

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

RSA-245-2016 (O&M)

Date of decision: 25.01.2016

Raj Kumar

...Appellant(s)

Versus

Uttar Haryana Bijli Vitran Nigam Ltd. and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Munish Mittal, Advocate for the appellant(s).

JITENDRA CHAUHAN, J.

CM-817-C-2016

Heard.

For the reasons contained in the application, which is duly supported by an affidavit of the appellant, delay of 4 days in filing the appeal is condoned, subject to all just exceptions.

Main case

The instant regular second appeal has been preferred against the judgment and decree dated 26.11.2014, passed by the learned Civil Judge (Junior Division), Karnal (for short, 'the trial Court'), whereby, the suit of the plaintiff-appellant has been dismissed; and judgment and decree dated 13.07.2015, passed by

learned Additional District Judge, Karnal (for short, the first Appellate Court), whereby, the appeal preferred by appellant against the impugned judgment and decree dated 26.11.2014, of the trial Court, has been dismissed.

The plaintiff filed suit for declaration to the effect that the allged checking report dated 18.03.2014; the M&T report dated 19.03.2014, the order of assessment issued vide memo no.Ch.294 dated 20.03.2014, and notice of compounding vide memo no.Ch296 dated 20.03.2014, are illegal, null & void, and are not binding on the rights of the plaintiff, with the consequential relief of permanent injunction restraining the defendants from recovering the amount of Rs.3,81,533/- demanded vide the impugned notices and also from disconnecting the electricity supply of the premises of the plaintiff and taking any action against him on account of non-deposit of the said amount. The learned trial Court dismissed the suit.

The learned first Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the oral as well as documentary evidence on record and dismissed the appeal of the plaintiff vide impugned judgment and order dated 13.07.2015.

Hence, this appeal at the behest of the plaintiff.

Learned counsel for the appellant has submitted that the

plaintiff-appellant was inducted as tenant in the premises i.e. ground floor of House No.14, New Bahadur Chand Colony, Karnal, vide rent agreement dated 14.02.2014. The electricity connection was checked on 18.03.2014, i.e. soon after the plaintiff shifted to the premises in question. At the time of the checking, no irregularity, as noticed by the checking team, was conveyed to the plaintiff. In spite of that, the meter was removed and the electricity supply was restored directly without the meter by the officials of the defendants. It is contended that the order of assessment to the applicant has been issued under Section 135 of the Electricity Act, 2003 whereas, the respondents ought to have made assessment under Section 126 of the Act. The final order has also been passed without following the due procedure as no opportunity of hearing was granted to the plaintiff.

I have heard learned counsel for the appellant and gone through the case file.

Section 135 of the Electricity Act, 2003 is reproduced as under:-

“135. Theft of electricity.—(1) Whoever, dishonestly,

- (a) taps, makes or causes to be made any connection with overhead, underground or underwater lines or cables, or service wires, or service facilities of a licensee or supplier, as the case may be; or
- (b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or

otherwise results in a manner whereby electricity is stolen or wasted; or

- (c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity; or
- (d) uses electricity through a tampered meter; or
- (e) uses electricity for the purpose other than for which the usage of electricity was authorised,

so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use—

- (i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;
- (ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station:

Provided also that if it is proved that any artificial means or means not authorised by the Board or licensee or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until

the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(1-A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity:

Provided that only such officer of the licensee or supplier, as authorised for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity:

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty-four hours from the time of such disconnection:

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment.

(2)[Any officer of the licensee or supplier as the case may be, authorised in this behalf by the State Government may—

- (a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity has been or is being used unauthorisedly;
- (b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been or is being used for unauthorised use of electricity;
- (c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub-section (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall

sign the list:

Provided that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

(4) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.”

In the present case, the premises of the plaintiff were checked on 18.03.2014, by Shri G.K. Ahuja, AEE, Vigilance, Karnal, along with his team and following observations were made:-

“The existing meter checked in presence of the plaintiff and found meter LED broken but working very slow, the LED of EF also blinking continuously. Both the M&T seals and company seals also seek to be tampered and refixed hence meter packed in cardboard box duly paper sealed and signed by checking party and plaintiff for onward submission to the M&T Lab Karnal for checking the genuineness of seals, working of meter and material examination of the meter.”

As per the report, Ex.D2, the meter LED was found broken and was slow by 50% and both seals lace wire were found cut and refixed with the help of some adhesive. The counter top

cover was also found missing, thus, the reading could have been manipulated at any stage. Thus, it is evident that it is a case of theft of energy and not unauthorized use thereof. The theft of electricity energy is covered by Section 135 of the Electricity Act. The checking was done in the presence of the plaintiff and the report prepared at the spot was also signed by him. The entire proceedings were also videographed. He has also admitted that he went to M&T Lab on 19.03.2014, for checking of the meter.

In view of the above discussion, this Court does not find any perversity with the findings returned by the learned Courts below, which call for any interference by this Court. No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for.

Dismissed in limine.

25.01.2016

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**(JITENDRA CHAUHAN)
JUDGE**