IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3939 of 2015 (O&M)
Date of decision: 04.08.2017

Vijay Kumar

... Appellant

Vs.

SDO, OP, Sub Divn., DHBVNL, Mandi Adampur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Kuldip Singh, Advocate
for the appellant.

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RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the impugned judgment of reversal dated 21.01.2015, whereby first appeal of the defendants was allowed by the learned Additional District Judge and the judgment and decree dated 19.07.2012 of the learned trial Court, decreeing the suit of the plaintiff for declaration, were set aside, plaintiff has approached this Court by way of present regular second appeal.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of the impugned judgment, are that plaintiff was having domestic electricity connection bearing No.GG/1102103 at his residence. The alleged checking report No.38 dated 19.01.2008 vide Book No.713 and order of assessment bearing memo No.623-624 dated 22.01.2008 by which penalty of Rs.42,728/- has been imposed upon plaintiff was illegal, wrong, against law and facts, arbitrary, malafide, against the principle of natural justice and was liable to be set aside on the grounds that the checking was done in the night hours i.e. at 8.25 p.m. but the assessment order shows that alleged checking was done at 8.25 a.m. Further, the alleged checking report shows that the plaintiff was present at the spot but his signatures had not been obtained on the checking report nor his refusal had been shown on the alleged checking report which falsified the alleged checking. This shows that at the time of alleged checking, plaintiff had not been joined and no prior notice had been given to him and as such, the alleged inspection was no inspection in the eyes of law. Moreover, in the alleged checking report the load had wrongly been shown, whereas the plaintiff was using the sanctioned load. The alleged checking was also not carried out by the competent person and falsity of the alleged checking was also proved from the fact that the bill of Rs.42,728/- was prepared on 11.1.2008 i.e. much prior to the alleged checking, which shows that the alleged checking was nothing, but a pre-determined efforts on the part of the officials of the defendants to implicate and harass the plaintiff by way of imposing such a huge amount in the form of penalty without any fault on part of plaintiff. However, plaintiff deposited the amount with the defendants on 25.1.2008 under the threat that his connection would be disconnected, for which the defendants were not having any right. Plaintiff requested the defendants to withdraw the alleged demand notice but of no avail.

Defendants were put to notice. They appeared and filed their joint contesting written statement, raising more than one preliminary objections. Plaintiff did not file any replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the checking report No.38 dated 19.01.2008

imposing a penalty of Rs.42,728/- on the plaintiff is illegal, null and void and is liable to be set aside? OPP

2. Whether the defendants are liable to refund the penalty amount deposited by the plaintiff on account of checking report? OPP

3. Whether the plaintiff is estopped by his own act and conduct from filing the suit? OPD

4. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD

5. Whether plaintiff has not come to the Court with clean hands, if so, its effect? OPD

6. Relief.

In order to prove their respective stands taken in their pleadings, both the parties brought on record their 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 proved his case. Accordingly, suit of the plaintiff was decreed by the learned trial Court vide its judgment and decree dated 19.07.2012. Checking report dated 19.01.2008 was declared null and void and the assessment based on checking report was also set aside. Defendants were directed to adjust the amount deposited by the plaintiff in his future bills. Feeling aggrieved, defendants filed their first appeal, which came to be allowed by the learned Additional District Judge vide impugned judgment and decree dated 21.01.2015. Hence this regular second appeal at the hands of plaintiff.

Heard learned counsel for the appellant.

A bare combined reading of the relevant documents available on the lower Court record and the impugned judgment passed by the learned first appellate Court would show that when the plaintiff-appellant was found indulging in theft of electricity and as a consequence thereof, an FIR was going to be lodged against him, he deposited the amount towards the compounding fee for the offence committed by him. In fact, it seems that rightly apprehending registration of FIR against him, plaintiff got prepared the bill-cum-receipt Ex.P2 and deposited the amount of Rs.42,728/- on 11.01.2008, so as to avoid his arrest for committing theft of electricity.

However, it seems that later on either on some ill-advice or otherwise, plaintiff turned around and filed the present suit for declaration. When this Court asked learned counsel for the appellant to refer to any document or other material available on record to show deposit of the abovesaid amount of Rs.42,728/- by the appellant vide bill-cum-receipt Ex.P2 that it was paid under protest, he had no answer and rightly so, it being a matter of record. Having said that, this Court feels no hesitation to conclude that learned first appellate Court was well within its jurisdiction to pass the impugned judgment of reversal and the same deserves to be upheld.

