

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

105

RSA No.3265 of 2015 (O&M)
Date of Decision : 10.08.2017

Rajbir Bhardwaj

..... Appellant

Versus

Dakshin Haryana Bijli Vitran Nigam Limited and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Shiv Kumar, Advocate
for the appellant.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the judgment of the lower Appellate Court reversing that of the trial Court and thereby dismissing the suit filed by the appellant-plaintiff.

The appellant was served with a notice under Section 135 of the Electricity Act, 2003 (hereinafter referred to as '*the Act*') alleging that he had been indulging in theft of electricity and asking him to deposit the amount and the penalty. This was followed by an assessment order under Section 152 of the Act. He then filed the statutory representation under Regulation 37 and after 2 months filed the instant civil suit challenging the action taken against him. The Civil Court decreed the suit as mentioned above but on an appeal, the lower Appellate Court held that the suit itself was not maintainable. To come to this conclusion the lower Appellate Court relied upon a Division Bench judgment of Delhi High Court in the

matter of *Sohan Lal vs. North Delhi Power Limited and others, 2005(1) RCR (Civil) 432*, which was later on followed by the Delhi High Court in the matter of *B.L. Kantroo vs. BSES Rajdhani Power Limited, 2009(1) AD (Delhi) 63*. It also referred the decision of this Court in *RSA No.389 of 2011, titled as Hans Raj vs. DHBVNL and others, decided on 31.03.2014*. Further it also relied upon the decisions of the Supreme Court in the matters of *U.P. Power Corporation Ltd. and others vs. Anis Ahmad in Civil Appeal No.5466 of 2012, decided on 01.07.2013* and *M/s Ujjal Rice Sheller vs. Punjab State Power Corporation Ltd. and others, 2011(2) Law Herald (P&H) 965*. In all these cases it was held that the Act contains a complete Code and apart from Section 145 of the Act which specifically bars jurisdiction of the Civil Court with regard to Sections 126 & 127, the creation of a complete Code bars the jurisdiction of the Civil Court by necessary implication. In B.L.Kantroo's case (supra) it was held as follows :-

“22. It is apparent that the cases of theft under section 135(1) involve mens rea. The jurisdiction of civil court is not barred but the power to try offences punishable under section 135 to 139 is conferred exclusively on the Special Court constituted under section 153 of the Act and the provisions of sub-section (5) of section 154 specifically invest Special Court with the jurisdiction to determine any dispute regarding the quantum of civil liability in theft cases whether or not the allegation of theft is disputed, is still entitled to make such a challenge to the disputed bill before the Special Court, even in cases where no criminal complaint is filed against the consumer and the amount of civil liability so determined shall be recovered as if it were a decree of a civil court and it can act as civil court as well as criminal court while conducting

the cases before it.

28. *It is well-settled that the exclusion of jurisdiction of civil court cannot be readily inferred and the normal rule is that civil courts have jurisdiction to try all suits of a civil nature except those of which cognizance by them is either expressly or impliedly excluded. The scheme of the Electricity Act is complete in itself and thereby the jurisdiction of the civil court to take cognizance of the cases under the Act, by necessary implication, stood barred. The Act provides for the jurisdiction of the Tribunals and/or appropriate forum and also hierarchy of appeals or revisions and gives finality to the orders passed thereunder. This also necessarily implies that the jurisdiction of the civil court to take cognizance of the suit of civil nature covered under Electricity Act stands excluded. Consumer cannot approach civil court without exhausting alternative remedies provided under Electricity Act.*

29. *It is true that ordinarily, the Civil Court has jurisdiction to go into and try the disputed questions of civil nature, where the fundamental fairness of procedure has been violated. By necessary implications, the cognizance of the civil court has been excluded. As a consequence, in the present case, the Civil Court shall not be justified in entertaining this suit and giving the declaration without directing the party to avail of the remedy provided under the Act. Therefore, by necessary implications, the appropriate competent authority should hear the parties, consider their objections and pass the reasoned order, either accepting or negating the claim. Of course, it is not like a judgment of a civil court. Civil court has no jurisdiction by necessary implication to entertain suit for declaration and injunction against specially constituted forum in view of the specific provisions found in the Electricity Act. [(1997) 5 SCC 120].*

30. *Although there is no specific provision in Section 145 of the Act for exclusion of jurisdiction of Civil Court to entertain*

any proceeding in respect of any matter which the Special Court is empowered by or under the Act to determine, we are of the view that any dispute about civil liability in theft cases is impliedly excluded from the jurisdiction of civil court in view of the provisions of Section 153 and 154 of the Act wherein special court has got the jurisdiction to determine any dispute regarding the quantum of civil liability specifically in theft cases and the said court can act as civil court as well as criminal court while conducting the cases before it.”

When learned counsel for the appellant was confronted with this position in law, he has argued that this was a case where the mandatory provisions of the Act were not adhered to and completely unjustified penalty was imposed upon him which can not stand the scrutiny of any legal procedure.

Learned counsel has relied upon the judgment of this Court in the matter of ***DHBVNL and others vs. Smt. Santosh Devi, 2014(4) PLR 115***. In that case this Court though held that a civil suit is maintainable but no reasons was given and none of the above judgment was cited before the Court. He has also relied upon the judgment of this Court in the matter of ***Suraj Bhan vs. UHBVNL and another, 2015(1) R.C.R. (Civil) 894***. In that case this Court had merely held that against a demand of payment of electricity charges and penalty it was not be open to consumer to move to Special Court. Both the judgments relied upon by the Counsel in no way detract from the precedential value of the judgments relied upon the lower Appellate Court.

In the circumstances, no fault can be found with the finding of the lower Appellate Court to the effect that civil suit was not maintainable.

No other question of law arises.

Consequently, the appeal is dismissed. No costs.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

August 10, 2017
ashish/pooja

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No