IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.630 of 1989
Date of Decision: 16.02.2016

Jagatjit Cotton Textile Mills Ltd.,
......Appellant

Vs

The Punjab State Electricity Board and others
.....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Vipan Sharma, Advocate for
Mr. S.M. Sharma, Advocate
for the appellant.

Mr. M.L. Saini, Advocate
for the respondent.

Mr. Devinder Singh, SDE in person.

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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.

[1]. Plaintiff-Jagatjit Cotton Textile Mills Ltd., has filed this Regular Second Appeal against the judgment and decree dated 21.12.1988 passed by Additional District Judge, Kapurthala vide which appeal filed by the defendants against the judgment and decree dated 02.05.1986 passed by Sub-Judge Ist Class, Phagwara was partly accepted and it was held that the injunction granted by the trial Court will operate only in respect

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of demand of Rs.45,885.40 paise and the plaintiff shall be duty bound to make the payment of remaining amount of Rs.47,126.40 paise towards Low Power Factor surcharge within specified period.

[2]. Plaintiff filed suit for permanent injunction restraining the defendants from recovering or raising demand of illegal and unauthorised charges by means of coercive method and from interfering with or controlling the electric supply under duress and disconnecting the electric connection of the plaintiff or by creating an illegal demand of Rs.93,011.80 paise i.e. Rs.45.885.40 paise as the defaulting amount towards late payment surcharge on the electricity bill for July 1981 and Rs.47,126.40 paise towards Low Power Factor charges from July 1981, without any sufficient cause.

[3]. Plaintiff alleged that it is a Public Limited Company duly registered and incorporated under the Companies Act having its Mills at Phagwara. Plaintiff is carrying out business of manufacturing under the name and style of Jagatjit Cotton Textile Mills Ltd. Plaintiff-Mill is a big consumer of electricity having contract demand of 6500 KVA (kilo volt ampere) from the defendants. The connecting load is about 100 KW (kilo watt). A tariff applicable to charge electric consumption charges is in two part tariff comprising of demand charges and energy

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charges. Defendants raised a demand vide Bill No.38, Book No. 42779 for Rs.21,76,713.90 paise towards consumption of electricity by the plaintiff-Mill during July 1981. The plaintiff-Mill on receipt of such bill pointed out some factual inaccuracies in computation of amount of the bill on 10.09.1981. The demand charges were levied on the plaintiff-Mill for 6780 KVA against the usual maximum demand of 5500/5600 KVA.

[4]. Plaintiff further alleged that the charges were levied in excess on account of higher Maximum Demand Indicator recorded due to defect in Trivector Meter installed in the premises of the plaintiff-Mill. The defect in the meter was brought to the notice of the defendants on 20.06.1981. The meter was removed thereafter and was replaced by the defendants on 23.07.1981.

[5]. Plaintiff further alleged that the defendants on realising the mistake of levying excess demand charges due to defective Trivector meter issued fresh bill for July 1981 on 19.12.1981 wherein Maximum Demand Indicator (for short 'the MDI') was taken to be 5680 KVA and reduced Rs.35,200/- in the bill amount. Plaintiff submitted that the Mill never exceeded its contract demand of 6500 KVA, but the defendants levied charges amounting to Rs.12,880/- as a penalty for exceeding contract demand. Once the defendants realised their mistake

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and rectified the same by taking the MDI at 5680 KVA instead of 6780 KVA, therefore, the charges as claimed by the defendants were illegal.

[6]. Plaintiff further submitted that bill for July 1981 was received by the plaintiff during September 1981 containing consuming units as 29,62,992 as per meter reading shown on the face of the meter, but while calculating the amount the units were taken to be 30,43,072 units. On that premise the bill was claimed to be inflated by 80,080 units. MDI at 6780 KVA was taken by the defendants in place of 5680 KVA which was later on rectified and, therefore, the defendants worked out the power factor of the plaintiff-Mill at .81 against the normal factor of .85 and thus the defendants levied penalty of Rs.39,109.12 paise for Low Power Factor and electricity duty @ 25% thereon amounting to Rs.9,777.28 paise i.e. total amount of Rs.48,886.40 paise.