Checking report of the premises of the appellant was prepared in the presence of family members of the appellant, as the same was duly signed by brother of the plaintiff. Appellant-plaintiff was also present at the time of carrying out the checking of his premises. It was so recorded at Sr. No.1 of column Nos.6 to 9 of the checking report Ex.P1. It is also not in dispute that the appellant was consumer and the electricity connection was in his name, which is recorded as such in column No.2 of the checking report Ex.P1. Minor discrepancies, if any, while preparing the documents by the concerned officials of the department, would be of no help to the appellant, because he could not prove his pleaded case on the substantive aspect of the matter. Under these circumstances, it can be safely concluded that the learned first appellate Court committed no error of law, while passing the impugned judgment and decree and the same deserve to be upheld, for this reason also.

Documentary as well as oral evidence available on record speaks volumes against the appellant. Neither there was any ambiguity in any of the documents nor any kind of prejudice has been caused to the appellant. In fact, plaintiff-appellant saved himself from criminal prosecution by depositing the abovesaid amount as compounding fee vide Ex.P2. Thereafter, he tried to take a somersault, with a view to play smart and avoid his financial liability, for which he has not been found entitled either on facts or in law. Equity is also not in favour of the appellant. Joint reading of Ex.D2 and D7 would further support the fact that the appellant was found indulging in commission of theft of electricity.

It was for this reason that authorities of the defendants wrote to the Station House Officer of the concerned police station for registration of FIR against the plaintiff-appellant. Since the appellant deposited the amount for getting the offence compounded, FIR was not registered against him. Again, subject of Ex.D8 was the order of assessment for offence of theft under Section 135 of the Electricity Act, 2003. Since the learned trial Court proceeded on technicalities alone, ignoring the substantive aspect of the matter, the learned Additional District Judge rightly set aside the judgment of the learned trial Court, allowing the first appeal of the defendants. In this view of the matter, no fault can be found with the impugned judgment and decree passed by the learned first appellate Court and the same deserve to be upheld, for this reason as well.

Before arriving at its judicious conclusion, the learned first appellate Court rightly examined, considered and appreciated true facts of the case as well as evidence brought on record, in the correct perspective. The relevant and cogent findings recorded by learned Additional District Judge in paras 13, 14 and 16 of the impugned judgment, which deserve to be noticed here, read as under: -

> *"As far as ambiguity is concerned as mentioned in Ex.P2 regarding preparation of bill in advance before affecting raid, it seems to be vital infirmity in this report. However, court has to see in context the day to day proceedings accomplished by employees of Electricity Department. From perusal of text of Ex.P2, it is evident that on 25.1.2008, plaintiff deposited the penalty amount. In my view plaintiff got obtained himself form of bill from the Electricity Department and got it filled for depositing the penalty amount as per notice given by Electricity Department vide Ex.P3 to the consumer. So, in my view the date mentioned in last but one column of Ex.P2 is also a clerical mistake. In fact this date meant to be 19.1.2008 but not 11.1.2008. If contention of counsel for plaintiff is considered to be true then why he remained silent for more than 11 days regarding sanctity of this bill Ex.P2. Had it been falsely prepared bill, plaintiff should have redressed his grievance before concerned officials of the department that huge*

amount was mentioned in his bill. So, in my view the amount mentioned in Ex.P2 in fact is consequence of Ex.P3 and due to fear of registration of criminal case, plaintiff himself got prepared Ex.P2 and deposited the amount. Practically, it is the conduct of the officials of the Electricity Department to accept the bill if any consumer pretend to do so.

Learned Trial Court misconstrued the law laid down in case titled Reddy Subbarao (died) per LRs Vs. Nunner Venkatar Imanna and others, 2008(2) CCC-20 that the party who is duty bound to produce evidence or should have stepped into the witness box, if keeps away from the witness box then adverse inference should be drawn against him. Brother of plaintiff had endorsed over Ex.P1 as a witness being member from the family of plaintiff, so he should have been brought into the witness box for explaining his status as to why he endorsed over the LL-1 report but same has been with-held by the plaintiff for the reasons best known to him. So, adverse inference is drawn not against defendants but plaintiff himself, but it is quite surprising that learned Trial Court misconstrued the law laid down in case titled Reddy Subbarao (died) per LRs Vs. Nunner Venkatar Imanna and others (supra), in favour of plaintiff.

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Thus, having into account the factors discussed in detail above, plaintiff was rightly served with notice Ex.P3 after preparation of LL-1 report which he deposited within time. So, *findings recorded by learned Trial Court suffers from illegality and infirmity which are not in accordance with law and evidence of parties. Accordingly, the same are set aside and appeal is allowed with costs and suit of plaintiff is dismissed with costs."*

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in the impugned judgment of reversal passed by the learned first appellate Court. He also could not refer to any question of law, much less substantial question of law, which is sine qua non for entertaining the regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

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 present regular second appeal having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground 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

04.08.2017
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No