

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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C.M. No. 11104-C of 2015 &
RSA No. 4601 of 2015 (O&M)

Date of Decision: 07.12.2015

Uttar Haryana Bijli Vitran Nigam Limited and another

.....APPELLANTS

VERSUS

Hira Nand Arora

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

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

AUGUSTINE GEORGE MASIH, J (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Karnal dated 29.04.2014 whereby the suit for declaration preferred by the respondent-plaintiff to the effect that the checking report dated 16.10.2012, order of assessment issued vide memo dated 16.01.2013 and notice of compounding fee issued vide memo dated 16.01.2013 are illegal, null and void and not binding on the rights of the plaintiff along with consequential relief of permanent injunction to the appellants-defendants from disconnecting the electricity connection stands decreed, appeal against which preferred by the appellants-defendants stands dismissed by the Additional District Judge, Karnal on 20.05.2015.

It is the contention of the learned counsel for the appellants that the findings, as recorded by the Courts below, are not based on proper appreciation of the pleadings and the evidence produced on record. He

contends that it is not in dispute that the meter of the respondent-plaintiff was found running slow by 10% and as per the M & T Lab report, the seals of the meter were found fake. The finding recorded by the Courts below, thus, according to him, was without any justification and basis. An assertion has also been made that the assessment should be permitted under Section 126 of the Indian Electricity Act, 2003.

I have considered the submissions made by the learned counsel for the appellants and with his assistance, have gone through the judgments passed by the Courts below.

A perusal of the impugned judgments shows that the Courts below have, on due appreciation of the pleadings and the evidence on record, come to the conclusion that this was not a case which would fall under Section 135 of the Indian Electricity Act especially when the appellants-defendants have not been able to prove by producing the seals which, as per the report of the M & T Lab, were found to be fake. The procedure, as has been prescribed under the regulations, has also not been complied with, the result whereof is that the impugned orders/reports/assessment cannot be sustained and rightly so, the Courts have set aside the same and decreed the suit of the respondent-plaintiff.

As regards the contention of the learned counsel for the appellants that the assessment should have been permitted under Section 126 of the Indian Electricity Act, 2003, suffice it to say that once a stand has been taken by the appellants-defendants that the matter has to be dealt under Section 135 of the Act, the stand of the appellants cannot be permitted to be changed in the midstream. The findings, as recorded by the Courts below, are based upon due appreciation of the pleadings of the

Statute and the regulations framed and applicable to the case in hand, which do not call for any interference by this Court.

There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below. Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

In view of the above, finding no merit in the present appeal, the same stands dismissed.

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In view of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

December 07, 2015

pj