

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

**RSA No.5827 of 2014 (O&M)
Date of decision : 01.08.2017**

K.C. Yadav

..... Appellant

Vs.

**The DGM/XEN (Enforcement) Dakshin Haryana Bijli Vitran Nigam
Limited and others**

... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. K.S.Yadav , Advocate
for the appellant.

Mr. S.K. Mahajan, Advocate
for the respondents.

AJAY TEWARI, J.(ORAL)

This appeal has been filed against the concurrent judgments of the Courts below dismissing the suit of the appellant whereby he had challenged the levy of penalty under the Electricity Act, 2003.

The appellant was served with a notice under Section 126 of the Electricity Act, 2003 (hereinafter referred to as '*the Act*') alleging that he had been indulging in unauthorized use of electricity and asking him to deposit the amount and the penalty. This was followed by an assessment order under Section 152 of the Act. After making oral requests the appellant had filed the instant civil suit challenging the action taken against

him. The Civil Court dismissed the suit as mentioned above and on an appeal, the lower Appellate Court also dismissed the suit and both the Courts held that the suit itself was not maintainable. To come to this conclusion the lower Appellate Court relied upon a Division Bench judgment of Delhi High Court in the matter of ***U.P. Power Corporation Ltd. and others vs. Anis Ahmad*, 2013(3) RCR (Civil) 947, Uttar Haryana Bijli Vitran Nigam vs. Harjit Singh, 2014(1) Civil Court Cases 475, *M/s Bharat Auto Care vs. Punjab State Electricity Board and another*, 2012(5) RCR 64, *M/s Bharat Auto Care vs. Punjab State Electricity Board and another*, 2012(5) RCR 64 and *B.L. Kantroo vs. BSES Rajdhani Power Limited*, 2009(1) AD (Delhi) 63. In all these cases it was held that the Act contains a complete Code and apart from Section 145 of the Act which specifically bars jurisdiction of the Civil Court with regard to Sections 126 & 127, the creation of a complete Code bars the jurisdiction of the Civil Court by necessary implication. In B.L.Kantroo's case (supra) it was held as follows :-**

“22. It is apparent that the cases of theft under section 135(1) involve mens rea. The jurisdiction of civil court is not barred but the power to try offences punishable under section 135 to 139 is conferred exclusively on the Special Court constituted under section 153 of the Act and the provisions of sub-section (5) of section 154 specifically invest Special Court with the jurisdiction to determine any dispute regarding the quantum of civil liability in theft cases whether or not the allegation of theft is disputed, is still entitled to make such a challenge to the

disputed bill before the Special Court, even in cases where no criminal complaint is filed against the consumer and the amount of civil liability so determined shall be recovered as if it were a decree of a civil court and it can act as civil court as well as criminal court while conducting the cases before it.

28. *It is well-settled that the exclusion of jurisdiction of civil court cannot be readily inferred and the normal rule is that civil courts have jurisdiction to try all suits of a civil nature except those of which cognizance by them is either expressly or impliedly excluded. The scheme of the Electricity Act is complete in itself and thereby the jurisdiction of the civil court to take cognizance of the cases under the Act, by necessary implication, stood barred. The Act provides for the jurisdiction of the Tribunals and/or appropriate forum and also hierarchy of appeals or revisions and gives finality to the orders passed thereunder. This also necessarily implies that the jurisdiction of the civil court to take cognizance of the suit of civil nature covered under Electricity Act stands excluded. Consumer cannot approach civil court without exhausting alternative remedies provided under Electricity Act.*

29. *It is true that ordinarily, the Civil Court has jurisdiction to go into and try the disputed questions of civil nature, where the fundamental fairness of procedure has been violated. By necessary implications, the cognizance of the civil court has been excluded. As a consequence, in the present case, the Civil Court shall not be justified in entertaining this suit and giving the declaration without directing the party to avail of the remedy provided under the Act. Therefore, by necessary implications, the appropriate competent authority should hear the parties, consider their objections and pass the reasoned order, either accepting or negating the claim. Of course, it is*

not like a judgment of a civil court. Civil court has no jurisdiction by necessary implication to entertain suit for declaration and injunction against specially constituted forum in view of the specific provisions found in the Electricity Act. [(1997) 5 SCC 120].

30. *Although there is no specific provision in Section 145 of the Act for exclusion of jurisdiction of Civil Court to entertain any proceeding in respect of any matter which the Special Court is empowered by or under the Act to determine, we are of the view that any dispute about civil liability in theft cases is impliedly excluded from the jurisdiction of civil court in view of the provisions of Section 153 and 154 of the Act wherein special court has got the jurisdiction to determine any dispute regarding the quantum of civil liability specifically in theft cases and the said court can act as civil court as well as criminal court while conducting the cases before it.”*

When learned counsel for the appellant was confronted with this position in law, he has argued that this was a case where the mandatory provisions of the Act were not adhered to and completely unjustified penalty was imposed upon him which can not stand the scrutiny of any legal procedure.

Learned counsel has relied upon the judgment of this Court in the matter of ***DHBVNL and others vs. Smt. Santosh Devi, 2014(4) PLR 115***. In that case this Court though held that a civil suit is maintainable but no reasons was given and none of the above judgment was cited before the Court. He has also relied upon the judgment of this Court in the matter of ***Suraj Bhan vs. UHBVNL and another, 2015(1) R.C.R. (Civil) 894***. In that

case this Court had merely held that against a demand of payment of electricity charges and penalty it was not be open to consumer to move to Special Court. Both the judgments relied upon by the Counsel in no way detract from the precedential value of the judgments relied upon the lower Appellate Court.

In the circumstances, no fault can be found with the finding of the lower Appellate Court to the effect that civil suit was not maintainable. No other question of law arises.

Consequently, the appeal is dismissed. No costs.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

01.08.2017

pooja sharma-I/ashish

**(AJAY TEWARI)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No