

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

**RSA No.1360 of 2017 (O&M)
Date of decision: 25.07.2017**

Jaspal Singh

... Appellant

Vs.

Dakshin Haryana Bijli Vitran Nigam Limited and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Rajesh Sethi, Advocate,
Ms. Varinder Kaur, Advocate and
Ms. Paramjit Kaur, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Defendant No.1 is in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby suit for recovery filed by the plaintiff-respondent No.1 was decreed by the learned trial Court vide its impugned judgment and decree dated 31.10.2015 and first appeal of defendant No.1-appellant was dismissed by the learned District Judge vide impugned judgment and decree dated 08.09.2016, upholding the judgment of the learned trial Court.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of the impugned judgment, are that defendant No.1-appellant was consumer of the plaintiff Nigam vide non-domestic electric connection No.MG-41/022-SP, installed at the premises of defendant No.1 for running atta chakki,

situated at village Santnagar, Tehsil Rania, District Sirsa. On 24.09.2005, the electricity connection of defendant No.1 was checked by the vigilance staff in the presence of one Hardev Singh, who was present there at the time of checking and found the following irregularities:-

"Four number pin holes on the top portion of the meter body as shown in the sketch. There were also signs of scratches on the meter counter plate. The meter in question was found tampered and the consumer was found using electricity by way of unauthorized means, so as to consumer manipulates the actual consumption recorded by meter as per his will, which amounts to theft."

In this regard, a checking report was prepared at the spot in the presence of said Hardev Singh, which was signed by all the members of checking party as well as Hardev Singh. Thereafter, on the basis of that checking report, provisional assessment on account of loss to Nigam was assessed to the tune of ₹1,60,000/-. In this regard, notices under Section 135 and 152 of Electricity Act were also served upon defendant No.1, but in spite of disconnection of electricity connection and service of notices, defendant No.1 had failed to make the abovesaid payment along with surcharges etc. It was further submitted that defendant No.2 Narvair Singh stood as guarantor for and on behalf of defendant No.1. He also executed and signed a surety bonds in favour of plaintiff Nigam. As per terms of surety bonds, defendant No.2 was also responsible and liable to make the payment of claim of the plaintiff Nigam. It was further asserted that since the defendants did not pay the arrears of charges/amount to the tune of ₹4,46,696/-, so the electricity connection of

defendant No.1 was disconnected. It was further averred that defendant No.1 filed a consumer complaint before District Consumer Disputes Redressal Forum, Sirsa, which was accepted on 24.02.2006, but in the appeal, it had been set aside vide order dated 16.06.2011. The defendants were asked time and again to make the above said amount, but to no avail.

Defendants were put to notice. Defendant No.1 appeared and filed his contesting written statement, raising more than one preliminary objections. Defendant No.2 filed his separate written statement. On completion of pleadings of the parties, the learned trial Court framed the following issues: -

1. Whether the plaintiff is entitled to recovery amount as prayed for in the head note of the plaint? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether the plaintiff has concealed and suppressed the true and material facts from the court? OPD
4. Whether the present suit time barred? OPD
5. 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 by the plaintiff-respondent No.1, suit for recovery was decreed by the learned trial Court vide its impugned judgment and decree dated 31.10.2015. Feeling aggrieved, defendant No.1 filed his first appeal, which was dismissed by learned first appellate Court, vide impugned judgment and decree dated 08.09.2016. Hence this regular second appeal at the hands of unsuccessful

defendant No.1.

Heard learned counsel for the appellant.

It is a matter of record that electric connection in question was issued by the plaintiff-Corporation in the name of the appellant. Defendant No.2 stood surety for the appellant and he was identified as such by one Mahinder Singh. It has also come on record that defendant-appellant moved an application before the plaintiff-Corporation for increase of load of electricity from 3 BHP to 15 BHP, which would show that he had already an electric connection of lesser load. The application for increase of load signed by the appellant in English was Ex.P5. Photograph of the appellant was also affixed on this application Ex.P5. Checking report Ex.P1 and notice Ex.P2 issued under Section 135 of the Electricity Act were never challenged by the appellant.

