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

**Civil Revision No.6111 of 2015(O&M)
Date of Decision: 03.10.2017**

Kamal Mohan

.....Petitioner

Vs

Punjab State Power Corporation Ltd. and Anr.

....Respondents

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

Present:Mr. N.S. Dandiwal, Advocate
for the petitioner.

Ms. Meena Bansal, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

CM No.803-CII of 2017

Prayer made in this application is for bringing on record the legal representatives of deceased/petitioner Kamal Mohan, who died on 19.08.2016.

For the reasons mentioned in the application, the same is allowed and the legal representatives of deceased Kamal Mohan as shown in para no.3 of the application are ordered to be brought on record, subject to all just exceptions.

Amended memorandum of parties is taken on record.

Main case

[1]. In this revision petition challenge is made to the order dated 13.07.2015 passed by the Addl. District Judge, Moga in the civil suit titled '*Kamal Mohan vs. Punjab State Power Corporation Limited and others*' vide which the suit was held to be not maintainable.

[2]. Brief facts are that the plaintiff/petitioner filed a suit for declaration to the effect that the demand notice dated 21.10.2014 in a sum of Rs.65,733/- in respect of electricity connection installed in the premises of the plaintiff was illegal, null and void. A consequential relief of permanent injunction was sought restraining the defendants from disconnecting the electric connection in default of payment by the impugned demand notice. Plaintiff was holder of electric connection bearing Account No.HM-24/90 installed in the residential premises of the village. The plaintiff purchased the residential house from Gurcharan Singh in whose name the meter was existing. A notice dated 21.10.2014 was received by the plaintiff in the aforesaid account in respect of imposition of fine. Theft of electricity was alleged against the plaintiff.

[3]. The defendants contested the suit on the ground of its being not maintainable before the civil Court. Defendants alleged that on 18.10.2017, the officials of the Defendant-

Corporation checked the electric connection and the plaintiff was found stealing the electricity by fixing a direct wire from the meter block into the grips by bypassing the meter and main switch was off. The electricity was running. The petitioner was found running load of 5.926 K.W. against the sanctioned load 2.70 KW. A case of theft of electricity was alleged by means of unfair use and by using excess load. The checking was done allegedly in the presence of the petitioner, who refused to sign on the checking report. Defendants alleged that the checking report was duly received by the plaintiff at the spot and the notice dated 21.10.2014 was served under Section 135 of the Indian Electricity Act, 2003 (hereinafter to be referred as 'the Act') for deposit of Rs.65,733/- + Rs.6840/- = Rs.72,573/- in lieu of compensation of theft of electricity and excess load detected at the spot at the time of checking. The plaintiff was at liberty to file objection to such an assessment made in the notice. No objection was filed by the plaintiff against the provisional assessment of Rs.72,573/- and, therefore, the aforesaid amount became final. Besides the aforesaid amount, the plaintiff was liable to pay compounding charges to the tune of Rs.18,000/-.

[4]. I have heard learned counsel for the parties.

[5]. Perusal of the impugned order reveals that the controversy was in respect of maintainability of the civil suit

before the civil Court in view of notice of assessment issued to the plaintiff. The Court below has come to the conclusion that merely because Section 135 of the Act has been mentioned in the notice, therefore, the controversy does not fall within the strict corners and the case under Section 135 of the Act, the unauthorised use of electricity was commented upon thereby bringing the case within the four corners under Section 126 of the Act and holding the jurisdiction of the civil Court to be barred and allowing the plaintiff to file appeal before the competent authority in terms of Section 127(1) of the Act. Checking report of the officials of the Corporation revealed that the electricity was being used unauthorisedly against the sanctioned load by using direct wires from the meter block into the grips by bypassing the meter and the main switch was found off. In this way, the case was found to be of shunt connection, thereby connecting the supply directly to the inputs by bypassing the meter.

[6]. The notice of theft of electricity and use of excess load was issued. In order to constitute the theft of energy and before raising such presumption under Section 39 of the Act, there must be a dishonest abstraction of energy by an artificial means and consumption thereof has to be established. The demand notice was on account of theft of energy. Sections 126 and 135

of the Act, if taken to be under conjoint reading would give rise to a complete interpretation, all the relevant considerations of passing an order of assessment. There is a mark distinction between both the Sections in terms of their contents and application. Both are distinct and operates in different fields. Theft has been defined in Section 34 of the Act, which falls under part XIV relating to offences and penalties. The word 'dishonestly' appearing in the Section means abstraction 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. 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.