[7]. The aforesaid figures were also revised by the defendants while raising the fresh bill in December 1981 to the tune of Rs.37,701.12 paise and Rs.9425.28 paise respectively totalling Rs.47,126.40 paise. In this way an illegality was crept in the official mechanism.

[8]. Plaintiff asserted that in view of acceptance of clerical mistake by the defendants and issuance of fresh bill on

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19.12.1981 of Rs.21,18,358.92 paise instead of Rs.21,76,713.90 paise, the defendants are estopped and debarred from realising any amount of payment of the previous bill towards late payment surcharge thereon. In the fresh bill defendants have not claimed any late payment surcharge. Any demand made by the defendants for payment of Rs.93,011.80 paise being the alleged balance for the month of July 1981 towards Low Power Factor surcharge for delayed payment were non-existent amount and were to be treated as if, the same were never raised for the month and, therefore, the action of the defendants was illegal and arbitrary. The plaintiff never neglected in making payments of the bill as per the demand of the defendants.

[9]. Defendants contested the suit. Defendant No.1 was proceeded against *ex parte*. Defendants No.2 and 3 contested the claim of the plaintiffs on all counts claiming that MDI meter was correctly installed and 6780 KVA was correctly recorded by the MDI meter which was checked in the Laboratory and it was found to be correct. The meter was removed and was sent to Laboratory and new MDI meter was installed to record the electricity consumption. In every month reading of the meter was set at zero. No mistake was found in the said meter.

[10]. Defendants alleged that the plaintiff exceeded the

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contract demand of 6500 KVA to 6780 KVA and the charges levied by the defendants were correct. There was no mistake and, fresh bill was issued only due to the fact that in order to rule out any possibility of shooting up MDI meter, revised bill was issued on 14.12.1981. Infact defendants had issued the detailed calculation along with the bill to the consumer. Plaintiff-Mill was found to have consumed 30,43,072 units and the said consumption was accepted to be correct by the plaintiff itself. The defendants correctly taken the MDI at 6780 KVA. The Power Factor of the plaintiff-Mill was at .81 as against the .85, therefore, penalty of Rs.39,109.12 paise was levied and fresh bill was issued. Power meters were checked in the premises of the Mill. Calculations had no concern with MDI meters as percentage is always worked out by taking into consideration the consumption of KVAH (kilo volt ampere hour) and KWH (kilo watt hour) meters. The Power Factor of the consumer in the month of July 1981 was .81 as per the reading of KVAH and KWH meters which were got tested by the Laboratory and were found in order and 4% of surcharge was levied as per norms of the Department. The plaintiff had made part payment on 11.09.1981 and were required to make the the payments upto 14.09.1981 in cash otherwise surcharge @ 10% was to be levied. Defendants asserted that though they had issued revised

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bill but they were not precluded from raising the demand as they were entitled to recover the surcharge. Defendants never cancelled the demand as the plaintiff was liable to make the payment. Since the plaintiff had failed to make the payment, therefore, defendants were well within their right to disconnect the meter.

[11]. Defendants have also pointed out that during August 1981, the bill for consumption of July 1981 was submitted to the plaintiff on 26.08.1991 with a grace period till 11.09.1981 by cheque and 14.09.1981 by cash. Plaintiff had made the payment of Rs.5,79,856.45 paise out of Rs.12,94,164.84 paise by cheque on 11.09.1981 calculating the bill on its own which was nor permissible under the Rules. Defendants asked the plaintiff on that very day for the balance amount to be paid on 14.09.1981 in cash failing which surcharge @ 10% was to be levied. Plaintiff never deposited balance amount of Rs.7,14,308.39 paise in cash by 14.09.1981 and the defendants levied the late payment surcharge of Rs.45,885.40 paise. With this stand defendants sought to get the suit of the plaintiff dismissed.

