

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

RSA No.5558 of 2015 (O&M)

Date of Decision:06.11.2015

SARLA DEVI

....Appellant

vs

**ADDITIONAL DIVISIONAL GENERAL MANAGER, DHBVN
LTD. AND ORS.**

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Mukesh Yadav, Advocate
for the appellant.

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

RAJ MOHAN SINGH, J.

CM No.13406-C of 2015

Prayer in this application is for condonation of delay of
12 days in filing the appeal.

Since the appeal is being decided on merits, this Court
feels like to condone the delay, in view of averments made in
para No.3 of the application.

Consequently, delay of 12 days in filing the appeal is
condoned.

Application stands disposed of.

Main case

[1]. Plaintiff-Sarla Devi has filed this appeal against the
concurrent judgments and decrees passed by the Courts below

dismissing the suit for permanent injunction.

[2]. Plaintiff filed the suit for permanent injunction to the effect that she got issued an electricity connection bearing No.34MMIDI-1451. When the plaintiff moved an application before the defendants' department to get the reading of the meter checked, the defendants arbitrarily showed wrong units and sent a notice of higher amount. With this background a restraint order was sought against the defendants from recovering the arbitrary amount of Rs.30,349/- and from disconnection of the electricity.

[3]. The suit was contested by the defendants on the ground that they have acted in their official capacity and have no personal vendetta against the plaintiff. Plaintiff was issued electricity connection in the year 2001 and on 12.12.2011, plaintiff deposited an amount of Rs.250/- only. Earlier on 12.02.2002 she deposited only Rs.250/- and except this she did not pay anything to the defendants. Defendants contested the suit on number of grounds of maintainability, *locus standi*, estoppel and limitation.

[4]. Both the parties were put to trial on the following issues:-

- “1. Whether the plaintiff is entitled for the relief for injunction as prayed in the plaint? OPP

2. Whether present suit is not maintainable? OPD.
3. Whether the plaintiff has no cause of action to file the present suit? OPD.
4. Whether the plaintiff is estopped from filing the suit by her act and conduct? OPD
5. Whether the plaintiff has not come in the court with clean hand? OPD.
6. Whether the defendant are not entitled for the compensation as per Section 35A of CPC? OPD
7. Relief.”

[5]. Both the parties led their respective evidence to prove their case on the aforesaid issues.

[6]. Plaintiff got examined Birender Singh as PW-1 and she herself examined as PW-2, besides adducing Ex.P-1 i.e. letter No.2777 dated 03.03.2009 and receipt of waiving of interest and bill receipt for the period 15.07.2008 to 16.09.2008 Ex.P-2.

[7]. The evidence of the plaintiff was rebutted by the defendants by the document i.e. ledger of account of meter Ex.DW-1/A.

[8]. In cross-examination PW-1 Birender Singh stated that after issuing the electricity connection he deposited only 5-6 bills. The connection had already been disconnected 18 months ago and after filing of the suit, he has not deposited any electricity bill.

[9]. PW-2 Sarla Devi has also supported the testimony of PW-1 Birender singh who is her husband. The plaintiff in her cross-examination stated that nothing is due towards her regarding electricity bill. Factum of disconnection about 18 months ago remained an admitted fact.

[10]. Both the Courts below have found as a matter of fact that the ledger account of the meter of plaintiff showed that till the month of October 2009, there remained an amount of Rs.34,559/- due towards the plaintiff as bill of consumed electricity charges. Plaintiff did not pay even a single penny to the Department for the consumed electricity after that.

[11]. PW-1 Birender Singh while appearing in the witness box admitted that the disconnection was done about 18 months ago. This statement was made on 03.07.2014 and the relevant period when electricity connection was disconnected comes out to be in the year 2013. Till then the plaintiff was using energy free of cost which has a tallying effect on the conduct of the plaintiff.

[12]. The waiver of any charge in terms of policy of the State Government could have been availed by the plaintiff. Apparently, the same was never availed of, which is apparent from Ex.P-1. Even vide order dated 03.04.2009, the trial Court asked the plaintiff to deposit an amount of Rs.10,000/- but the

plaintiff did not pay the same, nor made good the balance energy charges. Plaintiff never availed the benefit of waiver, nor paid the energy bills to the Department and was proved to be a defaulter of energy bills.

[13]. No cogent evidence was produced on record by the plaintiffs to prove a case of waiver or the energy bills shown at exaggerated note by the Department. Issue No.1 was decided against the plaintiff for want of any positive and legally acceptable evidence. Other issues were not pressed and the suit was dismissed by the Courts below.

[14]. In the present appeal, the appellant has based her contention on the following legal propositions:-

- “(i) Whether the appellant is entitled to the injunction, as prayed for?”*
- “(ii) Whether both the Id. Lower courts while passing the impugned Judgment and Decree are illegal and arbitrary?”*

[15]. Both the questions as formulated are pure question of fact. For question No.(i), appellant was required to adduce evidence so as to entitle her to injunction. Nothing has come on record that the amount claimed by the defendants was an exaggerated amount. Apparently since installation of electricity meter, an amount of Rs.250/- was paid by the plaintiff on two

occasions i.e. since 2001.

[16]. The record of the defendants/respondents in terms of Ex.DW-1/A i.e ledger account showed till October 2009, there was an amount of Rs.34,559/- to be paid by the plaintiff to the defendants on the basis of consumed electricity.

[17]. Since nothing was paid, nor any waiver was sought by the plaintiff under the policy of the State Government, therefore, in considered opinion of this Court question No.(i) does not arise. Question No.(ii) whether impugned judgments and decrees are illegal or arbitrary has to be answered on the same proposition as there is nothing on record to suggest that the impugned judgments and decrees are the result of any misreading of evidence or having suffered with any perversity of any nature. Therefore, impugned judgments and decrees cannot be held to be illegal or arbitrary by any stretch of imagination.

[18]. In the light of aforesaid, this Court does not find any ambiguity in the impugned judgments and decrees passed by the Courts below and, therefore, this appeal is dismissed in *limine*.

November 06, 2015

Atik

**(RAJ MOHAN SINGH)
JUDGE**