IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2101 of 2016 (O&M)
Date of Decision: 01.06.2016

Shish Pal ....Appellant

Vs.

Managing Director, UHBVNL, and another ....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Ms. Sonia G. Singh, Advocate
for the appellant.

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1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

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<u>Amol Rattan Singh, J (Oral)</u>

This is the second appeal by the plaintiff after his suit and first appeal were dismissed by the Courts below. He had filed a suit seeking a declaration that three memos dated 01.09.2011 and two memos dated 29.02.2012, issued by the defendants, be declared to be null, void and not binding upon him and further, mandatory injunction be issued directing the defendants to restore the electricity connection of the plaintiff and still further, they be restrained from recovering the amount shown to be due against him, in the said memos.

2. Briefly, the facts, taken from the judgments of the Courts below, are that the plaintiff is the owner in possession of a shop situated opposite the New Grain Market, Karnal Road, Assandh, with an electricity connection sanctioned in his name, bearing No.AS-08-0334. He had rented

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out the shop to Jitender Kumar and Vinod Kumar who, it was stated in the plaint, were running a Beer Bar and Restaurant in it. After they vacated the shop in the last week of April 2012 and had handed over possession to the plaintiff, he, allegedly, discovered at that time, that the electricity meter had been removed by the defendant, i.e. the electricity supply corporation, that had provided the connection. It was further discovered that the premises were checked by a checking team and theft of electricity was found and thereafter, the meter was removed on 28.02.2012. After that, the two impugned memos were issued on 29.02.2012, bearing memo Nos.630 and 631, directing that a complaint be lodged against the tenant, but also at the same time, directing the plaintiff-appellant to deposit Rs.8,59,012/-.

It was further alleged in the plaint that the premises had earlier also been checked by the checking party of the respondent Corporation on 30.08.2011 and that at that time also, the tenant was found to have committed theft of electricity.

Thus, the plaintiff contended, that since it was the tenant who had committed the theft, it was not the fault of the plaintiff and as such, the defendant should restore the electricity connection. The same not having been done, (due to the non-deposit of the outstanding dues), the suit was instituted on 28.09.2013.

3. Upon notice issued, the respondents-defendants (hereinafter to be referred to as the Corporation), filed a written statement taking preliminary objections of maintainability of the suit, cause of action, locus standi etcetera and further, contending on merits that the plaintiff had

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concealed the fact that the user was found to be thieving electricity by tapping electric supply directly from the " L.T. System", through 3 core cables, thereby running the electricity on the premises directly (obviously by passing the meter). It was also found that the neutral supply was also not being used in a manner that it should have been used and that the out going cable outside the meter was disconnected.

Video filming of the evidence on site was also stated to have been done and the service cable removed from the site, as material evidence.

It was also stated that the plaintiff had deposited Rs.4,30,000/- at the time of filing of the suit, as per the directions of the Civil Court and had also deposited the remaining amount of Rs.13,748/- thereafter.

In any case, in view of the theft of electricity, it was prayed that the suit be dismissed.

4. The following issues were thereafter framed by the learned Civil Judge (Junior Division), Assandh:-

> "1. Whether plaintiff is entitled to a decree for declaration to the effect that memo no.3767, 3768, 3769 dated 01.09.2011 and 630 & 631 dated 29.02.2012 are illegal, null & void, ineffective and not binding on the rights of the plaintiff? OPP
>
> 2. Whether plaintiff is entitled to decree of permanent injunction for restraining the defendant from recovering impugned amount vide said memos and lodging the criminal case against the plaintiff as prayed for? OPD
>
> 3. Whether suit is not maintainable in the present form? OPD
>
> 4. Relief."

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5. Upon appraising the evidence led by both the parties, that Court came to the conclusion that the stand of the respondents as reflected hereinabove, was wholly correct, the checking report also having been duly proved by the witnesses and the plaintiff not having been able to prove that the signatures thereto were not genuine.

Though it was also held that even in the checking report, Vinod and Jitender were mentioned as the users and their names were also given, however, as the plaintiff was admittedly the consumer in whose name the electricity connection had been issued, he being the owner of the premises, the liability to pay the dues were held to be his and consequently, the suit was dismissed.

In view of the findings on merits, the issue of maintainability was shown to be not pressed by the defendants.

6. In the first appeal filed by the plaintiff, the learned Additional District Judge, Karnal, also after noticing the contentions of both sides and appraising the evidence, eventually came to the conclusion that though the users of the premises were the tenants of the appellant-plaintiff, with the theft of the electricity proved by the checking team, which could not be rebutted by any evidence relied upon by the plaintiff, the demand made vide the impugned memos was perfectly legal and valid.

Consequently, the first appeal was dismissed.

7. Before this Court, though learned counsel for the appellant has submitted that no notice was actually issued to the appellant by the

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respondent-UHBVNL, in respect of any arrears due on the electricity connection in question, however, admittedly a notice was issued to the occupier, i.e. the tenant of the appellant. Upon the tenant not having paid the dues, obviously the liability to pay the outstanding dues to the respondent-Corporation would be upon the consumer in whose name the electricity connection has been issued.

Of course, if in terms of any contract between the appellant and his tenant, such dues were recoverable by the appellant from the tenant, such remedy of recovery would obviously be open to the appellant, subject to all parameters, including limitation etc.

8. Hence, I see no error in the judgments of the Courts below in dismissing the suit, as also first appeal of the appellant, on merits.

This is other than the fact that in terms of Section 145 of the Electricity Act, 2003, the civil Court has no jurisdiction to entertain a suit pertaining to any assessment order passed by the assessing officer under Section 126 of the aforesaid Act.

It is not in dispute that the notices issued to the appellant and recovery subsequently made from him, was in terms of an assessment order passed under Section 126 of the aforesaid Act of 2003.

Section 145 of the Electricity Act, 2003 is reproduced hereinunder:-

> **"145. Civil court not to have jurisdiction.-** No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in section 126 or an appellate authority referred to in section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no

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injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

Consequently, finding no merit in the appeal, it is dismissed *in limine,* with no order as to costs.

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Since the appeal itself has been dismissed on merits, the question of condoning the delay of 43 days in filing the appeal is rendered academic and is not gone into by this Court.

June 01 , 2016 **(AMOL RATTAN SINGH)**
vcgarg/dinesh **JUDGE**

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