Interestingly, the case sought to be set up by the appellant was that he was not a consumer of the plaintiff-Corporation. However, he filed a complaint before the District Consumer Disputes Redressal Forum titled as Jaspal Singh Vs. DHBVNL and others. Sh. S.P. Tokasia, Advocate was examined by the plaintiff-Corporation as PW3, who represented Sh. Hardev Singh, power of attorney holder of the appellant before the Consumer Forum. This witness proved on record Ex.P8 to Ex.P11, which bear the signatures of Hardev Singh, power of attorney holder of the appellant. At the time of checking the premises for unauthorized use of electricity, employees of the plaintiff-Corporation prepared a compact disc (CD). Hardev Singh, father of the appellant, was shown present in the CD. All these documents go a long way to show that appellant was the consumer of electricity board. His flour mill was being run by his servants under the supervision of his father late Sh. Hardev

Singh. Having said that, this Court is of the considered opinion that the learned Courts below were well within their jurisdiction, while passing the impugned judgments and decrees and the same deserve to be upheld.

Case of the plaintiff was not based on technicalities alone but also on falsehood. After checking the premises and preparing the report, including the CD, FIR No.336 dated 19.12.2005 came to be registered against father of the appellant. However, since Sh. Hardev Singh, father of the appellant against whom the FIR was lodged, died on 02.07.2008, the criminal proceedings arising out of abovesaid FIR were dropped and file was consigned to the record room vide order dated 18.08.2008. Ample evidence was brought on record by the plaintiff-Corporation that the electric connection was being used by the appellant through his father Hardev Singh. Appellant never denied that at the time of checking, his family was not residing in Sant Nagar. Getting released a subsequent electric connection in village Kharekan would not ipso facto prove that the appellant never reside in Sant Nagar.

In fact, the appellant himself admitted that he moved to Malaysia and later on, he worked in New Delhi. The electric connection in question was an old one running at the site for more than 20 years. It was the appellant himself, who applied for increase in the electric load. He had been doing the business by running a floor mill (atta chakki) by using electricity through electric connection in question and had been deriving handsome income from it. However, when he was caught at the wrong foot and was found indulging in illegal activities, he started raising one or the other objections, which were contrary to the record and based on technicalities alone. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned

Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

So far as the judgments relied upon by learned counsel for the appellant in **Kiran Singh and others Vs. Chaman Paswan and others, 1954 AIR (SC) 340, Sadhu and others Vs. Jagdish Ram, 1996 (1) CivCC 95, State of Gujrat Vs. Rajesh Kumar Chimanlal Barot and another, 1996 AIR (SC) 2664, Rajasthan State Electricity Board Vs. Dalip Singh and another, 2000 (3) RLW 1689, Punjab State Electricity Board Vs. Ashwani Kumar, 1997 (3) RCR (Civil) 147, Harshad Chiman Lal Modi Vs. DLF Universal and another, 2005 (4) RCR (Civil) 260, The Executive Engineer, KPTCL Now GESCOM, Bidar Vs. Ishwaramma and another, 2006 (2) ICC 646, Bharat Sanchar Nigam Ltd. Vs. Pawan Kumar Gupta, 2007 (4) RCR (Civil) 10, Superintending Engineer Virudhunagar Electricity Distribution Circle Tamil Nadhu Electricity Board Vs. Murali Raja, 2008 (4) CivCC 172, Assistant Engineer, Acquisition, Tamil Nadu Electricity Board and others Vs. S. Baskaran, 2008 (5) CTC 307, BSEB Rajdhani Power Ltd. Vs. Ashok Kumar, 2008 (72) AIC 613, UHBVN, Panipat and others Vs. Vinod Kumar, 2009 (4) RCR (Civil) 199, Durham Careline Indian Pvt. Ltd. Vs. Studio Line and others, 2010 (8) RCR (Civil) 1811, Rama Kapila Vs. State of Punjab, 2012 (4) RCR (Crl.) 634, C.P. Kapur Vs. The Chairman and others, 2013 (2) BC 243 and Hari Chand Vs. Dakshin Haryana Bijli Vitran Nigam Ltd. and another, 2015 (1) RCR (Civil) 58** are concerned, there is no dispute about the observations made and law laid down therein. However, on close perusal of the cited judgments, none of them has been found of any help

to the appellant, being distinguishable on facts.

It is settled proposition of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundrao Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan Vs. Ganeshi Lal, 2008 (2) SCC 533.**

With a view to avoid repetition and also for the sake of brevity, the observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in **Ganeshi Lal's** case (supra), reiterating its earlier view taken in **Amrit Lal Manchanda's** case (supra) and **Mohd. Illiyas's** case (supra), which can be gainfully followed in the present case, read as under:-

“11. “12....Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An

inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the

matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. Ed. See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (AIR p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract

from the great weight to be given to the language actually used by that most distinguished judge."

16. *In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294)* Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in *Shepherd Homes Ltd. V. Sandham (No.2) (1971) 1 WLR 1062* observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in *Herrington v. British Railways Board (1972 (2) WLR 537)* Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. *Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.*

15. *The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680*

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a

single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it Ed. See Union of India Vs. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."

