

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

RSA No.43 of 2015(O&M)

Date of Decision:-08.01.2015

Vijay Verma.

.....Appellant.

Versus

Uttar Haryana Bijli Vitran Nigam Limited & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Surinder Singh Virk, Advocate for the Appellant.

JASWANT SINGH, J.(ORAL)

Plaintiff is in second appeal against the judgment of reversal whereby his suit for declaration and permanent injunction was decreed by the learned Additional Civil Judge(Sr. Divn.), Panipat vide judgment and decree dated 22.03.2013. However, in an appeal preferred by the respondent/defendant learned District Judge, Panipat vide judgment and decree dated 29.11.2014 accepted the appeal and consequently dismissed the suit.

In brief facts of the case are that the plaintiff who was a consumer of the defendants/respondents having electricity meter installed in its premises since 2005 had alleged that on 18.10.2011 at about 11.00 AM the employees of the defendant came at the present and started interfering in the working of meter without any reasons or permission of the plaintiff/appellant. It was further averred that when the plaintiff raised

objection about the illegal conduct, the employees of the department demanded an amount of Rs.25,000/- for not preparing any report which as per the case set out by the plaintiff he refused to accept the illegal demand. It was further averred that thereafter the meter of the plaintiff was sealed by the employees of the defendant/respondent by preparing a false report. The plaintiff has impugned the letter/memo no.110/N-TOE dated 17.11.2011 whereby the amount of Rs.2,46,147/- is being sought to be recovered and as per the case of the plaintiff the said recovery memo/letter is illegal. Hence the present suit.

Upon notice, defendants/respondents filed their written statement whereby they denied all the averments and pleaded that the meter was rightly got checked in the presence of the plaintiff and it was found that the Circuit plate of the meter was manipulated/disturbed which lead to less billing, therefore, prayer was made for dismissal of the suit.

From the pleadings of the parties issues were framed. Both sides lead their evidence in support of their respective claims and after appreciating their evidence learned trial Court decreed the suit whereas in appeal the learned lower Appellate Court accepted the appeal and reversed the findings of the trial Court. Hence the present second appeal.

Learned Counsel for the appellant has argued that the judgment and decree passed by the learned lower Appellate Court is based on conjectures and surmises as the well reasoned judgment and decree passed by the learned trial Court has been wrongly set aside by the learned lower Appellate Court without giving any cogent and valid reasons and thus the findings returned are liable to be set aside.

After hearing learned Counsel for the appellant and perusing

the paper book, this Court is of the considered view that the present second appeal is devoid of any merit and same deserves to be dismissed.

Learned lower appellate Court while adjudicating the matter had observed as follows:-

“ Learned Counsel for the appellant has argued that on 18.10.2011 Vigilance Team of Nigam checked the premises of the plaintiff where the connection no.KH-21/3466 was installed and during the checking, they found that the working of the meter was slow. The meter was removed from the site duly packed in card-board box signed by the checking party. At the time of checking, load was found 6.653 KW instead of sanctioned load of 2.8 KW. The checking report/LL-1 was prepared at the site and the plaintiff Vijay Verma, who was present in the premises also signed the checking report. The meter of the plaintiff was got checked in the presence of the plaintiff in laboratory and found that an additional resistances(green color) were found connected on the original circuit plate of the meter. The seals of the firm of meter were also found to be fake and circuit plate was also found to be manipulated and disturbed with abnormal soldering marks, which was done intentionally by the consumer to affect the working of meter and meter got slowed. On receipt of report from M & T Lab, appellant-defendant no.2 issued notice vide memo no.101/N-TOE dated 17.11.2011 for assessment of offence of theft of electricity and a penalty of Rs.2,46,147/- was

imposed and a compound fees of Rs.1,70,440/- was levied for compounding the offence of theft of electricity. As per Ex.D-2, checking report of M & T Lab, it is proved that the seals of the meter were fake and abnormal marks were found in the internal parts of the meter. The additional resistance of wires of green colour were put inside the meter which slowed the working of meter. Hence, the case of tampering of meter was proved. The meter was checked in the lab in the presence of plaintiff-Vijay Verma. There was found a hole in the meter and three resistance of wires of green colour were found inside the meter, which slowed down the speed of electricity meter. Hence the case of theft of electricity is proved against the plaintiff. Hence the finding of the learned trial Court on issue no.1 is hereby reversed and it is held that the plaintiff has failed to prove his case and he is not entitled to any relief of declaration as well as of permanent injunction. Hence the finding on issue no.1 is answered against the plaintiff and in favour of the defendants.”

A perusal of the above findings would show that the case of tampering with the meter was found and there was in fact a hole in the meter and three resistance wires of green colour were found inside the meter which slowed down the speed of the electricity meter. The Court while hearing appeal under Section 100 CPC is required to see whether any substantial question of law arises for consideration or not and whether the findings returned by the learned Court below is so arbitrary, illegal or

perverse on the basis of which it is said that it has completely overlooked the relevant evidence led by the parties. In the present case, the learned lower Appellate Court has appreciated the evidence and has come to a definite conclusion that the plaintiff/appellant was guilty of slowing down the meter and thereby causing loss to the respondent/department. No illegality or perversity is apparent from the said findings which appears to be based upon sound reasoning.

In view of the above, finding no question of law much less substantial question of law arising for determination in the present second appeal, the same is hereby dismissed.

**(JASWANT SINGH)
JUDGE**

January 08, 2015
Vinay