IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.4170 of 2014
Date of decision : 22.07.2015

Rajesh Kumar ...Appellant

versus

Uttar Haryana Bijli Vitran Nigam Ltd. & another ...Respondents

CORAM: **HON'BLE MS. JUSTICE RITU BAHRI**

Present: Mr. Akshay Jindal, Advocate for the appellant.

Mr. P.S.Poonia, Advocate for the respondents.

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RITU BAHRI , J (Oral)

The appellant/plaintiff has come up in regular second appeal against the judgment of the trial Court dated 15.01.2014 and the lower appellate Court dated 19.07.2014, whereby his suit for declaration and mandatory injunction that the notice dated 28.05.2008 for deposit of Rs.1,62,639/- and Rs.2,60,000/- for compounding the offence pertaining to electric connection No.S-2/42 is null and void has been dismissed by both the Courts.

The defendants, vide memo No.2223 dated 28.05.2008 had alleged the theft of electricity and imposed penalty of Rs.1,62,639/- and Rs.2,60,000/- for compounding the offence pertaining to electric connection No.S-2/42 upon the plaintiff. These notice was challenged by the plaintiff before the District Consumer Disputes Redressal Forum, Karnal, which vide order dated 13.02.2009 accepted the complaint of the plaintiff and the said amount was set aside. Against the said order, the department filed an appeal No.402 of 2009 on 18.03.2009, which was accepted by the State Consumer Disputes Redressal Commission, Haryana, Panchkula, vide order dated 07.03.2012. Thereafter, the present suit was filed by the plaintiff.

On notice of the suit, the defendants filed a written statement taking the objection that the civil Court has no jurisdiction to try the suit in view of the provisions contained in Section 145 of the Electricity Act, 2003. On merits, it was stated that the electricity connection of the plaintiff bearing No.S-2/42 was checked on 08.05.2008 by Sh. Sunil Kumar, A.E. Enforcement alongwith other checking staff and it was found that the accuracy of the meter with clip on meter and running load was found slow by 60% and both the MCB seals were found tampered with. The meter was removed and outgoing wires from the bottom of MCB and packed in Gatta box with Khaki PVC tape duly signed by checking team and consumer present at the time of checking, the connected load was 11.490 KW. The checking was done in the presence of Sh.Rajesh Kumar, Consumer, who signed on the checking report. After replacement of the meter, the meter was sent to the M&T Lab for verification of genuineness of the seals and as per the report of the M&T Lab, it was found that both the MCB cover load seal found tampered with i.e. lace wire cut and reinserted in the sealing holes. The meter installed on electronic test bench to check the accuracy of the meter and found working slow by 70%. On the basis of this report, memo No.2223 dated 28.05.2008 was sent to the plaintiff and charged the said amount was demanded. The trial Court framed the following issues:-

> *"1. Whether the plaintiff is entitled to a decree for declaration as prayed for? OPP.*
>
> *2. If issue No.1 is proved, whether the plaintiff' is entitled for relief of mandatory injunction and permanent injunction as prayed for? OPP.*
>
> *3. Whether the suit of the plaintiff is not maintainable in the present form? OPD.*
>
> *4. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD.*
>
> *5. Relief."*

The trial Court dismissed the suit of the plaintiff as the checking report LL-1 Ex.D1 corroborated with the report of M&T Lab, which is Ex.D4 and D5, in which it was found that the meter account of the plaintiff was working slow by 70% and the seals were tampered with. Thereafter, notice was sent to the plaintiff'. During the pendency of the appeal before the lower appellate Court, the plaintiff filed an application under Order 41 Rule 27 read with Section 151 CPC to place on record the certified copy of the judgment dated 09.07.2009 passed by Sh.R.S.Chaudhary, the then Addl. Sessions Judge, Karnal, in criminal case bearing FIR No.127 dated 05.06.2008 under Section 135 of the Electricity Act. Vide the impugned judgment, the appellant/plaintiff had since been acquitted in the criminal trial. This application was dismissed by the lower appellate Court on the ground that the judgment in a criminal case is not admissible in a civil suit and not binding on a civil Court.

At this stage, reference can be made to Section 154 (5) of the Electricity Act, 2003, which reads as under:-

> *"154 (5) The [Special Court shall] determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft is determined whichever is less and the amount of civil liability so determined shall be recovered as if it were a decree of civil Court."*

As per the above said provision, the Special Court created under Section 153 of the Electricity Act is to try offences punishable under Sections 135 to 140 and Section 150 and while deciding the above said offences it can determine civil liability against the consumer in case of theft of energy. Vide impugned judgment dated 09.07.2009, the Special Court has acquitted the plaintiff and has not proceeded to decide the civil liability as contemplated under Section 154 (5) of the Electricity Act. Hence the application under Order 41 Rule 27 should have been allowed by the lower appellate Court. Once the Special Court created under Section 153 of the Act was required to determine the civil liability against a consumer or in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft is determined whichever is less and the amount of civil liability so determined shall be recovered as if it were a decree of civil Court.

Hence the said application was wrongly declined by the lower appellate Court. Since the Special Court has acquitted the plaintiff of the charges of theft under Section 154 (5) of the Electricity Act, the notices for deposit of penalty and compounding fee are likely to be set aside.

Accordingly, the present appeal is allowed, the judgments of the trial Court dated 15.01.2014 and the lower appellate Court dated 19.07.2014, dismissing the suit of the plaintiff are set aside and the suit of the plaintiff' is decreed.

Decree sheet be drawn accordingly.

22.07.2015 **(RITU BAHRI)**
Vinay **JUDGE**