

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

RSA No.4155 of 2012 (O&M).
Decided on:-February 09, 2017.

Joginder Singh.

.....Appellant.

Versus

Punjab State Electricity Board and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Sarju Puri, Advocate
for the appellant.

HARI PAL VERMA, J.

Appellant-plaintiff has filed the present regular second appeal against the judgment and decree dated 05.05.2012 passed by learned District Judge, Shaheed Bhagat Singh Nagar whereby his appeal against the judgment and decree dated 29.07.2011 passed by learned Additional Civil Judge (Senior Division), Balachaur, was dismissed.

Briefly stated, the appellant-plaintiff filed a suit for declaration to the effect that the defendants be ordered to reconnect his electric meter connection bearing Account No.N22-SP-370030-NG, installed in the house for the purpose of flour mill, situated in the area of village Mutton, Tehsil Balachaur, District Nawanshahr and to restrain the defendants from recovering illegal amount of Rs.3,31,782/- forcibly and illegally.

As per the plaint, the meter in question was installed in the

house of the plaintiff. He regularly paid the electricity bill. He had not used the electric meter for any illegal purposes. The plaint further suggests that on 29.12.2008, the respondent-defendant No.4 forcibly and illegally disconnected the electric meter and demanded more money than the actual electricity bill. For this disconnection of meter, the school going children of the plaintiff are facing difficulty. The plaintiff has cattle in his house and is facing hardships to fetch water for them due to disconnection of this electric meter. The plaintiff requested the defendants to admit his claim, but they refused to do so, rather, they raised an illegal demand of Rs.3,31,782/-. Hence, the suit.

Written statement on behalf of respondents-defendants was filed taking various preliminary objections, including maintainability and estoppel from filing the suit by his own acts, conduct, admissions and acquiescence. The plaintiff has not approached the Court with clean hands. The plaintiff has no cause of action and right to sue against the defendants. The suit is bad for mis-joinder and non-joinder of the necessary parties. The suit is not properly valued for the purpose of court fee and jurisdiction. The suit is hit by the principle of resjudicata as well as Order II Rule 2 CPC in view of decision of civil suit No.267 of 21.10.2008.

On merits, it has been averred that the electric connection has been released for the purpose of flour mill, but the plaintiff had not paid electricity bill regularly. The plaintiff was using the electric supply illegally. The connection was rightly disconnected as per rules and regulations of the department. On 29.04.2008, the meter Inspector Dara Singh along with Daljit Singh Lineman had checked the connection of plaintiff. They found

that the plaintiff was committing theft of electric energy by way of affixing Kundi with 24 hours supply line and 5 BHP motor was running through A.P connection and direct supply was given to S.P connection with which flour mill was running at the time of checking. The plaintiff had signed the checking report on 29.04.2008 itself. The copy of site report dated 29.04.2008 was also supplied to the plaintiff. Accordingly, vide notice dated 30.04.2008, the plaintiff was directed to deposit Rs.2,77,712/- within seven days as fine for the theft and unauthorized use of electricity, but he did not deposit the same in spite of the repeated notice dated 13.05.2008 as well.

It was further pleaded that on 19.05.2008, order for disconnection of electric connection of the plaintiff was issued and on 21.05.2008, electric connection of the plaintiff was disconnected. Again on 04.08.2008, the plaintiff was found committing theft of electricity when SDO visited the spot in dispute and a fine of Rs.31,994/- was imposed upon the plaintiff for that theft. The entire electric connection of the plaintiff was disconnected on 03.01.2009 and the electric meter was removed therefrom on 03.02.2009. Accordingly, fine in question has rightly been imposed.

On the basis of pleadings of the parties, following issues were framed by learned trial Court:

1. Whether plaintiff is entitled to declaration, as prayed for? OPP
2. Whether plaintiff is entitled to permanent injunction, as prayed for? OPP
3. Whether suit is bad for mis-joinder of necessary parties? OPP
4. Whether this Court has no jurisdiction to try and decide this suit? OPD

5. Whether principle of resjudicata applied in the present suit?
OPD
6. Whether suit is barred under Order II Rule 2 CPC? OPD
7. Relief.

Vide judgment and decree dated 29.07.2011, learned trial Court had dismissed the suit of the plaintiff.

Aggrieved against the aforesaid judgment and decree passed by the trial Court, the appellant-plaintiff filed an appeal before the lower appellate Court, but the same was also dismissed by learned District Judge, SBS Nagar vide judgment and decree dated 05.05.2012.

