

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

**RSA No. 2057 of 2017 (O & M)
Date of Decision:-26.04.2017**

Rajesh Kumar

...Appellant

Versus

Uttar Haryana Bijli Vitran Nigam Limited and others

...Respondents

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

Present:- Mr. Rahul Makkar, Advocate for
Mr. L.M. Gulati, Advocate
for the appellant.

HARI PAL VERMA J.

C.M. No.4957-C of 2017

This is an application seeking condonation of delay of 09 days
in filing the appeal.

For the reasons mentioned in the application, the same is
allowed and the delay of 09 days in filing the appeal is condoned.

RSA No.2057 of 2017

The appellant-plaintiff has filed the present regular second

appeal against the judgment and decree dated 09.12.2016 passed by learned District Judge, Kurukshetra whereby his appeal against the judgment and decree dated 29.1.2016 passed by the Civil Judge (Junior Division), Kurukshetra was dismissed.

Briefly stated, the appellant (hereinafter called 'the plaintiff') had filed a suit for declaration and mandatory injunction with consequential relief of permanent injunction on the averments that the plaintiff is running a confectionery shop under the name and style of 'Raju Confectionery' at Village Ratgal. He has taken the shop on rent from Shyam Lal. He being a tenant is the user of electric connection bearing account No.K22KF562094M at the shop and had been paying the electricity bills issued by the defendant-Nigam regularly. The premises of the plaintiff used to be checked by the official staff of the defendant Nigam regularly at the time of noting the reading of the units of electricity used by the plaintiff. No theft or malpractice of any kind was ever pointed out against the plaintiff. It was only on 3.12.2014 some officials of the defendant Nigam came to the premises of the plaintiff and after checking the electricity meter, they removed the same with an explanation that they have been directed by the UHBVN to change the meter of the plaintiff and to install a new meter. However, after about two months, the plaintiff received an assessment notice dated 8.1.2015 for Rs.76973/- and compounding notice dated 8.1.2015 for Rs.15,000/- from the office of the defendant. The defendants sought an amount of Rs.91,973/- from the plaintiff on the allegation that the plaintiff has committed theft of energy. However, the said assessment

notice was issued without any notice, checking report and any opportunity of hearing. The plaintiff had never committed any theft of energy, therefore, the very assessment notice and compounding notice are illegal and liable to be withdrawn. Since the defendants have not acceded to his request and rather threatened to lodge an FIR, plaintiff had filed the present suit.

The defendants contested the suit and filed written statement taking various preliminary objections including non-maintainability, want of locus-standi, bar of jurisdiction of Civil Court, estoppel, misuse of Court process and concealments of true and material facts from the Court. However, on merits, it has been pleaded that on 3.12.2014 the premises of the plaintiff was checked by the raiding party consisting of Neeraj Grover SDO, Sandeep C.T., Kapil Kumar C.T. and Suresh Kumar Lineman in the presence of plaintiff Rajesh Kumar. The meter of the plaintiff was checked and working of the same was found abnormal. The external and internal firm seals of the meter were found broken/tampered. The load of the plaintiff's premises was found 1.850 KW. The meter was removed and packed in a card box with khakhi tape duly signed by the checking team and the same was sent to M & T Lab, Kaithal so as to check its accuracy, seals and internal examination. The videography was also done. The checking report was signed by the checking party as well as the plaintiff and the checking report was handed over to the plaintiff. Thereafter, the meter was sent to M & T Lab, Kaithal for examination after due intimation to the plaintiff to reach the lab on 6.1.2015 i.e. at the time of checking of the

meter. During checking both firm seals were found broken/tampered and during internal checking of the meter, circuit was found fitted with the meter. Circuit plate and the meter reading counter were found cut and rejoined to disturb the working of the meter. The assessment was calculated on the basis of the load and consumption data of the plaintiff as per the prescribed formula. They have justified the issuance of notices.

The trial Court found that on 3.12.2014 the premises of the plaintiff was checked and electricity meter was removed by the official of the respondent Nigam. The plaintiff has challenged the notice dated 8.1.2015 issued by the defendant asking the plaintiff to deposit Rs.91,973/- as penalty amount and compounding fee. The only defence as put forward by the plaintiff is that the premises was checked on 3.12.2014 and on that day the electricity meter was removed by the official respondents on the pretext of changing the electric meter, but during the course of evidence, plaintiff has admitted in his cross-examination about checking of the electricity meter by the officials of the defendant Nigam on 3.12.2014. He has also stated that the checking was conducted in his presence. He has admitted the checking report Ex.D1, which is otherwise signed by the plaintiff against the column of consumer. The report reveals that external and internal firm seals of meter were found tampered. Even the videography of the spot regarding checking of meter was done and it is in these circumstances the checking report Ex.D1 was prepared in the presence of plaintiff, which is duly signed by him. Therefore, this plea of the plaintiff that the electricity meter was removed only for the reason that the

