

RSA No. 2411 of 2015(O&M)

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

RSA No. 2411 of 2015(O&M)

Date of Decision: 21.3.2017

Bal Krishan Proprietor M/s Anil Tools & Forgings, Basti Danishmandan,
Jalandhar

.....Appellant

Vs.

Punjab State Power Corporation Limited (Earlier known as Punjab State
Electricity Board) and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the impugned judgment and decree dated 31.3.2015 passed by the learned first appellate court, dismissing the first appeal and upholding the impugned judgment and decree dated 18.9.2014 of the learned trial court, whereby suit for declaration and mandatory injunction was dismissed, plaintiff has approached this Court by way of present regular second appeal.

Brief facts of the case, as noticed by the learned trial court court in para 1 of its impugned judgment, are that plaintiff was the sole proprietor of M/s Anil Tools & Forgings, Basti Danishmandan, Jalandhar. Earlier, he was allotted electricity connection bearing A/c No. BD 71/283 (MS) in the name of Kewal Krishan, Manager of this firm. It was changed to

RSA No. 2411 of 2015(O&M)

J42BD710990N and name of account number was changed to M/s Anil Tools & Forgings. Thus, the plaintiff was consumer. He had been making the payment of bills of electric consumption regularly. A checking was conducted by the officials of defendants on 26.11.2005, who illegally jumped on the conclusion that Kewal Krishan did not remain a partner of the said firm. The plaintiff was real brother of Kewal Krishan and he told the officials of defendants that Kewal Krishan had gone out of station, but they mistook the fact that he now did not remain partner of firm. Since the plaintiff could not read or write Punjabi easily or fluently, he did not take the said note seriously and signed the report casually being routine checkup. He received demand letter No.3603 dated 09.12.2005 directing him to apply for change of name and submit fresh documents. He replied to the same vide letter dated 26.12.2005, which was received on 28.12.2005. Kewal Krishan had gone abroad and after coming back to India, he and plaintiff approached the defendants and told that Kewal Krishan was never partner in firm and he was only Manager. Thereafter, the defendants stopped demanding any charge and matter was settled. But after about one year, the defendants illegally started demanding the amount of ₹1,15,071/- vide letter No. 2568 dated 15.10.2006 on the ground of not changing the name of consumer. They started demanding illegally another amount of ₹1,35,807/- vide notice No.1936 dated 20.07.2007.

Again after a few months, they started demanding another amount of ₹36031/- vide letter No.2731 and another amount of ₹29095/- vide letter no.3274 dated 20.11.2007 on same grounds. The defendants had also taken affidavit dated 24.04.1989 from Kewal Krishan at the time of releasing the said connection in the year 1989, wherein he had categorically

RSA No. 2411 of 2015(O&M)

stated that he was Manager in the said firm. The demands raised by the defendants were illegal, arbitrary and without any justification. The plaintiff had also filed a consumer complaint No.707 of 2008, but due to some technical and legal objections, it was withdrawn. In the meantime, defendants had also raised another illegal demand of ₹1,25,439/- vide letter No.5037 dated 14.11.2008. The plaintiff was constrained to deposit this amount of ₹1,25,439/- and ₹37,100/- vide two receipts bearing Nos.223 and 224 dated 10.10.2007 under protest and under duress of disconnection of electricity. He was also constrained to deposit in parts an amount of ₹55,145/- along with different bills.

Having been served, defendants put appearance and filed their contesting written statements, raising more than one preliminary objections. On completion of pleadings of the parties, learned trial court framed the following issues:-

1. Whether the plaintiff is entitled for declaration as prayed for?OPP
2. Whether the plaintiff is entitled for mandatory injunction as prayed for?OPP
3. Whether suit is not maintainable in the present form?
OPD
4. Whether the plaintiff is estopped by his own act and conduct from filing the present suit?OPD
5. Whether the plaintiff has no locus-standi and cause of action to file the present suit?OPD
6. Whether the suit is bad for misjoinder and nonjoinder of necessary parties?OPD
7. Whether this Court has no jurisdiction to entertain and try the present suit?OPD
8. Relief.

RSA No. 2411 of 2015(O&M)

4

With a view to prove their respective pleaded cases, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiff has failed to prove his case. No illegality was found in the action taken by the defendant-respondent. Accordingly, his suit for declaration and mandatory injunction was dismissed vide impugned judgment and decree dated 18.9.2014. Dissatisfied, plaintiff filed his first appeal, which also came to be dismissed by the learned first appellate court vide impugned judgment and decree dated 31.3.2015. Hence this regular second appeal at the hands of unsuccessful plaintiff.

Heard learned counsel for the appellant.

The entire case of the plaintiff-appellant was based on the allegedly illegal four demands notices, whereby the defendants raised the demands of different amounts, as additional charges. These demand notices were, as a matter of fact, based on checking report dated 26.11.2005 (Ex.PW1/1). It is neither pleaded nor argued case on behalf of the plaintiff-appellant that checking report dated 26.11.2005 was not prepared in the presence of plaintiff-appellant, by Assistant Executive Engineer, Enforcement Jalandhar-II and that too, after checking the premises of the plaintiff. In fact, this checking report was counter signed by the plaintiff himself, claiming himself to be the sole proprietor and declaring that his brother-Kewal Krishan was no more partner of the firm.

