

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

RFA No.317 of 2017(O&M)
Date of decision: 06.02.2017

Dakshin Haryana Bijli Vitran Nigam Ltd. and others

... Appellants

Versus

Rajeev Aggarwal

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. RS Longia, Advocate for the appellants.

ARUN PALLI, J. (Oral)

The defendants are in appeal against the judgment and decree dated 21.07.2016, rendered by Special Judge (Electricity)/Additional District Judge, Gurgaon, vide which suit filed by the plaintiff was decreed. Parties to the lis, hearinafter, would be referred to by their original position in the suit.

In a suit filed by the plaintiff, he prayed for a declaration that the report dated 18.05.2015, demand memos dated 22.05.2015, as also the joint checking report of an even date, were illegal and unlawful being in violation of the instructions issued by the Nigam. A decree for mandatory injunction to direct the defendants to refund the amount recovered pursuant to the said demand memos was also prayed for.

In short, the case set out by the plaintiff was that an electricity connection No.OWBQ-367 was released to him with a sanctioned load of 19 KW. Plaintiff has been regularly paying the electricity bills. However, he was charged with a case of theft of electricity on the basis of a report dated 18.05.2015, which was wholly false. Defendants had issued an assessment

as also the compounding memos No.82 & 83, dated 22.05.2015, for ₹ 4,19,669/- and ₹ 38,000/-, respectively, on the basis of the said report. It was maintained that the electricity meter installed by the Nigam was never tampered with by the plaintiff.

In defence, it was pleaded *inter alia* by the defendants that the premises and the meter were checked by Sh. Takdeer and Naresh (JEs Vigilance) with Nigam staff on 18.05.2015 in the presence of the plaintiff. And, the meter was found tampered. However, during the course of checking, the load was found in sync with the sanctioned load of the connection.

On an analysis of the material, and the evidence on record, learned Additional District Judge, Gurgaon reached a conclusion that no cogent or credible evidence was led by the defendants to prove that there indeed was any tampering in the meter or it was inaccurate. And, it was not the case of the defendants either that any external device was used by the plaintiff. So much so, the electricity meter was never produced before the court to substantiate the charge. No photographs were prepared at the time when the meter was removed to show that it had developed gaps. Further, the sales circular No.D-43/2007 (Ex.DW1/C) showed that the matter in hand could not be termed as case of theft of electricity, for the defendants failed to prove that the meter was tampered or a device was used by the plaintiff to commit theft of electricity. Even otherwise, in sync with the norms envisaged under Ex.DW1/C, Assistant Foreman (AFM) authorized by SE (OP) is only the person/officer to conduct the inspection in case of theft of electricity along with Junior Engineer (Field) and Junior Engineer (Vigilance), however, in the matter in hand neither the Assistant Foreman

authorized by SC (OP) nor Junior Engineer (Field) or Junior Engineer (Vigilance) were present at the spot. That being so, the only and the inevitable conclusion that could be reached was to hold that the checking report dated 18.05.2015, the demand memos, as also the joint checking report were illegal.

Learned counsel for the appellants could not point out as to how the conclusion arrived at by the court below was either contrary to the position on record or suffers from any material illegality. No other argument was advanced. The appeal is dismissed being bereft of merit,

For, I have heard the appeal on merits, no formal order is required to be passed in the application for condonation of delay.

February 6, 2017
Rajan

(Arun Palli)
Judge

Whether speaking / reasoned:
Whether Reportable:

YES/NO
YES/NO