IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH.

RSA No.1166 of 2017 (O&M)
Date of decision: 01.03.2017

Dakshin Haryana Bijli Vitran Nigam Limited & another
-----Appellant(s)

Vs.

Anil Jain
-----Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. K.S. Malik, Advocate
for the appellants.
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HARI PAL VERMA, J.

Appellant-defendants have filed the present Regular Second Appeal against judgment and decree dated 31.8.2016 passed by learned Additional District Judge, Hisar, whereby their appeal against judgment and decree dated 26.9.2013 passed by learned Civil Judge (Jr. Division), Hisar was dismissed.

Briefly stated, the respondent-plaintiff (hereinafter called as "the plaintiff") had filed the present suit for declaration to the effect that pursuant to checking report dated 5.5.2012, the action of appellant-defendants (for short, "the defendants"), directing the plaintiff to deposit Rs.1,46,349/- vide Electricity Bill No.00008 dated 21.5.2012 for the period from 19.3.2012 to 21.5.2012 is illegal and arbitrary. It has been pleaded in the plaint that an electricity connection bearing meter account no.P201-0779, Sub Div.OH11 SBM No.CT48 was installed at the premises of plaintiff i.e. house situated at Subhash Market, Mohalla Udaypurian, Near Bishnoi Mandir, Main Gate, Hisar. The said connection was in the name of mother of the plaintiff namely Kanta Jain, who expired in the year of 2004. The plaintiff being the legal heir of Kanta Jain was using the electricity and regularly making the payment of electricity charges according to the consumption of electricity, on the basis of domestic rates. However, in the month of April, 2012, plaintiff intended to start the business of clothes. Therefore, on 17.4.2012, he applied for commercial electricity connection at the ground floor to the defendant-department. Pursuant to this application, Sh. Gauri Shanker, JE visited the premises of the plaintiff on 20.4.2012 and checked the connection load. After checking, he submitted report dated 9.5.2012 and accordingly, security of Rs.14,360/- was got deposited by the plaintiff vide receipt no.11110512167 dated 9.5.2012. It has been alleged in the plaint that on 5.5.2012 also, the inspection team of the defendants consisting of Gauri Shanker, JE, Amit, ALM and another official surprisingly, visited the premises of the plaintiff and on checking of the electricity meter installed at the premises of plaintiff, they prepared a checking report dated 5.5.2012 mentioning therein that meter was found installed inside the premises and seals of meter were found in order. The supply of meter was being used for commercial purpose, though there was no such commercial connection. Accordingly, on the basis of checking report dated 5.5.2012, defendant no.2 directed the plaintiff to deposit Rs.1,50,458/- by raising bill no.00008 dated 21.5.2012 for the period from 19.3.2012 to 21.5.2012. The said amount, which also included the penalty charges of

Rs.1,46,349/- was payable by 5.6.2012. It was the aforesaid recovery amount which was challenged through the suit.

Upon notice, defendants put in appearance through their counsel and contested the suit raising various preliminary objections including jurisdiction, estoppel, cause of action, maintainability etc. However, on merit, it is submitted that no document was supplied by the plaintiff for transferring the electricity meter in his name and the electricity connection was still being run in the name of Kanta Jain - mother of plaintiff. On 5.5.2012, the officials of the defendant-Nigam visited the premises of the plaintiff and checked the said meter. During checking, the meter of the plaintiff was found installed inside the premises and its seals were found in order, but supply of the meter was being used for commercial purpose. Plaintiff signed the checking report voluntarily. Accordingly, notice under Section 135 of the Electricity Act was served upon the plaintiff vide memo dated 9.5.2012 and an amount of Rs.56,349/- was assessed towards theft of the electricity and notice for compounding the offence under Sections 135 and 152 of Electricity Act was also served vide memo. dated 9.5.2012. The compounding amount was assessed at Rs.90,000/-. As such, the total outstanding amount assessed against the plaintiff is Rs.1,46,349/-.

From the pleadings of the parties, following issues were framed:-

"Issue no.1: Whether the checking report dated 5.5.2012 by which plaintiff is directed to deposit an amount of Rs.1,50,458/- as penalty through electricity bill no.00008 dated 21.5.2012 for the period 19.3.2012 to 21.5.2012 are wrong, incorrect,

against law & facts, null &void, ab-initio, not binding upon the rights of the plaintiff and is liable to be set aside? OPP

Issue no.2: Whether the the plaintiff is entitled for injunction, as prayed for? OPP.

