

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

**RSA No.489 of 2014(O & M)
Date of Decision:16.01.2015**

Vivek Mahajan

....appellant

Versus

Satpal Kaur and others

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

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

Present: Mr.Anil Chawla, Advocate
for the appellant

ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiff was dismissed by the trial Court vide judgement and decree dated 14.09.2012. Appeal preferred against the said decree failed and was dismissed on 24.08.2013. This is how, plaintiff is before this Court in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, in a suit filed by the plaintiff, he prayed for a decree for injunction restraining the defendants from causing any interference in his possession and business that was being run by him under the name and style M/s Shubh Kamna at 7, Link Road,

Opposite Railway Station, Amritsar, in any manner or causing his dispossession from the suit property except in due course of law. It was averred that previously, father of the plaintiff Mool Raj used to run his business in the suit property, who had since died and, thereafter, plaintiff had been running the said business in the premises in question. It was averred that earlier plaintiff would get electricity to his premises from defendant No.1 and he had been making payments in proportion to the consumption to defendant No.1. However, on 15.04.2009, plaintiff applied for a new electric connection in the said premises in his name and the required information in this regard was duly furnished to the electricity Board. Resultantly, electric connection bearing No. LR09/639 was granted by the Electricity Board in the name of the plaintiff. Plaintiff had been using the said connection till a few days ago when the official of the Board in connivance with defendant No.1 threatened to disconnect the electricity to the premises of the plaintiff. Thus, the suit.

In defence, it was pleaded, inter alia, that the plaintiff was never in possession of the premises in question, thus, occasion of drawing any electricity supply from defendant No.1 did not arise. In fact, plaintiff had earlier filed a suit against Punjab State Electricity Board (for short 'PSEB') and defendant No.1. And by pleading incorrect facts, he had obtained an ex parte order. By filing the present suit he only intends to procure an order under the garb of which he could manage an entry into the premises.

In the wake of the respective pleadings of the parties, trial

Court had framed the necessary issues on 08.12.2010. However, plaintiff failed to examine even a single witness to prove his claim, though, seven effective opportunities including last opportunity was granted to the plaintiff. Having found no justification for any further adjournment, evidence of the plaintiff was closed by order. That being so, counsel for the defendants made a statement that he did not wish to lead any evidence on behalf of the defendants. Consequently, the Court proceeded in the matter in terms of the provisions of Order 17 Rule 3 of the Code of Civil Procedure. Since no evidence was brought on record by the plaintiff to substantiate his claim, for lack of any evidence, issue No.1 *i.e. Whether plaintiff was entitled for relief of permanent injunction? OPP*, was decided against him. As a result, suit filed by the plaintiff was dismissed under Order 17 Rule 3 of the Code of Civil Procedure.

Being aggrieved against the said decree, plaintiff preferred an appeal. First appellate Court, reviewed the matter in issue, and on a comprehensive consideration of the records, it was found that the plaintiff had claimed himself to be in possession of the suit property and also got an electric connection installed in the premises in his name. On the contrary, defendant No.1 had claimed himself to be the owner in possession of the suit property. Thus, the electric connection had been installed by the plaintiff by falsely claiming himself to be the owner. And after the PSEB authorities were apprised of the true facts, notice of disconnection of the electricity connection was issued to the plaintiff. Without disclosing these facts, he filed a suit against PSEB and since some of the

officials of the Board helped the plaintiff, and thereafter, he filed the present suit. It was observed that the issues in the suit were framed on 08.12.2010 and it was ordered that PF, DM and list of witnesses be filed within 15 days and in case, the needful was not done, no assistance of the Court would be extended to the plaintiff for summoning the witnesses. The matter was adjourned to 03.02.2011 for evidence of the plaintiff but no evidence was led on the adjourned date i.e. 03.02.2011. Even on subsequent dates i.e. 03.03.2011, 30.03.2011, 17.05.2011, 19.09.2011, 25.01.2012, 05.05.2012, 09.08.2012 and, thereafter, on 14.09.2012 the plaintiff failed to lead any evidence. So much so, he did not even file PF, DM and list of witnesses. Accordingly, it was concluded that plaintiff had availed seven effective opportunities in a period of one year and nine months i.e. from 08.12.2010 to 14.09.2012, but yet failed to lead any oral or documentary evidence. So much so, plaintiff himself did not step into the witness box in support of his claim. That being the position, trial Court closed his evidence on 14.09.2012. The story propounded by the plaintiff that although, he was present in Court on 14.09.2012 but had to leave the Court premises being unwell and, thereafter, on the way, he met with an accident, was found to be wholly false. Accordingly, it was concluded that the plaintiff was found to be extremely negligent. As despite having availed numerous opportunities, he even failed to have his own statement recorded in a period of one year and nine months. In reference to the conduct of the plaintiff and the decision of this Court in "*Surjeet Kaur versus Gurmail Singh*" 2000(2) Civil Court Cases 6, there was hardly any

ground to still remit the case to the trial Court and afford opportunity to the plaintiff to lead evidence. Accordingly, it was concluded that in the absence of any evidence on record to prove the possession of the plaintiff over the premises in question and, particularly, when the same was vehemently denied by the defendants, mere obtaining of an electricity connection by the plaintiff in his name was of no consequence. Particularly, when the defendants had brought on record that even a notice for disconnection of the sold electricity connection had already been issued by the Board. Resultantly, the appeal was dismissed.

I have heard learned counsel for the appellant. Learned counsel for the appellant could not point out as to how the conclusions that have concurrently been recorded by both the Courts were either contrary to the position on record or suffered from any material illegality. Ex facie, negligence and conduct of the plaintiff in pursuing his claim is writ large. Issues were framed on 08.12.2000 and PF, DM and list of witnesses were to be furnished within 15 days. And it was observed that in case the needful is not done within 15 days, court would not extend any assistance to summon the witnesses. Concededly, no PF, DM and list of witnesses was filed. Plaintiff failed to examine any witness despite having been afforded seven effective opportunities. Not just that in a period of one year and nine months, he himself did not step into the witness box to get his statement recorded. Story that was sought to be propounded by the plaintiff to justify his conduct was found to be wholly incorrect and false. That being so, what else could the Court do? Indeed, the

Court was choiceless but to proceed under Order 17 Rule 3 of the Code of Civil Procedure. Without a doubt, plaintiff dis-entitled himself of any judicial discretion and, thus, dismissal of the suit and appeal were the only necessary and inevitable consequence of his conduct.

In the wake of the position as set out above, there hardly exists any ground, least plausible in law to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is accordingly, dismissed.

16.01.2015

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(ARUN PALLI)
JUDGE