same was to be replaced with a new one, cannot be accepted. Further, the defendant Nigam had issued a Notice Ex.P9 regarding testing of the meter in M & T Lab, Kaithal and contents of Ex.P9 show that plaintiff has refused to accept the notice. Therefore, the Court has presumed it as deemed service regarding testing of meter at M & T Lab, Kaithal. It is clearly mentioned in the test report Ex.D2 that extra resistance was found fitted with meter circuit plate and 01 number meter reading counter wire was found cut and re-joint to disturb the working of meter. Thus, the testing report Ex.D2 shows that artificial means, by way of fitting extra circuit were used by the plaintiff for creating disturbance of the working of meter. It reveals no matter of doubt that electricity meter of the plaintiff was disturbed for committing theft of energy. Accordingly, the suit was dismissed vide judgment and decree dated 29.1.2016 passed by the Civil Judge (Junior Division), Kurukshetra.

Feeling aggrieved against the said judgment and decree passed by learned Civil Judge (Junior Division), Kurukshetra, the plaintiff filed an appeal before the lower appellate Court. Vide judgment and decree dated 09.12.2016 passed by learned District Judge, Kurukshetra, the appeal was also dismissed.

It is in the aforesaid circumstances, the plaintiff-appellant has filed the present regular second appeal.

Learned counsel for the appellant has argued that both the Courts below have not appreciated the fact that the act of official respondents is contrary to law and no opportunity of hearing was given to

the plaintiff and the alleged checking of the meter was done by the official respondents at their own. The appellant was not allowed to join at the time of alleged checking. The assessment has been done on the basis of sanctioned load, and the amount which the appellant had already paid, was not deducted from the alleged amount of penalty. No details are coming forward in the assessment notice or the compounding notice. The plaintiff has never committed any theft of energy as alleged, therefore, the impugned notice of assessment/penalty is liable to be set aside.

I have heard learned counsel for the appellant.

Admittedly, on 3.12.2014, the officials namely Neeraj Grover SDO, Sandeep C.T., Kapil Kumar C.T. and Suresh Kumar Lineman had checked the premises of the plaintiff in his presence and had found that the meter was working in an abnormal manner. The external and internal firm seals of the meter were found tampered with. As against the sanctioned load of 1.5 KW, the plaintiff was found using 1.850 KW. Even the videography of checking was also prepared. Thereafter, the meter was sent to M & T Lab, Kaithal for examination. The plaintiff was also asked to reach the said Lab on 6.1.2015. During checking, both the firm seals were found tampered and an extra circuit was also found fitted with the meter. Circuit plate and the meter reading counter were found cut and rejoined to disturb the working of the meter. The plaintiff was issued notice dated 8.1.2015 regarding depositing a sum of Rs.91,973/- i.e. the penalty amount and compounding fee. The plaintiff admitted in his cross-examination about the checking of electricity meter by the official of the defendant

Nigam on 3.12.2014 and also that the checking was conducted in his presence. The checking report Ex.D1 was signed by the plaintiff himself. Ex.D1, the checking report further reveals that the plaintiff has put his signature under the column of consumer. As per report, external and internal firm seals of meter were found tampered with and the checking report Ex.D1 was prepared in the presence of plaintiff, which was duly signed by him. Therefore the plea of the applicant that the electricity meter of the plaintiff was removed only for replacing it with new one, has rightly been declined by the Courts below. The defendants have also issued a notice Ex.D9 regarding testing report of the meter in M & T Lab, Kaithal but the plaintiff, who is a consumer, had refused to accept the notice, which led to a presumption that the notice has duly been served. The testing report Ex.D2, clearly mentioned that extra resistance was found fitted with meter circuit plate and 01 number meter reading counter wire was found cut and re-joint to disturb the working of meter.

Thus, as per the testing report Ex.D2, it is clearly established that the plaintiff had fitted extra circuit by way of artificial means for creating disturbance in the working of the meter. In this manner, the electricity meter of the plaintiff was disturbed for committing theft of energy and led to a conclusion that the plaintiff has committed theft of electric energy. It being a case of concurrent finding of facts recorded by both the Courts below, no interference is warranted.

No other point has been argued.

No substantial question of law is involved in the present

regular second appeal. Therefore, the impugned judgments and decrees passed by the Courts below are upheld and the present regular second appeal is dismissed.

April 26, 2017
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No