

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

**RSA No.3652 of 2016 (O&M)
Date of Decision: 28.07.2016**

**Dakshini Haryana Bijli Vitran Nigam Ltd and others
.....Appellants**

Vs

**M/s Ganesh Floor Mills
.....Respondent**

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

Present: Mr. Pardeep Rajput, Advocate for the appellants.

Mr. Arpandeeep Narula, Advocate and
Mr. Rahul Gautam, Advocate
for the caveator/respondent.

RAJ MOHAN SINGH, J.

[1]. Defendants have preferred this appeal against the concurrent judgments and decrees passed by the Courts below in a suit for declaration and consequential relief of mandatory injunction filed by the plaintiff-respondent.

[2]. Plaintiff filed the suit to the effect that the plaintiff was using the electricity connection No.MS-24 for Medium Supply purposes with sanctioned load of 50 KW. The plaintiff was making payment of energy bills regularly and there was no arrears on that account. On 22.11.2013, some of the officials from the defendant-Nigam came to the premises of the plaintiff

under the pretext of routine checking. The officials demanded ransom of Rs.1 lac and also threatened that in case the amount was not paid, there would be a false checking report as they were getting incentives for such type of action. Plaintiff refused to oblige the employees. Thereafter, a false report was prepared. Plaintiff also alleged that the officials of the Nigam asked the plaintiff to receive the checking report. When the plaintiff objected about the allegations, the officials threatened the plaintiff to put his signature on the checking report, otherwise they would call the police. Plaintiff had to put his signature on the checking report, though the allegations were false. The connected load of 30.060 KW was found at the time of checking which was within the sanctioned limit of 50 KW. The defendants disconnected the electricity of the plaintiff. The request of the plaintiff for installation of check meter or new electricity meter for comparing the consumption of electricity was declined. The defendants issued memos of assessment dated 02.12.2013 for a sum of Rs.33,56,672/- and Rs.5,00,000/- respectively.

[3]. Plaintiff further alleged that SDO was not authorized to disconnect the electricity connection. As per instructions of the Nigam, the energy was to be restored through a new meter. No notice of one week in advance was issued to the plaintiff as per

instruction No.12 (B) (d). The consumption pattern was not checked by the officials of the Nigam and the assessment was not calculated as per guidelines of the Nigam.

[4]. The suit was contested by the defendants on all counts. It was submitted that the plaintiff was indulged in committing theft of energy and as such, proceedings in terms of Section 135/151 of the Electricity Act, 2003 (for short 'Act') were initiated by lodging a criminal complaint with the Police. In addition to criminal proceedings, an order for assessment of loss suffered by the Nigam was served upon the plaintiff. An offer for compounding the offence under Section 152 of the Act was also served upon the plaintiff. The plaintiff accepted the same and deposited the amount in question by admitting his guilt of theft of energy.

[5]. The defendants further alleged that the premises was checked up by the staff of the Nigam on 22.11.2013 and during the course of checking the terminal seal, lead seal, paper seal, meter seal and T.C. seals were found tampered. The meter was removed and was referred to M&T Lab, Gurgaon for accuracy and authenticity of seals. The meter was further checked by M&T Lab vide joint checking report dated 29.11.2013 in the presence of the checking staff. The consumer was given notice for his presence at the time of checking, but the consumer did

not come present. Thereafter, the meter was checked in M&T Lab, Gurgaon and MDI seals were found intact. Both M&T seals were found tampered and were re-fixed with some adhesive. Terminal cover seals were also found tampered. Both the paper seals were found tampered. Accordingly, a notice for assessment of loss of Rs.33,56,672/- was served upon the plaintiff and an offer for compounding the offence subject to deposit of Rs.5,00,000/- was also served upon the plaintiff. Plaintiff deposited the amount in question by admitting his guilt of committing theft of electricity. It was also mentioned that the plaintiff was present at the time of checking and had signed the checking report in token of confirmation.

