

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM No.2828-CI of 2017 in/and
RFA No.3050 of 2016 (O&M)
Date of Decision : 01.03.2017.

Uttar Haryana Bijli Vitran Nigam Ltd.

.....Appellant

Versus

Hoshiar Singh

..... Respondent

CORAM : HON'BLE MR.JUSTICE ARUN PALLI

Present : Mr. Mohnish Sharma, Advocate for the appellant.

ARUN PALLI, J. (Oral)

CM No.2828-CI-2017

The present application has been filed for restoration of the appeal which was dismissed for non-prosecution, vide order dated 16.02.2017, passed by this Court.

For the reasons set out in the application, that is duly supported by an affidavit, the same is allowed. Order dated 16.02.2017 is recalled. Appeal is restored to its original number.

CM No.8326-CI-2016

This is an application for condonation of delay of 56 days in filing the accompanying appeal.

For the reasons set out in the application which is duly supported by an affidavit, the same is allowed. Consequently, the delay of 56 days in filing the accompanying appeal is condoned.

RFA-3050-2016

Defendant is in appeal against the judgment and decree dated 15.02.2016, vide which, learned Additional District Judge, Rohtak has

decreed the suit filed by the respondent-plaintiff. Parties to the lis, here-in-after, would be referred to by their original positions in the suit.

Plaintiff prayed for a declaration that the penalty imposed by the respondent pursuant to a bill No.111985 dated 21.02.2012, memo No.3342 dated 23.02.2012, and memo No.3343 dated 23.02.2012 for a sum of ₹71,604/- be declared illegal, null and void, and the defendant be enjoined from making any recoveries in this regard. Briefly, the case set out by the plaintiff was/is that his old electricity meter became defective and therefore, a new meter was installed by the defendant in the month of March, 2011. Various bills, post installation, were issued by the defendant but without recording the actual readings. Despite repeated requests by the plaintiff, defendant refused to rectify the error. Rather, on 27.03.2012, the defendant illegally and malafidely served a bill No. 111985 dated 21.02.2012, for a sum of ₹71,604/- (Ex.P7), assessment order under Section 135 of the Electricity Act, 2003, dated 23.02.2012 (Ex.P8) and notice to the plaintiff to compound the theft of electricity energy, dated 23.02.2012 (Ex.P9). The specific case set out by the plaintiff is that the defendant did not conduct any inspection in the presence of any independent witness nor any document in this regard was signed by the plaintiff. For, such a suit could only be tried by the Special Court under the Electricity Act. But as the plaintiff had pursued the said litigation bonafidely, the learned Court below found him entitled to the benefit of Section 14 of Limitation Act, 1963. And, thus after excluding the time that was consumed in the earlier proceedings, the Court held that the present suit filed by the plaintiff was

within limitation.

In defence, defendant, *inter alia* justified the imposition of penalty, for, a raiding party of UHBVNL purport to have visited the premises on 20.12.2012, and found that the consumer was stealing electricity energy through direct supply by making a cut on PVC before the meter.

On a consideration of the matter in issue and the evidence on record, the learned Court below reached a conclusion that the checking report Ex.P8 was fraught with infirmities, for, the inspection that purport to have been cried out by the defendant was not in conformity with the instruction set out in the sales circular Ex.PW2/A. No written permission of the concerned SDO 'OP' was obtained before raiding or inspecting the premises. Though, the report Ex.P18, which is the basis of the impugned bills and penalty, shows that the defendant had checked the meter in the presence of the user Kuldeep. But, neither the said report was signed by any Kuldeep nor it bears any endorsement that alleged Kuldeep had refused to sign the checking report. Thus, it was concluded that presence of Kuldeep, at site, was doubtful. Not just that, no evidence was brought on record by the defendant to show that during the course of inspection videography of the premises was carried out or any photographs were prepared. Therefore, the checking report Ex.P18 was held to be null and void. And consequently, even the bills under challenge were held to be illegal. Originally, the plaintiff had filed a suit before the Civil Court which was decreed by the Civil Judge (Jr. Divn.) Rohtak, vide judgment and decree, dated 22.05.2014. However, the appeal preferred by the respondent against

the said decree was accepted by the District Judge, vide judgment dated 09.03.2015, for, the Civil Court was held to have no jurisdiction in the matter. Learned counsel for the appellant could not point out as to how the conclusion arrived at by the learned Court below was either contrary to the record or suffered from any material illegality.

No other argument was advanced.

That being so, the only and the inevitable conclusion one could reach is that the appeal is being wholly devoid of merit and is accordingly dismissed.

01.03.2017

Manoj Bhutani

(ARUN PALLI)
JUDGE

Whether speaking/reasoned
Whether reportable:

Yes/No
Yes/No