625 of 2015

Defendants-appellants have come up in regular second appeal
against the judgment of reversal dated 30.03.2015 passed by the Additional
District Judge, Faridabad, whereby appeal filed by the plaintiff-respondent
against the judgment and decree dated 07.03.2014 passed by the Civil Judge
(Junior Division), Faridabad, has been accepted and defendants-appellants
have been restrained from recovering the amount from the plaintiff and from
disconnecting its electric supply.

M/s Tech Plast India-plaintiff (respondent herein) was having an
electricity connection bearing account No.HRB/07432 installed at its factory
premises. On 26.11.2010, plaintiff had written a letter to defendant No.1

stating therein that its meter was not working properly. On receipt of the said letter, officials of defendant-respondent No.1 visited the factory of the plaintiff and removed C.T.P.T. No.2447, 2448 and 2449 of the previous meter and had installed a new C.T. No. CT-16971-A, CT-16971-B and CT-16971-C and thereafter, handed over a Lab testing certificate dated 30.11.2010 with regard to checking of the old C.T. And report of new C.T. On 22.12.2010, plaintiff received a bill from defendant No.1 for a sum of Rs.48,955/-, upon which Rs.62,457/-, Rs.1,75,445/- and RS.5060/- were added in hand and total demand of Rs.2,97,755/- was made. When the plaintiff had gone to deposit the due amount, officials of defendant No.1 refused to accept the bill and asked the plaintiff to deposit the entire amount, which was handwritten on the bill. They also refused to correct the bill, rather threatened to disconnect the electricity connection of the plaintiff. As per plaintiff, after installing the new C.T., no team had investigated its meter and no notice was ever served upon it in that regard. No theft was found to have committed in any manner.

Upon notice, defendant-appellants filed written statement, wherein it was stated that the electricity meter in question was checked on the request made by the plaintiff. However, two CTs installed on the said meter were not found working, therefore, the same were removed for checking in M & T Lab, DHBVNL, Faridabad. New meter along with CTs was got checked from M & T Lab before it was installed. The M & T Lab vide test certificate bearing CT No.2448 had reported that two CTs bearing No. 2447 and 2448, installed with old meter, were found running slow by 75.95% and 65.01%, whereas new CTs were found in perfect condition. It was found that the meter was not recording the correct consumption of electricity and

the plaintiff was billed for a lesser amount. Pursuant to the report dated

30.11.2010, account of the plaintiff was overhauled and a sum of Rs.1,75,445/- was debited in its account. Remaining allegations mentioned in the plaint were denied and a prayer for dismissal of the suit was made.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether the plaintiff has no cause of action or locus standi to file the present suit? OPD
4. Whether the suit is bad for want of notice under Section 80 CPC? OPD
5. Whether the plaintiff has suppressed the material facts from the Court? OPD
6. Relief.

Trial Court, after going through the evidence led by the parties, dismissed the suit. However, on appeal, the lower appellate Court reversed the findings of the trial Court and decreed the suit. Hence, this appeal.

Plaintiff-firm had written a letter dated 26.11.2010 (Ex.D1) to the defendants-appellants to get its meter checked. Thereafter, officials of defendants-appellants visited the factory premises of the plaintiff and removed old C.Ts and installed new one. According to the report of M & P Laboratory, two C.Ts were found running slow by 75.95% and 65.01%. After overhauling the account of plaintiff-respondent, a sum of Rs.1,75,445/- was debited to its account. Rs.62,457/-, Rs.1,75,445/- and

to Rs.48,955/-. Out of the above amount, a sum of Rs.1,75,445/- was demanded on account of slowness of the meter. As per depositions of Anoop Sharma (PW-1), Vasudev Dass (PW-2) and Vijay Pal (DW-1), there was nothing on the file to show that any show cause notice was issued to the plaintiff-respondent before overhauling his account and while imposing a sum of Rs.2,97,755/-. At this stage, reference can be made to a judgment passed by Co-ordinate Bench of this Court in **UHBVNL and others Vs. Brijesh Kumar Garg**, 2009 (2) RCR (Civil) 799, wherein it has been held that without issuing notice, the penalty cannot be imposed merely on the basis of report of M & T Lab. In that case while making reference to the judgment delivered in **Trupati Industries Vs. Punjab State Electricity Board**, 2000 (1) RCR (Civil) 681 (P&H), it was held that a notice has to be given to the consumer about the date and time of testing of his meter and the report of M & T Lab cannot be made basis for imposing penalty against the plaintiff-respondent. Ultimately, the appeal filed by the UHBVNL was dismissed.

In the present case also, neither the C.Ts were got checked from the Laboratory in the presence of the plaintiff-respondent nor any show cause notice was given to him before imposing the penalty. Therefore, the procedure adopted by the defendants-appellants while imposing penalty upon the plaintiff was not justified. The present case is squarely covered by the judgment passed in **Brijesh Kumar Garg's** case (supra).

In the light of the above discussion, this Court is of the view that suit of the plaintiff-respondent has been rightly decreed by the lower appellate Court after appreciating evidence in the right perspective. No illegality, much less perversity, has been found in the impugned judgment,

warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

03.08.2015

ajp

(RITU BAHRI)
JUDGE