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

“1) Whether the plaintiff is entitled to a decree for declaration as prayed for?OPP

2) If issue No.1 is proved, whether the plaintiff is entitled to a decree for mandatory injunction as prayed for? OPP

3) Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD

4) Whether the plaintiff has suppressed and concealed the material facts and not come to the court with clean hands?OPD

5) Whether the suit is not maintainable in the present form?OPD

6) Whether the civil court has no jurisdiction to try and entertain the present suit?OPD

7) Whether the suit is not properly valued for purposes of court fee and jurisdiction? OPD

8) Relief.”

[7]. Both the parties led their respective evidence to prove their case. Trial Court decreed the suit of the plaintiff vide judgment and decree dated 12.03.2015. The defendants remained unsuccessful before the First Appellate Court where the appeal was dismissed vide judgment and decree dated 28.04.2016. That is, how, the present appeal came to be filed in this Court.

[8]. I have heard learned counsel for both the parties as a caveat was filed by the respondent-plaintiff.

[9]. The appellants in para No.4 of the grounds of appeal have formulated following substantial questions of law:-

“1) Whether the findings of courts below, are illegal and perverse and unsustainable in the eyes of law?

2) Whether the findings of Courts below are result of misreading and non appreciation of the evidence/law?”

[10]. Both the questions as framed are revolving around the fact whether the Courts have recorded findings with misreading of evidence or the same are perverse in nature.

[11]. Before taking up the issue of jurisdiction of the Civil

Court, some factual details as noticed by the Courts below are relevant to be quoted:-

As per Clause 12(B) (d) of Sales Circular No.D43/2007 the meter/metering equipments are required to be tested by M&T Laboratories. The competent officer is required to issue a letter to the consumer at least one week in advance, informing him about the date of meter testing and requiring him to attend the date of testing. The defendants have placed on record the copy of notices served upon the plaintiff, requiring him to be present at the time of testing by M&T Lab Laboratory. The notices issued to the plaintiff were Exs.D5 to D7. The perusal of Ex.D5 showed that the plaintiff was required to be present at Lab on 26.11.2013 and the said notice bore memo No.1124 dated 25.11.2013. Said notice was received by one Pardeep Yadav and not by the plaintiff. The defendants could not explain as to how the service was effected on Pardeep Yadav. However, meter was not tested on 26.11.2013 and fresh notice/memo No.1143 dated 26.11.2013 (Ex.D6) was issued to the defendants. The perusal of Ex.D6 would show that the plaintiff was required to attend M&T Lab on 27.11.2013 at 11.00 A.M. There was endorsement made on notice Ex.D6 that the consumer had refused to receive the same, but the time and date of endorsement was relevant to show that it bore the same

date on which the plaintiff was called upon to attend the Lab. Postal receipt of notice Ex.D6 bore the date as 27.11.2013. Surprisingly, the defendants required the plaintiff to appear on 27.11.2013 by dispatching notice on 27.11.2013 itself. Again the meter was not tested on 27.11.2013 and fresh notice vide memo No.1156 dated 28.11.2013 Ex.D7 was issued, requiring the plaintiff to attend the M&T Lab on 29.11.2013 at 11.00 AM. There was endorsement dated 28.11.2013 on the notice Ex.D7 and it was alleged that the plaintiff had refused to accept notice. The defendants did not examine the person who made the endorsement on Ex.D7 and therefore, service of notice Ex.D7 was not proved. Even otherwise, the notice was required to be served upon the plaintiff a week's ahead of the date of attendance before M&T Lab. The instructions/Clause 12(B)(d) of Sales Circular No.D43/2007 were flouted at will.

As per Clause 12(B) (e) of Sales Circular No.D43/2007, the defendants were required to check the consumption pattern for the last one year. Admittedly, the accuracy of meter was not checked and there was nothing in the joint checking report Ex.DW4/A that the consumption pattern of the meter for the last one year was checked by the officials. If the consumption pattern for the last one year was uniform and was less than 75% of the assessed consumption, no further proceedings were

required to be taken by the officials of the department. The action of the defendants was wanting on this front also.