Issue no.3: Whether the suit of the plaintiff is not maintainable in the present form? OPD.

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

Issue no.5: Whether this court has no jurisdiction to try and entertain the present suit? OPD.

Issue no.6: Whether the plaintiff has concealed true and material facts from the Court, if so to what effect? OPD.

Issue no.7: Whether the plaintiff is estopped to file the present suit by his own act &conduct? OPD.

Issue no.8: Relief."

Learned trial Court after hearing both the sides and appreciating the evidence on record decreed the suit and held that the electricity bill dated 21.5.2012 issued in pursuance of memos. No.1872 and 1873 dated 9.5.2012 was illegal and arbitrary. Accordingly, these memos. were set aside and the defendants were restrained from recovering the aforesaid amount of Rs.1,46,349/-. It was held that the only allegation against the plaintiff was that the premises was being used for commercial purpose. However, the plaintiff had duly pleaded the fact that the plaintiff had already applied for non-domestic connection on 17.4.2012 and the said file was marked to Gauri Shankar, JE for verification at the spot, but in the meantime, defendants raided the premises and prepared a report alleging therein that the premises was being used for a commercial purpose. Plaintiff deposited the amount of Rs.14,360/- for NDS connection on 9.5.2012 vide receipt Ex.P2. Thus, as on the relevant date i.e. 5.5.2012, when the raid was conducted, the plaintiff had already applied for NDS connection i.e. on 17.4.2012, as he intended to start his new business in the premises in question. Moreover, the plaintiff had also deposited the amount towards NDS connection on 9.5.2012. Since the defendants could not lead any evidence to the effect that the premises was being used for a commercial purpose continuously for long time before the date of checking and there was no evidence to that effect, the trial Court has decreed the suit holding that the premises in question was not being used for a commercial purpose prior to 17.4.2012.

Aggrieved from the aforesaid judgment and decree passed by the trial Court, the appellant-defendants preferred an appeal before the first Appellate Court which was dismissed vide judgment and decree dated 31.8.2016.

Still not satisfied, the appellant-defendants have filed the instant appeal submitting that following substantial questions of law for consideration of this Court:-

"(i) Whether in the case of theft, the civil court has no jurisdiction to entertain and decide the civil suit in view of section 154(5) of the Electricity Act, 2003?

(ii) Whether the checking report and demand notices for theft of electricity and composite fee for compounding the offence under Sections 135 and 152 are legal and valid?

(iii) Whether the findings recorded by the ld. Courts below are perverse and have resulted from misappreciation of provision of law?"

Learned counsel for the appellants has argued that the staff of Nigam, on checking the premises of the plaintiff, had found that the seal of the meter was in order, but he was using the electricity for the commercial purpose for his shop, though the connection was released for domestic purpose. In this manner, the plaintiff was found guilty of committing theft. The plaintiff has admitted in his statement that he had applied for commercial connection on 17.4.2012 and he inaugurated his shop on 29.4.2012 and whereas the staff of the Nigam conducted raid on 5.5.2012. Thus, as on the date when the raid was conducted, the plaintiff was using electricity from his meter for commercial purpose which was otherwise meant for domestic purpose.

I have heard learned counsel for the appellants-defendants and perused the impugned judgments passed by the Courts below.

The Courts below have found that there is no evidence to show that the plaintiff was using the premises in question for commercial purpose before 5.5.2012. The plaintiff had applied for NDS connection on 17.4.2012 and it is only thereafter, he inaugurated his shop on 29.4.2012. Once the plaintiff had applied for NDS connection on 17.4.2012, it can be inferred that before 17.4.2012, the plaintiff was not using the premises in question for commercial purposes. Thus, there is no evidence on record to show that the premises in question was being used for non-domestic purpose since long time back. In these circumstances, this Court finds no illegality in the judgment and decrees passed by the Courts below.

Both the Courts below had recorded a concurrent finding of facts, that the plaintiff was not found guilty of committing theft of electricity. Therefore, no interference is called for in the concurrent findings of fact recorded by the Courts below.

No substantial questions of law arise in this appeal.

No other point is argued.

In view of the aforesaid, this Court finds no merit in this appeal.

Dismissed.

March 01, 2017 **(HARI PAL VERMA)**
AK **JUDGE**

Whether speaking / reasoned? Yes / No

Whether reportable? Yes / No