IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 6830 of 2016 (O&M)

DATE OF DECISION : 08.11.2017

Uttar Haryana Bijli Vitran Nigam Limited and others

.... APPELLANTS

Versus

Pushap Raj

.... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Abhilaksh Grover, Advocate,
for the appellants.

* * *

AVNEESH JHINGAN, J.

This regular second appeal is at the behest of the defendants against the judgments and decrees passed by the courts below decreeing the suit filed by the plaintiff.

For the sake of convenience, the parties are being referred to as per their original position in the civil suit.

The plaintiff filed a suit for declaration with consequential relief of permanent injunction making a prayer that the impugned notice No. 121 dated 29.01.2010 issued for recovery of ₹ 2,67,614/- of electricity account No. LSP-53 NDS of the plaintiff and all subsequent bills/notices for demand issued by the defendants are illegal and whimsical etc.

The facts which led to filing of the suit as per the averments of the plaintiff are that he was a consumer of electricity connection for small power Atta Chakki having connected load of 12.682 KW. The electric meter is installed 200 feet away from the premises of the plaintiff on electric pole in a sealed and locked box. The defendants had been sending the bills showing the meter dead stop since January, 2009. The plaintiff made requests time and again to the defendants to replace the meter, but no action was taken. The plaintiff made representation dated 28.12.2009 for change of defective meter. In January, 2010, he was issued a bill for 178 units showing old reading as 60342 and new reading as 60520. Another representation was made by the plaintiff on 28.01.2010 for replacement of the meter. On 28/29.01.2010, the electric meter was burnt. The electricity supply to the premises was disconnected on 29.01.2010. On the same day, the defendants handed over memo No. 121 dated 29.10.2010 asking the plaintiff to pay a sum of ₹ 2,67,614/-. The plaintiff filed complaint under the Consumer Protection Act, 1986, and as per the order of the District Consumer Disputes Redressal Forum, Kurukshetra (for short, `the Consumer Forum'), deposited 40% of the amount in question. A stay order was passed by the Consumer Forum restraining the defendants from disconnecting the electricity supply. The said complaint was withdrawn by the plaintiff on 08.12.2011 with liberty to file suit. Thereafter, the present suit was filed.

On notice, the defendants filed written statement raising various objections and gave their own version of the facts.

The learned trial court framed the following issues :-

(1) Whether plaintiff is entitled for decree for declaration to the effect that the impugned notice No. 121 dated 29.01.2010 issued for recovery of Rs. 2,67,614/- of the electricity A/c No. LSP-53 NDS, is illegall, wrong, whimsical, inoperative, ineffective, unlawful, null & void, ultra vires as well as against the provisions of law, rules, regulations and as such are liable to be set aside? OPP

(2) Whether the plaintiff is entitled to not recover any amount or part of alleged amount of Rs. 2,67,614/- in any manner or refund of amount of Rs. 1,07,446/- (deposited in compliance of order dated 9.2.2010 of learned DCDF, Kurukshetra along with interest at the rate of 18% per annum ? OPP

(3) Whether plaintiff is entitled for decree of permanent injunction as prayed for ? OPP

(4) Whether plaintiff is entitled for decree of mandatory injunction as prayed for ? OPP

(5) Whether the suit is not maintainable ? OPD

(6) Whether plaintiff has no locus standi and cause of action to file the present suit ? OPD

(7) Whether this Court has got no jurisdiction to entertain and try this suit ? OPD

(8) Whether plaintiff is estopped by his own act and conduct from filing the present suit ? OPD

(9) Whether plaintiff has concealed the true and material facts from the Court ? OPD

In support of the suit filed, the plaintiff examined Naresh Kumar UDC as PW1, Gurmeet Singh as PW2 and the plaintiff himself appeared as PW3. Documents Ex.P1 to Ex.P24, Mark A and Mark B were also produced.

The defendants examined Brijesh Kumar, Junior Engineer as DW1 and produced documents Ex.R1 and Ex.RW1/A.

The learned trial court, on the basis of the pleadings and after appreciating the statements of the witnesses and the evidence produced by the parties, decided issues No.1 to 4 in favour of the plaintiff and issues No.5 to 9 against the defendants, and decreed the suit.

Aggrieved of the said judgment and decree, the defendants filed the first appeal which was dismissed by the learned District Judge, Kurukshetra, vide judgment and decree dated 16.09.2015. Hence, the present appeal.

In the present appeal, as many as six questions of law were framed, but at the time of arguments, learned counsel did not press these questions.

