

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 4287 of 2014 (O&M)
Date of decision 28.08. 2015.

Devi

..... Appellant.

versus

Dakshini Haryana Bijli Vitran Nigam Ltd. and others

..... Respondents.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present : Mr. Sanjay Mittal, Advocate for the appellant.

K.C.PURI, J.

This is an appeal directed by plaintiff/appellant against the judgment and decree dated 16.04.2014 passed by Shri Narinder Kumar, District Judge, Narnaul vide which the appeal preferred by the plaintiff against the judgment and decree dated 15.02.2014 passed by Dr. Chander Hass, the then learned Civil Judge (Senior Division), Narnaul was dismissed.

2. The brief facts of the present case are that oil mill of the plaintiff is situated at Maal Godam, Narnaul and plaintiff has taken one electric connection bearing No.C-241-006 and the electric bill is being

paid by her therefore nothing is pending against her. It has been further pleaded that at the time of applying the connection, plaintiff had deposited an amount of Rs.52,250/- vide receipt No.157 dated 01.05.2007 and she had also deposited an amount of Rs.64,0000/- vide receipt No.359/83323 dated 14.06.2007, and in this manner, she has deposited whole of the charges and allowances to the defendants. One bill amounting to Rs.1,29,354/- for the month of June, 2008 was received by the plaintiff and the same was deposited by her in that month, and thereafter, bill No.11 dated 08.08.2008 for Rs.3,41,668/- was wrongly issued to the plaintiff in which bill for Rs.82,794/- was for consumption of electricity units and Rs.2,58,875/- was for sundry allowances charges. It has been further pleaded that on 18.08.2008, the plaintiff approached defendant No.3 to remove the line charges, then they got deposited an amount of Rs.82,794/- from the plaintiff on that day. Plaintiff requested the defendants not to add an amount of Rs.2,58,875/- in her bill and the defendants under the garb of that amount intend to disconnect the electric connection of the plaintiff, when they have no legal right to do so. The plaintiff requested the defendants not to disconnect her electric connection, but to no effect. Hence the present suit.

3. Joint written statement was filed by the defendants No.1 to 3, wherein they raised preliminary objections inter alia about the maintainability, jurisdiction, cause of action, locus standi, limitation

and that the plaintiff has filed false and frivolous suit. On merits, it has been pleaded that plaintiff had obtained an electric connection but denied that no amount is outstanding against the plaintiff and contended that, rather an amount of Rs.2,58,875/- is outstanding on account of sundry charges as per audit report dated 08.07.2008 for which the defendants are entitled to recover from the plaintiff. It has been admitted that plaintiff deposited initial amount at the time of obtaining the electric connection, but denied that total amount and costs of estimate and amount of service connection was deposited by the plaintiff and it was pleaded that rather an amount of Rs.2,58,875/- is due against the plaintiff as per audit report dated 08.07.2008, because connection of the plaintiff is industrial connection and due expenditure for release of new connection are to be recovered under sale instruction No.D-42 of 2006, but the plaintiff has not deposited the total amount of costs of estimate and amount of service connection and due to that this amount of Rs.2,58,875/- were added in the bill of the plaintiff for recovery as per Nigam rules and the defendants are legally entitled to recover the amount and in the event of non-depositing of this amount by the plaintiff, the defendants are entitled to disconnect the electric connection of the plaintiff. It has been further pleaded that sale instruction No.42 of 2006 dated 17.07.2006 have been issued according to the rules and regulation of Haryana Electricity Regulatory Commission Regulation No. HERC/12/05 dated 26.07.2005 which

provides the details method on “Duty to supply on request for the distribution as licensee” and under the said regulation, the consumer opt either for self execution of wire or for carrying out the work through the licensee on paying expenditure where the supply of electricity requires extension of distribution system. It has been further submitted that in the present case, after submitting of the application for electric connection by the plaintiff, detailed estimate was prepared for releasing the connection and the estimated amount was Rs.3,79,500/- and this amount was mentioned in the demand notice dated 12.06.2007 issued in the name of plaintiff, but the plaintiff deposited initial amount of Rs.64,000/- in this regard and as such, the defendants are legally entitled to recover an amount of Rs.2,58,875/- from the plaintiff. Remaining contents of the plaint have been denied by the defendants and lastly the defendants prayed for dismissal of the suit of the plaintiff.

4. Replication to written statement of defendants was filed.

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

1. Whether the plaintiff is entitled to relief of injunction as prayed for? OPP.
2. Whether the suit 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 present suit is time barred? OPD.
5. Whether the plaintiff has not come in the Court with

clean hands ? OPD.

6. Relief.

6. The parties have led their respective evidence on the aforesaid issues. In the light of the same, the trial Court after appraisal the same dismissed the suit of the plaintiff vide judgment and decree dated 15.02.2014.

7. The plaintiff preferred appeal before First Appellate Court. The First Appellate Court vide judgment and decree dated 16.04.2014 dismissed the appeal.

8. Still feeling dissatisfied with the aforesaid judgments and decrees, the plaintiff preferred the present appeal.

9. The appellants in paragraph No.7 of the grounds of appeal, have mentioned that following substantial questions of law have arisen in the present regular second appeal :-

- (a) Whether there is any misreading or non-leading of evidence by the courts below while dismissing the suit for permanent injunction filed by the plaintiff-appellant ?
- (b) Whether the admission of the defendant witness should have been taken into consideration by the learned courts below while deciding the suit filed by the plaintiff/appellant?
- (c) Whether the suit filed by the plaintiff/appellant for permanent injunction can be dismissed when no opportunity has been given by the respondent while imposing the impugned sundry charges ?
- (d) Whether it is obligatory for the respondent to explain and to give the details of sundry charges to the plaintiff-appellant ?
- (e) Whether the respondent can take the sundry charges

from the plaintiff/appellant when the same has been duly paid by the plaintiff/appellant ?

10. I have heard learned counsel for the appellant and have gone through the case file with her able assistance

11. Learned counsel for the appellant has submitted that there is a demand of Rs.2,58,875/- made by the defendant/respondents, which is not genuine. Both the Courts below have not appreciated the fact that connection has been released to the appellant without any objection. The security amount was paid by the appellant and thereafter connection had been issued.

12. I have carefully considered the said submission but do not find any force in that submission.

13. Both the Courts below have given concurrent finding that inadvertently the amount in question was not got deposited from the plaintiff. The demand notice was issued regarding the said amount. The estimate was also prepared, which was communicated to the plaintiff. So, in these circumstances, the amount was rightly claimed by the respondents-defendants. There is nothing on the record to show that judgments of both the Courts below are the result of misreading and misinterpreting the evidence on the file. Whole of the evidence has been properly appreciated by both the Courts below. Although the amount has been shown as sundry charges but it is the balance amount in respect costs of installation of the electricity connection. So, I have no hesitation in holding that no substantial question of law has arisen in the present appeal. Consequently, the appeal is without any merit and the same stands dismissed.

14. A copy of this judgment be sent to the trial Court for strict compliance.

**(K.C.PURI)
JUDGE**

August 28 , 2015
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