[12]. Replication was filed by the plaintiff reiterating the stand taken in the plaint.

[13]. Both the parties went to trial on the following issues:-

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"1. Whether bill for Rs.93011.80 P sent vide memo No.2587 dated 16.1.84 is illegal, unlawful and arbitrary? OPP (onus objected to).

2. Whether the plaintiff is entitled to the injunction prayed for? OPP.

3. Relief."

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

[15]. Trial Court decreed the suit granting permanent injunction as prayed for i.e. restraining the defendants from levying/recovering demand of illegal unauthorised charges by coercive methods and from interfering with the electric supply under duress or disconnecting the electricity connection installed in the premises of the plaintiff on the ground of alleged arbitrary demand of Rs.93,011.80 paise i.e. Rs.45,885.40 paise as alleged defaulting amount towards late payment surcharge on electricity bill of July 1981 and Rs.47,126.40 paise as Low Power Factor surcharge for July 1981 without any reasonable cause.

[16]. Defendants went in appeal against the judgment and decree of the trial Court. Lower Appellate Court partly accepted the appeal thereby granting injunction only in respect of demand of Rs.45,885.40 paise. The remaining amount of Rs.47,126.40

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paise towards Low Power Factor surcharge was ordered to be paid by the plaintiff within stipulated period. The only surviving issue which remains for consideration of this Court is in respect of Rs.45,885.40.

[17]. I have heard learned counsel for both the parties and have perused the record after seeking necessary assistance from Sh. Devinder Kumar, Sub-Divisional Engineer, who came present pursuant to the order dated 01.02.2016 passed by this Court.

[18]. No substantial question of law has been framed by the appellant. The entire controversy involved in the present appeal is based on calculation of necessary details with reference to different components which have specific meaning.

[19]. Learned counsel for the appellant has argued that the defendants had raised a bill of Rs.21,76,713.90 paise for consumption of electricity by the plaintiff-Mill during July 1981. This bill carried an amount of Rs.19,21,259.48 paise towards sale of power plus electricity duty to the tune of Rs.2,55,456.42 totalling to Rs.21,76,713.90 paise. Learned counsel further argued that the said bill had shown the MDI at 6780 KVA as against usual maximum demand of 5500/5600 KVA. The defect in trivector meter was brought to the notice of the defendants. The same was removed and replaced by new meter on

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23.07.1981, however while taking reading of MDI in the month of July 1981, the defendants had taken figures from the defective meter and on representation the mistake was realised and fresh bill for July 1981 was issued thereby reducing the MDI from 6780 KVA to 5680 KVA. The reduction in MDI resulted in reduction of Bill by Rs.35,200/-.

[20]. Learned counsel for the appellant asserted that though the defendants had rectified the mistake by reducing the MDI, but they had not withdrawn the demand of Rs.12,880/- for their purported escalation in MDI by 280 KVA. The sanctioned demand of the plaintiff was 6500 KVA. Learned counsel further asserted that on account of revision in MDI the surcharge of Rs.12,880/- should have been withdrawn. The power consumption of 29,62,992 units was shown in the bill of September 1981 whereas calculation of amount was made on the basis of 30,43,072 units, therefore, the bill was inflated by 80,080 units. The defendants later on corrected the mistake.

[21]. The defendants used to levy surcharge of Low Power Factor, if the same is found below .85. The power factor surcharge is the ratio between Kilo Watt (KW) and Kilo Volt Ampere (KVA). It should be at .85. Power factor was found to be .81 and deficiency of .04 was noted. As per norms, for each deficiency of 1% Department used to charge 1% of the bill

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amount. At power factor of .85 Department will charge nothing. For .84 the defendants will charge 1% of the total bill, therefore at power factor of .81, the Department will charge 4% of the total bill amount.