Checking at the premises of the appellant was carried out on 24.09.2005. Checking report was prepared vide Ex.P1. Memo Ex.P2 was issued against the appellant. Sh. Hardev Singh, father of the appellant, being his power of attorney holder, filed a complaint before the District Consumer Disputes Redressal Forum challenging the memo Ex.P2. The complaint was finally decided by the National Consumer Disputes Redressal Commission, holding that the Consumer Forum had no jurisdiction to try this complaint, as the electric connection in question was a commercial one.

Thereafter, the plaintiff-Corporation filed the present suit for recovery. The amount sought to be recovered by the plaintiff-Corporation was found outstanding against the defendant-appellant and both the learned Courts below rightly held him liable for payment of the amount in question. In this view of the matter, both the learned Courts below have been found fully

justified in recording their concurrent findings of facts and the impugned judgments and decrees deserve to be upheld, for this reason as well.

Before arriving at its judicious conclusion, the 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 District Judge in paras 16 to 22 of the impugned judgment, which deserve to be noticed here, read as under: -

“It is also worthwhile to mention here that father of Jaspal Singh filed a complaint before the Consumer Forum titled as "Jaspal Singh Versus DHBVNL and others". The plaintiff-Nigam examined Shri S.P. Toksia, Advocate as PW3, who was the counsel for Hardev Singh, the power of attorney holder of Jaspal Singh in Consumer Forum. He deposed that Ex.P8 was signed by Hardev Singh and documents Ex.P9 to Ex.P12 also bear signatures of Hardev Singh. An another fact was disclosed by Hardev Singh that atta chakki was being run by the servant of Jaspal Singh and it is supervised by him. All these facts are sufficient to indicate that the atta chakki was being run in the premises with the help of electricity connection and the electricity connection was also issued in the name of Jaspal Singh.

The appellant has also disputed his photograph on application Ex.P5. But there is no convincing evidence on the file to prove that it was not his photograph. The electricity connection was being used by Jaspal Singh through his father Hardev Singh. The appellant has never denied that at the time of checking his

family was not living in Sant Nagar. The obtaining of subsequent electricity connection at village Kharekan would not ipso facto prove that he never resided in Sant Nagar. The appellant himself admitted that he moved to Malaysia and later on he worked in New Delhi.

The Nigam at the time of checking prepared the CD of checking of the premises and Hardev Singh, father of the appellant is appearing in the CD. It also proves that the electricity connection in question was being used by his father Hardev Singh.

The last and foremost question is that whether appellant Jaspal Singh was a minor when the electricity connection in question was issued. It is pertinent to mention here that the electricity connection was issued 22 years back. The appellant has placed on record school certificate Ex.D2/A which itself does not prove his exact date of birth in the absence of entry in the death and birth register of the Registrar and Chowkidar or even affidavit of his parents at the time of admission in the school, the same cannot be taken into consideration.

Appellant Jaspal Singh never came to the court to challenge the memo that he is not a consumer of the Nigam, rather he is denying that he and his father never went to the Consumer Forum. His father Hardev Singh was using the electricity connection with the help of a servant. Thus, family members were using the electricity connection as agent of the consumer and it was issued in his name and used by his father. The Nigam has maintained the

documents in due course of law. Their validity was never under challenge. Defendant No.2 Narvair Singh stood as guarantor and is also liable to pay the amount with the Nigam. As per provisions of Section 128 of the Indian Contract Act, the liability of the guarantor/surety is co-extensive with that of the debtor.

Therefore, the arguments raised on behalf of the appellant regarding his minority at the time of issuance of electricity connection in question and that the electricity connection in question do not belong to the appellant or his family members stands falsified with the evidence placed on the record. So far as language of affixation of signatures of the appellant on the documents either in Hindu or Punjabi is concerned, it does not affect the authenticity. The person knowing both the languages can sign the document according to his choice. The only question is whether it was signed by him or not. The entry in the school record by itself is not sufficient to prove the exact date of birth of the appellant in the absence of the record maintained by the Registrar of Birth and Death or Chowkidar or any other document produced at the time of admission of the appellant in the school.

Thus, the learned trial Court has taken into consideration all the documents/evidence available on record and arrived at a right conclusion. Hence, the findings recorded by the learned trial court call for no interference and are hereby affirmed.”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in the impugned judgments

and decrees passed by the learned Courts below. Further, he 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 the present regular second appeal is wholly misconceived, bereft of merit and without any substance, thus, it 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

25.07.2017
vishnu

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