Still aggrieved, the appellant-plaintiff has filed the present regular second appeal.

The appellant-plaintiff has formulated the following substantial questions of law:

- (i) Whether the impugned decisions of the Id. Courts below are against law, erroneous, perverse and based on misreading of the evidence on record?
- (ii) Whether the onus of proving a fact is upon the party asserting that fact?
- (iii) Whether the alleged report Ex.D1 is admissible in evidence and can be relied upon?
- (iv) Whether the defendants are justified in imposing the exorbitant penalty upon the plaintiff on the basis of the report Ex.D1?
- (v) Whether the additional evidence sought to be produced by the appellant in this Hon'ble Court is necessary for deciding the matter in dispute?

Learned counsel for the appellant-plaintiff has argued that

before disconnecting the meter connection, the appellant-plaintiff was not supplied with any details of the recoverable amount. The electric connection has been disconnected in a totally arbitrary manner. The appellant-plaintiff had not committed any illegal act and he is a consumer of the defendants having account No.N-22-SP-370030-NG for the purpose of running flour mill. He is paying the electric bills regularly and is not using the electricity illegally. The meter of the plaintiff has been illegally disconnected on 29.12.2008 and due to this disconnection, his whole family is suffering a lot. He has further argued that document Ex.D2 has been shown to be signed by the wife of the plaintiff, namely, Jasbir Kaur, but he does not have a wife of the said name. Therefore, findings recorded by the Courts below that Jasbir Kaur wife of the plaintiff has signed the report Ex.D2 is contrary to record and the said finding is erroneous and factually incorrect. Similarly, reliance placed on report Ex.D1 is wholly erroneous inasmuch as the same has not been prepared in accordance with law nor it is admissible in evidence.

I have heard learned counsel for the appellant-plaintiff and perused the record.

There is a concurrent finding of fact recorded by the Courts below that on 29.04.2008 the appellant-plaintiff was found committing theft of electric energy. The document Ex.D1 shows that the checking was made in the presence of plaintiff and he had also signed the same. Therefore, it is clearly established that the plaintiff committed theft of electricity. Another document Ex.D2 is a detailed report regarding checking of the meter connection owned by the plaintiff. Both these documents sufficiently show that the defendants had checked the premises of the plaintiff and found that

he committed theft of electricity. Accordingly, fine was imposed.

The plea of learned counsel for the appellant-plaintiff that no details have been furnished is again contrary to record. Ex.P3 dated 10.06.2011 is a provisional order of assessment for unauthorized use of electricity under Section 126 of the Electricity Act, 2003. The said order shows that during the inspection conducted on 29.04.2008, the unauthorized use of electricity was noticed. Vide said notice, the appellant-plaintiff was directed to deposit the pointed charges within 7 days of notice. Further more, it was made clear that in case the plaintiff is aggrieved by the aforesaid assessment, he may submit objection, if any, within 7 days of the receipt of said assessment order and in case such like reply is submitted, he will be afforded a personal hearing, if required, within 15 days of the submission of reply. But it is an admitted case of the parties that the plaintiff has neither submitted any objection to the aforesaid provisional order of assessment for unauthorized use of electricity nor he questioned the said assessment order in any manner. The provisional assessment order Ex.D3 further reflects the calculation of the provisional assessment. Therefore, this plea that no details have been furnished is not available to the plaintiff and he is estopped from raising such plea, when he had the opportunity to object, but he failed to avail. Similarly, the plea that document Ex.D2 was not signed by the wife of the plaintiff cannot be accepted as he has never pleaded this fact before the Courts below. The plaintiff has never examined said Jasbir Kaur, who had signed the inspection report, conducted in her presence of the premises, where the meter connection of the plaintiff was installed.

Moreover, another notice dated 30.04.2008 was issued to the

plaintiff, but no reply was submitted by him. Even otherwise, not only on 29.04.2008, rather, again on 04.08.2008, the appellant-plaintiff was found involved in committing the theft of electricity. As such, it is clear that he is in the habit of committing theft of electricity, but does not want to pay the penalty.

No other point has been raised.

This Court finds no fault with the concurrent findings given by the Courts below. No substantial question of law is involved in the present regular second appeal. Therefore, the impugned judgments and decrees passed by the Courts below are upheld and the present regular second appeal is dismissed.

Since the main appeal has been dismissed on merits, pending miscellaneous application, if any, also stands dismissed.

February 09, 2017

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No