[22]. Meter has three readings i.e. Kilo Watt Hour (KWH), Kilo Volt Ampere Hour (KVAH) and Maximum Demand Indicator (MDI). Power factor is calculated on the basis of ratio of Kilo Watt Hour and Kilo Volt Ampere Hour. There was no dispute of MDI in this case because on representation of the plaintiff in the office of defendants, the dispute was settled and MDI was fixed at 5700 KW per hour, therefore, the plea of MDI has nothing to do any connection with the power factor. The excess use of electricity over the sanctioned load i.e. MDI attracts penalty and this is not the case in the present appeal. So far as the faulty bill Ex.P-4 is concerned, the payment of bill amount was to be paid upto 11.09.1981. The bill was thereafter revised and corrected and new bill Ex.P-7 was issued. In the fresh bill Ex.P-7 no period of payment was shown, nor it was shown that there was any delayed payment surcharge, therefore, payment towards delayed payment was rightly appreciated by the lower Appellate Court.

[23]. As per the instructions No.158 of the sale manual, the defendants can demand deposit of a fee of Rs.10/- for

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determining the accuracy, however no such demand was ever raised. The defendants checked the MDI meter and other meters in the Laboratory. The defendants were at liberty to get the checking done even without demanding payment of Rs.10/-. The bill was rectified even in the absence of deposit of Rs.10/-, therefore, to that extent defendants cannot stake its claim towards delayed payment and the same was rightly appreciated by the lower Appellate Court. In the event of finding bill to be incorrect grace period was to be allowed to the consumer. No grace period was given despite the fact that bill was revised on the representation of the plaintiff, therefore, delayed payment surcharge to the tune of Rs.45,885.40 paise was not justified and was not recoverable.

[24]. As regards the demand of Rs.47,126.40 paise towards Low Power Factor charges, the Low Power Factor is the ratio of KHW and KVAH. Power factor was found to .81. No discrepancy was noted in the readings of KWH and KVAH, therefore, power factor was correctly assessed. Since power factor was lower to the normal reading of .85, therefore, as per norms of the Department for each 1% power factor, the defendants used to charge 1% of the total bill. In this way 4% of the total bill was required to be charged at the reading of the power factor of .81.

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[25]. PW-2 Sh. SC Vyas, Chief Accountant of the Mill admitted that units consumed were 30,43,072. The assertion of the plaintiff in the plaint is that actually 29,62,992 units were consumed. While deposing as PW-2, the allegation of the plaint was diluted, rather abundant and it was accepted that 30,43,072 units were consumed and consumption in terms of units shown in the bill was correct. The Low Power Factor being the ratio of Kilo Watt Hour and Kilo Volt Ampere Hour has nothing to do with the Maximum Demand Indicator (MDI).

[26]. In the instant case, there was no dispute with regard to MDI as the same was resolved between the parties and 5700 KVA per hour was fixed as MDI. Three meters were installed in the premises. One meter was MDI meter and this meter was set at zero in every month. The other meters were of Kilo Volt Ampere Hour and Kilo Watt Hour. Since the ratio of power factor surcharge has nothing to do with MDI because power factor is determined by working out percentage on the basis of consumption of KVAH and KWH meters.

[27]. Plaintiff found fault in MDI meter even before the month of July 1981. No fault was detected in other meters i.e KWH and KVAH, therefore, the calculation of amount of Rs.47,126.40 paise based on the ratio of KWH and KVAH cannot be faulted on the ground of defective MDI meter. To the extent of fixing

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amount of Rs.47,126.40 paise as Low Power Factor surcharge, this Court does not feel that any illegality has been committed by the lower Appellate Court in fastening liability upon the plaintiff for payment.

[28]. Since the controversy is purely revolving around factual details, no substantial question of law is involved, nor the same has been framed by the appellant, therefore, this appeal is totally found to be bereft of merits and the same is accordingly dismissed.

February 16, 2016 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

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