

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 5587 of 2014(O&M)

Date of Decision: 15.01.2016

Ram Kumar

... Appellant(s)

Versus

Dakshin Haryana Bijli Vitran Nigam Limited and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

1. Whether reporters of local newspapers may be allowed to see judgment?Yes
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?Yes

Present: Mr. R.S.Mamli, Advocate
for the appellant.

Shekher Dhawan, J.

Present regular second appeal against concurrent findings of both the Courts below, whereby suit filed by the plaintiff was dismissed and appeal filed before First Appellate Court was also dismissed.

For the sake of convenience, the parties are being referred to as per their status before the Court of first instance. Relevant facts, for the purpose of decision of the present appeal, are that plaintiff had filed suit for declaration to the effect that notice bearing Nos. 2677 & 2678 dated 24.8.2011 issued by the defendants on the basis of alleged checking was done on 18.8.2011 and plaintiff was asked to pay ₹

16,525/- as loss to the Nigam and ₹ 20,000/- as compounding fee are wrong, null and void. Plaintiff had also sought relief of permanent injunction for restraining the defendants from effecting the recovery of the disputed amount and also from disconnecting the electricity connection. As per plaintiff, no prior opportunity of hearing was given to the plaintiff before issuance of notice bearing Nos. 2677 & 2678 dated 24.8.2011.

The defendants contested the suit on the ground that inspection of the premises of the plaintiff was conducted on 18.8.2011 by Assistant Engineer (Enforcement), Hisar in the presence of Bharat Kumar and Ganga Ram son of Ram Kumar and at that time plaintiff was found using electricity connection for commercial purpose and the connected load was found to be 1,290 KW instead of the sanctioned load which was on the higher side and as such on the basis of checking report, penalty of ₹ 16,525/- was assessed and compounding fee of ₹ 20,000/- was demanded for the above mentioned notice and the suit deserves dismissal.

On these facts, Court of first instance settled issues and both the parties led their respective evidence. The Court of first instance, after appreciating the evidence, came to the conclusion that suit of the plaintiff was without any merit and the same was dismissed. First appeal having been preferred was also dismissed by the Court of first appeal and as such second appeal before this Court.

Learned counsel for the appellant mainly took the plea that before issuance of notice bearing Nos. 2677 & 2678 dated 24.8.2011,

no opportunity of hearing was given and no notice was issued before conducting inspection. The inspection report was based on incorrect facts. The inspection was not conducted in the presence of occupier of the premises. But the Courts below have not appreciated these facts while returning the findings against the present appellant and the said findings be set aside and proposed that following law points are involved in the present regular second appeal:

- "i) Whether the judgment and decree passed by the Courts below are based on conjectures and surmises and same are liable to be set aside?*
- ii) Whether the judgment and decree passed by the Courts below are based on misreading the facts of the case and evidence produced on record?*
- iii) Whether the judgment and decree passed by the Courts below are liable to be set aside?"*

Having considered the submissions made by learned counsel for the appellant, this Court is of the considered view that most of the facts are not disputed in any way. The plaintiff was having electricity connection and his premises was inspected on 18.8.2011 by Inspection Team headed by Assistant Engineer (Enforcement), Hisar. The inspection was conducted in presence of occupier of the premises and the inspection memo was duly signed by Ganga Ram, who is son of the present appellant. There was absolutely no question of issuing advance notice before inspection because the very purpose of inspection was to be frustrated. At the time of inspection, plaintiff was

found to be using electricity connection for commercial purpose and consumption of electricity was in excess of sanctioned load. The said inspection can be carried out by the Inspection Team as per Section 126 of the Electricity Act, 2003 and the penalty can be imposed as per the provisions of Sections 135 & 145 of the Electricity Act and that has been done by the defendant Nigam, in accordance with law. The evidence available on file has been duly appreciated by both the Courts below and concurrent findings have been recorded.

There is absolutely no substantial question of law involved in the case. Even the proposed substantial question of law by the present appellant are not involved in the case because the judgment & decree passed by Court below are based on facts of the case and evidence available on the file and as per the correct provisions of law and the said judgment & decree are not liable to be set aside.

In view of above, the present appeal is not maintainable because concurrent findings have been recorded by both the courts below after appreciating the evidence and there is no substantial question of law involved in the case and as such present appeal stands dismissed being not maintainable.

(Shekher Dhawan)
Judge

January 15, 2016

"DK"