

RSA-5015-2015(O&M)

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IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-5015-2015(O&M)

Date of decision : 27.01.2016

Santosh Yadav

... Appellant

Versus

Dakshin Haryana Bijli Vitran Nigam Ltd. and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Neeraj Gupta, Advocate
for the appellant.

REKHA MITTAL. J.

The present appeal has been directed against the judgment and decree dated 13.10.2014 passed by the Additional District Judge, Gurgaon, dismissing the appeal against the judgment and decree dated 17.09.2013 passed by the trial Court whereby the suit filed by the appellant was ordered to be dismissed.

The appellant filed a suit to assail the demand of ₹1,70,000/- raised by the respondents and the checking report dated 14.11.2007 in respect of account No.SD-238 with sanctioned load of 11 KV installed at House No.480, Sector 10-A, Gurgaon wherein the appellant along with her family is allegedly maintaining residence. The suit has been filed by Santosh Yadav appellant through her husband Rajender Singh Yadav.

The Ist appellate Court has adverted, in detail, to the issue whether the suit filed by the appellant through her husband without any power of attorney in his favour is maintainable or to say it differently whether Sh.Rajender Singh Yadav has the locus standi to file the suit and the appeal. It was held by the Court that Sh. Rajender Singh Yadav is not competent to file the suit and appeal for want of an authority in his favour given by the account holder Ms. Santosh Yadav. The Court further examined if Sh. Rajender Yadav can maintain a suit in his personal capacity on the premise that he being one of the user of the electricity through the connection in question is a consumer but the same was also negated in view of discussion in paras 15 & 16 of the judgment of the appellate Court.

Counsel for the appellant has not disputed that Ms.Santosh Yadav did not execute any attorney in favour of the appellant authorising him to institute the suit, on her behalf. Counsel for the appellant has failed to point out any provision in law that a suit instituted by a wife can be filed through her husband without any attorney in favour of the husband, authorising him to maintain such a suit.

There is nothing on record suggestive of the fact that the house in which the electric connection in question has been installed in the name of Ms. Santosh Yadav, belongs to the husband. The mere fact that Rajender Singh Yadav is staying in the said house with his wife would not entitle him to file the suit in the name of his wife through him.

The matter would have been different had he filed the suit personally, claiming himself to be a consumer of electricity and further proving that a suit filed on his behalf is maintainable in view of the provisions of the Electricity Act, relevant in the context.

Counsel for the appellant has submitted that any defect in verification of pleadings under Order 6 Rule 14 of the Code of Civil Procedure can be allowed to rectify, at any stage of the proceedings. For this purpose, he has referred to judgment of the Hon'ble Supreme Court of India in *Uday Shankar Triyar Vs. Ram Kalewar Prasad Singh and Anr., 2005(2) RCR (Rent) 637*.

There cannot be any dispute about the settled position in law as has been laid down in *Uday Shankar Triyar's* case (supra) wherein the question was in regard to defect in verification of a plaint by the plaintiff. The appeal was signed and presented by a pleader without any Vakalatnama in his favour. The court held that such a procedural defect would not entail rejection of appeal and the Court will give an opportunity to the appellant to rectify the defect. The judgment relied upon has got no bearing on the facts of the case in hand wherein the suit has been instituted by the appellant through her husband without any power or authority in writing authorising husband to file the suit. As has been said hereinbefore but for the sake of repetition, counsel for the appellant has failed to point out any law, rules or precedent which authorises a suit to be instituted by a wife through her husband without any attorney in his

favour. In this view of the matter, no error much less illegality can be found in the judgment passed by the first appellate Court.

For the foregoing reasons, the appeal is dismissed in limine.

(REKHA MITTAL)
JUDGE

January 27, 2016.
Davinder Kumar