

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

RSA No.6383 of 2016 (O&M)
Date of Decision: May 24, 2017

Gurmeet Singh

..Appellant(s)

Versus

Uttari Haryana Bijli Vitran Nigam Ltd. and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Munish Gupta, Advocate
for the appellant.

ANITA CHAUDHRY, J.

This is the second appeal by the un-successful plaintiff whose suit for declaration was dismissed on 13.10.2014. The appeal filed by him was also dismissed.

The plaintiff was challenging the notice issued to him by Uttari Haryana Bijli Vitran Nigam Ltd. (here-in-after referred to as the Nigam). The plaintiff claimed that he had not been supplied with any report regarding theft of electricity and the checking report was illegal, null & void and not effective and the defendants be restrained from recovering the amount.

The plaintiff had pleaded that he had not taken any electricity connection nor was using the connection as he had a generator.

Defendants took the plea that the plaintiff had not disclosed the true facts and had concealed that earlier connection had been restored to him in 2012 and he was penalized in the first matter

in November 2011 and penalty was also imposed for the second meter. It was pleaded that the plaintiff was present at the time of checking and he had admitted that the meter was running fast and a false plea had been taken that he did not have any electric connection or that he was not using electricity.

During the course of the evidence the plaintiff admitted that penalty had been imposed on him in November 2011. He also admitted that the meter had been removed by the defendants and a penalty of Rs.2 lacs had been imposed. The lower Court found that the plaintiff had concealed the true facts and had not approached the Court with clean hands and it was a case of theft of electricity and the suit was dismissed.

Dis-satisfied with the judgment an appeal was preferred and the Appellate Court exhaustively dealt with the evidence in para nos.14 & 15, which read as under:-

14. From the copy of checking report placed on file as Ex.D1 it is observed that the premises of appellant was checked on 2.9.2012 by DW1 Abhishek Kumar, SDO alongwith Anil Kumar, JE and Ved Parkash, Lineman and appellant was found abstracting the electric energy by putting direct wire on the line. Thereafter, in pursuance of the checking report Ex.D1, order of assessment by licensee for offence of theft under Section 135 of Electricity Act, 2003 i.e. Ex.D2 was issued to the appellant and appellant was asked to pay an amount of Rs.1,99,711/-. Appellant has admitted in his cross-examination that many persons of locality had approached at the spot but the appellant has not

examined any other person of the locality in order to prove that his premises was not checked by the officials of the Electricity Department on 2.9.2012 and he was also not found abstracting the electric energy. Appellant has also stated that he has also conducted the videography but he has not produced any copy of CD which can show that the appellant was not found abstracting the electric energy. The appellant has claimed that he was using the generator but the appellant has not produced any copy of bill which can show that he had purchased the generator in order to meet out his day to day electrical needs. He could also produced the photographs of the generator installed at his premises in order to prove that he had installed a generator at his premises. Therefore, non-production of bills, an adverse inference has to be drawn against the appellant. If the appellant was not satisfied with the notice Ex.D2 then he could challenge the same before the competent authority by filing an appeal as provided under the Act but he has approached the Civil Court and challenged order Ex.D2..

15. *It has also came into the evidence that earlier appellant was found abstracting the electric energy and electricity connection was removed by the Electricity Department. The copy of checking report Ex.D1 also made it clear that appellant was also present at the spot but he has refused to sign the notice. Learned lower Court has also observed in para no.14 of the judgment that plaintiff has alleged that he is not consumer of defendants and he never had any electricity connection at his premises, however, in para 4(V) of plaint, plaintiff pleaded that he is paying the bill regularly and in para 5 of plaint, plaintiff pleaded that,*

if electricity supply to the premises of the plaintiff is disconnected, the plaintiff shall suffer irreparable loss. The learned lower Court has also observed that the stand of plaintiff is self controverted and he tried his best to mislead the Court. The statement of DW1 Abhishek Kumar, SDO coupled with checking report Ex.D1 made it clear that appellant was found abstracting electric energy at his premises and a notice dated 4.9.2012 Ex.D2 was issued by the respondents to recover the loss which occurred to the respondents by abstracting electric energy by the appellant. Learned lower Court had considered the evidence of both the parties in a correct manner and dismissed the suit of the appellant-plaintiff.”

I have heard the counsel for the appellant and have gone through the paper-book and find no merit in the appeal. The plaintiff had not approached the Court with clean hands and had concealed material facts. Though the plaintiff claimed that he had prepared a video but failed to produce it. The officials of the Nigam had checked his premises and had found him drawing electricity illegally for which a penalty was imposed. Both the Courts below had correctly appreciated the evidence and I find no infirmity in the same. The findings recorded by both the Courts below are affirmed and the appeal is dismissed in limine.

(ANITA CHAUDHRY)
JUDGE

May 24, 2017

sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No