[7]. *Per contra* Section 126 of the Act would apply to the cases where no theft of energy is committed but the energy is consumed in violation of terms and conditions of supply leading to unauthorised use of energy. These proceedings would start from the inspection of the premises by an Assessing Officer, who would record the finding that the consumer is involved in an unauthorised use of energy. The Assessing Officer shall provisionally assess to the best of his judgment, the electricity

charges payable by such consumer as well as pass a provisional assessment order in terms of Section 126(3) of the Act, requiring him to file his objections, if any.

[8]. In view of aforesaid interpretation, it can be explained that Section 126 of the Act falls under Chapter XII and relates to investigation and enforcement and empowers the Assessing Officer to pass order of assessment whereas Section 135 of the Act deals with an offence of theft of energy and a penalty can be imposed for such theft. *Mens rea* is one of the relevant factor for finding a case of theft. Whereas Section 126 of the Act does not talk about any criminal intendment, rather is revolves around civil action and remedy thereof. Unauthorised use of energy falling under the domain of Section 126 of the Act has to be in the absence of any *mens rea* on the part of the consumer whereas Section 135 of the Act deals with an offence of theft of energy where *mens rea* is one of the relevant factor. The abstraction of energy by means and methods as specified under Section 135(a) to 135 (e) of the Act would bring the case within the four corners of the offence under Section 135 of the Act. The words 'whoever, dishonestly' does any act of listed actions so as to abstract or consume electricity would be punished in accordance with the provisions of 2003 Act. Therefore, the distinction was made between the Sections 126 and 135 of the

Act.

[9]. In **Executive Engineer and another vs. M/s Sri Seetaram Rice Mill, 2012(1) Law Herald (SC) 205**, the aforesaid proposition was minutely considered. The case of theft would fall under the provision of Section 135 of the Act. By virtue of Rule 11 of Electricity Rules, 2005 framed in exercise of powers conferred under Section 126 of the Act, the jurisdiction of the Courts other than special Courts have not been barred under sub-Section (1) of Section 154 till such time special Courts are constituted under Section 1 of Section 153 of the Act. This was a transitional measure in the rules so as to ensure that the consumer may not be remediless. With the issuance of Notification dated 03.12.2008, the subject matter of theft of energy is triable by special court having territorial jurisdiction over the subject matter. The special courts are not vested with the powers in respect of those cases which are strictly within the domain of the Authority under Section 126/127 of the Act i.e. unauthorised use of electricity. The special courts are constituted to deal with the cases of theft falling under Section 135 of the Act.

[10]. Even as per Regulation 37.03 of The Regulations of Electricity Supply code and Related Matters 2007, the civil Court is also competent to assess the civil liability in cases of theft,

therefore, civil liability is also a matter to be determined by the special court set up by the Government. The case falling in the category of consumption of electricity in excess of the maximum load may be governed under Section 126 of the Act, but when it is found that the same was abstracted or used dishonestly in terms of any of the listed action under Section 135 of the Act like providing a direct connection by bypassing the installed meter, then the action would be covered within the listed actions under Section 135 of the Act and same would amount to abstraction of energy with dishonest intention without authorisation. The afrosaid principle was also considered by the co-ordinate Bench of this Court in CR No.1865 of 2014 titled **'Kapoor Singh vs. Punjab State Power Corporation Limited and others'** decided on 12.03.2014. No exception can be made out to the observations made hereinabove in the context of Section 135 of the Act.

[11]. In view of above, impugned order dated 13.07.2015 passed by the Addl. District Judge, Moga is set aside being suffered from lack of exercise of jurisdiction vested in the special Court. This revision petition is allowed. The case is remitted back to the special Court with a direction to pass a fresh order on merits determining the liability of the petitioner in accordance with law.

[12]. Nothing expressed hereinabove would be taken to be an impression on merits of the case. The special Court shall examine the matter in accordance with law.

October 03, 2017	(RAJ MOHAN SINGH)
<i>Atik</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No