Defendants wrote letter No. 3603 dated 9.12.2015 to Kewal Krishan but it was not replied. It has also come on record that earlier, two civil suits were filed by Kewal Krishan for declaration and mandatory

RSA No. 2411 of 2015(O&M)

injunction, challenging these very amounts of bills in dispute. Both of his civil suits were dismissed as withdrawn on 30.8.2008. These suits were dismissed as withdrawn on the statement made by none else but the present appellant-plaintiff himself, contending that suits had become infructuous after getting changed name of the firm on 15.11.2007. Thereafter, instead of filing fresh suit, plaintiff filed complaint with the District Consumers Disputes Redressal Forum, Jalandhar, which was dismissed as withdrawn on 10.5.2010. Plaintiff did not disclose these material facts, thus, did not come to the court with clean hands. Further, plaintiff miserably failed to prove his case by leading cogent and convincing evidence. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

The learned first appellate court, before arriving at a judicious conclusion, considered factual as well as legal aspects of the matter and appreciated the same in correct perspective. Cogent findings recorded by the learned first appellate court in para 12 and 13 of its impugned judgment, which deserve to be noticed here, read as under:-

“12. It is an admitted fact that the factory of the plaintiff was checked on 26.11.2005. By going through the checking report Exhibit PW1/1 reveals that it is specifically admitted by Bal Krishan that Kewal Krishan is no more partner of the firm M/s Anil Tools & Forgings. To controvert this report, it is the plea of the plaintiff that the officials of the defendant department arbitrarily got signatures of him as he is not conversant with the reading and writing of Punjabi. To prove this contention that he is not conversant with the reading and writing of

Punjabi, the plaintiff has not placed on record any documentary evidence. It is very hard to digest the story put forth by the plaintiff that he is not conversant with the Punjabi language as he is 69 years old and is staying in Punjab and he is not conversant with Punjabi language. He has only lips service to offer. Thus, the story put forth by the plaintiff is of no use.

13. By going through the report Exhibit PW1/2 reveals that it has been categorically mentioned in this document that as per the checking report, the connection is being used by Bal Krishan and Mr. Kewal Krishan is not the partner of the factory. So, vide this letter dated 9.12.2005 Exhibit PW1/2, the defendants directed the plaintiff to submit the documents regarding change of name within 15 days of the receipt of this letter. By going through the correspondence on the file it reveals that the entire correspondence was done by Bal Krishan. The plaintiff is master of his case and he has to prove his case by leading cogent and convincing evidence that Kewal Krishan was not the partner of the firm and the connection was in his name being Manager of the firm. The main contention of the plaintiff is that he is Manager of M/s Anil Tools. This fact was also not proved by any documentary evidence. In case, Kewal Krishan was Manager of M/s Anil Tools & Forgings, the could prove the appointment letter or any other documentary evidence showing that Kewal Krishan was not the partner of the said firm and he was only a Manager but the plaintiff has not led any evidence in this regard. He has only lips service to offer. On the other hand, the defendants have led cogent and convincing evidence. By going through the letter dated 23.10.2007, Exhibit D4, reveals that the plaintiff requested the defendants to issue demand notice. It was also mentioned in the said letter

RSA No. 2411 of 2015(O&M)

by the plaintiff that he has deposited new security for the change of name. Vide letter dated 5.10.2007, the plaintiff submitted the documents including his own affidavit dated 11.09.2007 , (Exhibit D6) and the affidavit of his brother Kewal Krishan dated 11.09.2007 (Exhibit P24) . By going through the affidavit of plaintiff Exhibit D6 reveals that he has specifically mentioned in this affidavit that the electric connection be changed from the name of Kewal Krishan Shoor in his name. He undertook to pay all the arrears ,if any, due to the Board. Further, by going through the affidavit dated 11.09.2007 of Kewal Krishan reveals that he raised no objection, if the security paid/ deposited by him regarding the connection is adjusted in favour of the plaintiff. In both these affidavits and the other documentary evidence, the plaintiff did not dispute the demands made by the defendants prior to the dates of affidavits. In these circumstances, the plaintiff is estopped from raising such a plea that demand raised by the defendants are illegal, null and void. There is nothing on record to show that the plaintiff submitted the above documents under protest. By going through the entire evidence on the file, it reveals that the demands raised by the defendants for Rs.1,15,071/- , Rs.1,35,807/-, Rs.36,031/- , Rs.29,095/- and Rs.37,100/- as additional charges vide demand notices No.2568 dated 15.10.2006, No.1936 dated 20.07.2007, No.2731 dated 20.10.2007 and No.3274 dated 20.11.2007 etc were rightly issued by the defendants and the same are legal. Thus, the learned trial court has rightly held that the plaintiff is not entitled to get any relief and has rightly dismissed the suit of the plaintiff.”

Once the plaintiff-appellant himself admitted that Kewal Krishan was no longer Manager or partner of the firm, said admission, being

RSA No. 2411 of 2015(O&M)

the best evidence, would disentitle him for the relief sought by way of present litigation. It is so said, because the appellant could not have been permitted to resile from his admission.

It is also the settled proposition of law that plaintiff has to stand on his own legs to prove his case, by leading cogent and convincing evidence. Plaintiff should not depend on the alleged weakness of the case of the defendants. Initial onus is always on the plaintiff to prove his pleaded case. However, in the present case, plaintiff-appellant miserably failed to prove his case by leading cogent evidence. In this view of the matter, no fault can be found with the concurrent findings of facts recorded by the learned courts below and the same deserve to be upheld.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court:-

1. Gautam Sarup Vs. Leela Jetly and others, 2008 (7) SCC 85 (SC)
2. State of Madhya Pradesh Vs. Nomi Singh and another, 2015 (4) RCR (civil) 594 (SC)
3. Gram Panchayat Village Mulepur, Tehsil Sirhind District Patiala Vs. Sucha Singh (deceased through his legal representatives) and others, 2012 (67) RCR (civil) 942 (P&H)
4. State of Punjab and another Vs. Som Nath and another, 2014 (39) RCR (civil) 166 (P&H)

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments rendered by the learned courts below. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this

RSA No. 2411 of 2015(O&M)

Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

21.3.2017
Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No