

**C.M.No.9671-C-2016 in/and
RSA No.5811 of 2015 (O&M)**

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

**C.M.No.9671-C-2016 in/and
RSA No.5811 of 2015 (O&M)
Date of decision:29.08.2016**

Mahipal Singh

... Appellant

Vs.

Dakshin Haryana Bijli Vitran Nigam and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rahul Gautam, Advocate
for the applicant/appellant.

AMIT RAWAL J. (Oral)

C.M.No.9671-C-2016

For the reasons stated in the application, duly supported by an affidavit, order dated 25.02.2016 is recalled and the appeal is restored to its original number.

C.M. stands allowed.

C.M.No.14398-C of 2015

For the reasons stated in the application, duly supported by an affidavit, delay of 332 days in re-filing the appeal is condoned.

C.M. stands disposed of.

RSA No.5811 of 2015 (O&M)

Challenge in the present appeal is to the impugned judgments and decrees of the Courts below, whereby, the suit seeking declaration and

permanent injunction to the effect that the demand of the defendants calling upon the plaintiff to deposit a sum of Rs.3,94,395/- on account of alleged theft of energy on the basis of checking report dated 11.11.2008, has been dismissed on the ground that the Civil Court has no jurisdiction.

Mr. Rahul Gautam, learned counsel appearing on behalf of the appellant-plaintiff submits that the case would not squarely cover under the provisions of Section 126 and 135 of the Electricity Act, 2003 (hereinafter referred to as “2003 Act”) as provisions of both Sections are overlapping. He relies upon the decisions of this Court rendered in **RSA No.4054 of 2013 titled as Dakshin Haryana Bijli Vitran Nigam Limited and others vs. M/s Sirohi Medical Centre, decided on 12.10.2015** and as well as, **Dakshin Haryana Bijli Vitran Nigam Limited, Panchkula and others vs. Poonam Vashisth 2009(2) RCR (Civil) 677**. He further submits that the Court below have abdicated in dismissing the suit as it is fit case where the matter should have been remanded back because the department did not initiate the proceedings under Section 126 of 2003 Act by issuing the provisional assessment order, much less, final order in view of the provisions of Section 145 of 2003 Act, plaintiff is left in lurch, and thus, there is illegality and perversity in the impugned judgments and decrees of the Courts below.

I have heard learned counsel for the appellant-plaintiff and appraised the judgments and decrees of the Courts below.

On reading of provisions of Section 126 Explanation (b)(iii) of

2003 Act, unauthorized use of electricity also means the usage of electricity through a tampered meter. The allegation in the present case is that the appellant had tampered the meter. In my view, the Civil Court did not have the jurisdiction, in view of the provisions of Section 145 of 2003 Act.

No doubt, certain provisions of Section 126 of 2003 Act would be different from the cases where dishonest abstraction of electricity by means of artificial methods enlisted under Section 135 of 2003 Act and would be applicable to the cases where there is no theft of energy but energy consumed in violation of terms and conditions of supply would lead to authorised use of energy. Provisions of aforementioned sections should be read in whole and not in isolation. I have already given a judgment on this point in RSA No.2092 of 2015 titled as M/s Gill Rice Mills vs. Punjab State Electricity Board and another decided on 21.08.2015.

Thus, I am of the view that the judgments referred (supra) would not be applicable to the facts and circumstances of the present case as per the provision of Section 126 Explanation (b)(iii) of 2003 Act, which though have been extracted but not brought to the notice of the Court in cited judgment minutely. Had it been so, perhaps there would not have been a finding to entertain such type of dispute at this stage. I am of the view that the appellant should be granted a liberty to approach the Special Court.

In view of the aforementioned observations, in case, the appellant opts to approach the Special Court and files a petition, the Special Court will not be influenced with the findings rendered by this Court and

decide the case in accordance with law.

Liberty is granted to the appellant to approach the Special Court within a period of one month from the date of receipt of a certified copy of this order.

Appeal stands disposed of in the aforementioned terms.

August 29, 2016
savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No