The deposit made by the plaintiff towards composition money was under protest and was sent through registered post Ex.PW1/9. The deposit towards composition money could not be taken to be admission of guilt as the same was made to save the electricity connection from being disconnected. The money towards composition money under protest was also to save filing of separate proceedings for recovery in the event of finding that the department had violated their own instructions. The defendants also failed to produce the meter of the plaintiff allegedly checked by the officials of the department.

[12]. Since the principles of natural justice were violated with impunity and on repeated notes, therefore the Civil court has got all the jurisdiction to interfere in the matter. Secondly, when the allegations of theft were made by the defendants, the provision in terms of Sections 126 and 135 of the Act have to be discussed in terms of their applicability. Sections 126 and 135 of the Act if read together would give complete reading of the complete code covering all relevant instructions for passing an order of assessment in the cases which do not fall under Section 135 of the Act. There is mark distinction in the contents of Section 126 and Section 135 of the Act. Both are distinct and

different provision, which operate in different field having no common premise in law. Theft has been defined in Section 135 of the Act which falls under part XIV relating to offences and penalties. Title of Section is 'theft of electricity'. The word 'dishonestly' appearing in the Section denotes abstract or consumption or use of electricity by dishonest means which is punishable under Section 135 of the Act. The mechanism for dealing under Section 135 of the Act is based on dishonest abstraction and consumption of energy. Section (1A) of Section 135 of the Act also provides that without prejudice to the provisions of the Act, licensee or supplier through officer of rank as authorized may immediately disconnect the supply of energy in addition to imposition of punishment as specified in the Act and also to take other measures as given under sub-Section (2) to (4) of the said Section. The fine which may be imposed under Section 135 of the Act is directly proportional to the number of convictions and is also dependent on the extent of load abstracted.

[13]. Contra to the aforesaid provisions, Section 126 of the Act would be applicable to the cases where there is no theft of energy but energy is being consumed in violation in terms and conditions of supply leading to unauthorized use of energy. The Assessing Officer shall provisionally assess to the best of his

judgment and pass a provisional assessment order in terms of Section 126(2) of the Act. The Officer is also under legal obligation to serve a notice under Section 126(3) of the Act on the consumer, requiring him to file his objections, if any against the provisional assessment. There is a complete mechanism in terms of Section 126 of the Act. Any person served with order of provisional assessment may accept the same or deposit the amount with the licensee within seven days of service of such provisional assessment order or he may file appeal against the final order under Section 127 of the Act.

[14]. Section 126 of the Act deals with the cases of unauthorized use of energy in the absence of intention/*mens rea* whereas Section 135 of the Act deals with an offence of theft of energy where *mens rea* is the relevant factor. Therefore, both the provisions are distinct from each other. The dishonest abstraction of electricity by means of artificial methods is covered under Section 135 of the Act. The consumption of excessive load as against sanctioned load simpliciter would attract applicability in terms of Section 126 of the Act. The consumer by way of any mechanism as specified in Section 135(a) to 135(e) of the Act, if, abstracted energy with dishonest intention would fall under the category of Section 135 of the Act. The case fall under Section 135 of the Act would be amenable

to the Civil Court and the case fall under the category of Section 126 of the Act would remain out of purview of jurisdiction of Civil Court. The bar of Civil Court jurisdiction is applicable where dispute fall within the purview of Section 126 of the Act. If the demand is based on an allegation of theft of energy, the issue and contemplated action do not fall under the purview of Section 126 of the Act and Civil Court has got all the jurisdiction.

[15]. Reference can be made to **Executive Engineer and another Vs. M/s Sri Seetaram Rice Mill, 2012(1) Law Herald (SC) 205, Dakshin Haryana Bijli Vitran Nigam Limited Vs. Poonam Vashisht, 2009(2) CivCC 131** and decision given in **RSA No.4054 of 2013 titled as Dakshin Haryana Bijli Vitran Nigam Ltd., and others Vs. M/s Sirohi Medical Centre.**

[16]. In view of aforesaid facts, I am of the view that the substantial questions as poised for consideration do not arise in the present appeal as the findings recorded by the Courts below cannot be held to be perverse or the result of any misreading of evidence. Consequently, this appeal is found to be totally bereft of merits and the same is dismissed.

28.07.2016
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No