Before dealing with the one issue raised by learned counsel for the appellants, it would be appropriate to have a look at the issues which have been decided by the learned courts below. The learned appellate court relied upon various circulars to show the parameters to be followed by the defendants. Circular dated 27.02.1996, Ex.P4, makes it mandatory on the part of the field officers to conduct regular checking of the meters and that all the dead stop/burnt and inaccurate meters must be replaced within six months from the detection. Another circular dated 31.10.2002, Ex.P3, was that the revised fixed charges are applicable for a maximum period of six months, i.e. three billing cycles. Circular dated 26.08.2008, Ex.P2, gives the details of the action to be taken, in case the meter is found damaged/dead/ burnt/missing. It talks about registration of FIR. Apart from the above said circulars, the position emerges is that the bills dated 12.01.2009 and 12.02.2009, Ex.P13 and Ex.P14 respectively, had a status code of the meter mentioning `D' which implied that the meter was dead. In the bills dated 10.07.2009, 10.08.2009, 10.09.2009, 12.10.2009, 12.11.2009 and 12.12.2009, Ex.P15 to Ex.P20, the status code of the meter was mentioned as `D'. Thereafter, the bill dated 12.01.2010, Ex.P21, shows that the meter is working showing the current reading as 60520 and the previous reading as 60342. Accordingly, the bill was issued on consumption basis. The defendants failed to show that by whose report the meter was found dead for about 15 months and thereafter, suddenly the meter started working, on the basis of which the bill dated 12.01.2010 was issued on consumption basis. Ex.P9, a report by JE dated 18.01.2010, shows that the meter was `OK' and its reading on that day was 60683, but the best part is that the said checking and report was without any notice and no signatures of the plaintiff were obtained on the report. On the basis of the said report of the JE, the plaintiff was asked to deposit ₹ 2,67,614/-, being difference of reading from 500 to 60342. It was mentioned that in this bill, the previous average readings were deducted. All does not appear well, because virtually at the same time before issuance of notice dated 29.01.2010, the plaintiff submitted an application dated 28.01.2010, Ex.P8, that the meter was defective. The meter was burnt on 28/29.01.2010. The application was marked to Shri Brijesh, JE, who submitted his report dated 01.02.2010 that the meter is totally burnt and particulars are not visible and further that the meter was tampered with.

The sketchy picture of the affairs do not end here. The stand taken by the defendants before the Consumer Forum and in the suit was that the meter was found tampered with and then burnt. As such the billing was started on average basis and on installation of the new meter, the average of one month was taken of the new meter, then the account of the plaintiff was overhauled. On the other hand, the defendants produced evidence that the earlier meter was working and recorded a reading of 60683 and it was on that basis that the notice for deposit of ₹ 2,67,614/- was issued. The pleadings and the evidence were contradictory. No notice was given to the plaintiff granting him an opportunity before fixing the amount of consumption. On the basis of these findings, the suit was decreed.

Faced with the above contradictions, learned counsel for the appellants, while arguing this regular second appeal, very fairly and candidly submitted that the defendants are not aggrieved as such by the decreeing of the suit. He contended that their only grievance is that the learned courts below have directed an investigation into the case and thereafter, directed that if after such investigation the amount of consumption of energy is found payable by the plaintiff, the plaintiff would be bound to pay the same, but he would be given a notice and opportunity of being heard. Learned counsel contended that in view of the said direction, the amount already deposited by the plaintiff should not have been ordered to be refunded, as it would effect the ultimate recovery.

Since there is no challenge to the judgment and decree decreeing the suit in favour of the plaintiff, the above said contention deserves to be rejected. Once the suit is decreed and nothing is found due as on date from the plaintiff, there is no question of the defendants retaining the amount deposited as per interim order of the Consumer Forum. The plaintiff is still the consumer of the defendants and if ultimately, any thing is found due against him, the defendants are not helpless that they cannot recover the same.

During the course of hearing, learned counsel for the appellants could not point out any illegality or perversity in the impugned judgment passed by the learned first appellate court. He could not refer to any question of law much less substantial question of law which is sine qua non for this court to exercise its appellate power under Section 100 of the CPC.

The cogent findings recorded by the learned first appellate court have been found factually correct and legally justified. Thus, no fault can be found in the impugned judgment and decree passed by the first appellate court and the same deserves to be upheld.

No other argument was raised.

Considering the facts and circumstances of the case noted above, coupled with the reasons afore-mentioned, this Court is of the considered view that the present appeal is bereft of merit and without any substance, thus it must fail.

Resultantly, the instant Regular Second Appeal is dismissed, however, with no order as to costs.

November 08, 2017 **(AVNEESH JHINGAN)**
ndj **JUDGE**

Whether speaking/reasoned Yes

Whether Reportable Yes