

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

**R.S.A.No.6244 of 2015 (O&M)
Date of Order:28.07.2017**

Sanjay

..Appellant

Versus

Sub Divisional Officer UHBVNL, Jind

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sansar Kundu, Advocate
for the appellant.

ANIL KSHETARPAL, J (Oral).

Plaintiff is in regular second appeal against concurrent findings of fact arrived at by the Courts below.

Plaintiff had filed a suit for declaration seeking decree to the effect that checking report of the officials of electricity department dated 19.03.2017, notice memo dated 18.07.2011, notice memo dated 21.07.2011, seeking to recover penalty of Rs.1,14,442/- be declared illegal, null and void.

Plaintiff had claimed that he is running business in a tenanted premises at Safidon road and has an electric connection. He has further pleaded that as the officials of the respondent had demanded bribe but the plaintiff has refused to oblige them, therefore, in order to teach a lesson to the plaintiff, the shop of the petitioner was inspected when father of the appellant was present in the shop. It is further case of the plaintiff that father of the plaintiff was asked to sign some blank papers, which have been used to create inspection report. It is the case of the plaintiff that no

checking was conducted.

Initially plaintiff filed a complaint before the District Consumer Forum, the same was decided in favour of the plaintiff.

However, the State Consumer Disputes Redressal Commission, Haryana, Panchkula, set aside the order passed by the District Consumer Forum on the ground that the electricity was being used for commercial purpose, therefore, the plaintiff does not fall within the definition of consumer.

Thereafter, plaintiff filed the suit out of which this appeal has been filed.

Learned trial court after appreciating the evidence available on the file and after noticing that there is enough material available on the file, including photographs to prove that inspection did take place. Learned trial Court further noticed that plaintiff has not produced his father in the witness box, who was the best witness to throw light as to what has happened on that day when the inspection was carried out. Hence, the suit was ordered to be dismissed.

Learned first appellate Court after re-appreciating the evidence available on the file, found that the order passed is not in accordance with the procedure prescribed under Section 126 of the Electricity Act. The learned first appellate Court observed as under:-

“From the discussion above, it becomes manifestly clear that the objections were not invited against Ex.P1 and the subsequent memos Ex.P3, Ex.P4 and Ex.P8. In my view, an adequate opportunity of being hearing should have been given to the appellant-plaintiff before passing

the final assessment order. Accordingly, the respondent-defendant is directed to invite objections against the checking report, Ex.P1 and subsequent memos Ex.P3, Ex.P4 and Ex.P8 within forty five days from the date of delivery of the copy of the judgment as per the provisions of the Act.”

However, the learned first appellate Court also held that the civil Court does not have jurisdiction.

I have heard counsel for the appellant at length and with his able assistance gone through the paper book.

Learned counsel for the appellant has submitted that the directions issued by the learned first appellate Court have not been complied with. However, that can not be subject matter of adjudication before this Court in regular second appeal. If any fresh order has been passed, the appellant shall be at liberty to challenge the same in accordance with law.

Although, I have my serious doubt about the findings of the learned first appellate Court that jurisdiction of the civil Court is barred, however, taking into consideration the judgments passed by both the Courts below on merits, wherein the respondents have established that the inspection of the electricity meter installed in the shop of the appellant was carried out with cogent and reliable evidence. I do not find any sufficient reasons to interfere with the concurrent findings of fact. Appellant has failed to produce his father, who is said to be present and signatory of the inspection report.

Therefore, the findings of the Courts below are upheld.

However, the appellant would be at liberty to challenge the subsequent

order passed by the officials of the respondents, in accordance with law.

The regular second appeal stands dismissed.

July 28, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No