IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3712 of 2017 (O&M)
Date of decision: 21.09.2017

Dakshin Haryana Bijli Vitran Nigam Ltd. & another
...........Appellants
Versus

Vinod Yadav
...........Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Pardeep Rajput, Advocate,
for the appellants.

Ritu Bahri, J.

CM Nos.9040-9041-C of 2017

In view of the averments mentioned in the applications, same are allowed and delay in filing and re-filing of the appeal is condoned.

RSA No.3712 of 2017

This appeal has been directed against the judgment of reversal dated 04.03.2016 passed by the Additional District Judge, Gurgaon, accepting the appeal filed by plaintiff (respondent herein) against the judgment & decree dated 26.02.2014 passed by the Civil Judge (Junior Division), Gurgaon and decreeing the suit filed by the plaintiff for declaration and mandatory injunction.

Plaintiff (respondent herein) filed the aforesaid suit for declaration and mandatory injunction to the effect that he was having electricity connection No.CT 3X0763 for non-domestic purpose with sanctioned load of 11 KW at his residence. He had rented out the said premises for a wine shop and had been regularly paying the electricity charges. For the month of March, 2011, plaintiff had received the electricity bill to the tune of Rs.21,759/-. Thereafter, in July, 2011, he approached the Sub Divisional Officer, DHBVNL (defendant No.2) stating that he had not received his bill, however, defendant No.2 gave him checking report dated 10.06.2011 and memo No.1172 dated 13.06.2011. As per plaintiff, no checking was done in his presence and the checking report did not bear signatures of any witness. The defendants (appellants herein) had not provided any checking or assessment details. He had not committed any theft of energy as his meter was installed outside his premises and he was not responsible for any tampering. Therefore, he was not liable to pay the assessed amount of Rs.2,73,958/- and compounding charges of Rs.1,10,000/-. He had also filed a civil suit, however, later on, withdrawn the same on the wrong impression that he had already withdrawn his petition, which was filed before Permanent Lok Adalat. He had requested the defendants to redress his grievances, but to no avail. Hence, the suit.

Upon notice, defendant-appellants filed a joint written statement taking preliminary objections with regard to locus standi; cause of action, estoppel, maintainability, mis-joinder and on-joinder of necessary parties etc. On merits, it was stated that premises of the plaintiff was checked on 10.06.2011, whereupon he was found using electricity for wine shop and *ahata* purposes. Both M & T seals were found tampered. The checking was done in the presence of Sh. Sat Prakash, brother of plaintiff. It was a clear case of theft of energy. It was further submitted that the checking report was legal and valid as the plaintiff was found committing theft of energy. All other allegations levelled by the plaintiff in the plaint were denied and prayer for dismissal of the suit was made.

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

1. Whether the plaintiff is entitled to the relief of declaration as prayer for? OPP
2. Whether the plaintiff is entitled to the relief of mandatory injunction? OPP
3. Whether the plaintiff is having cause of action and locus standi to file the present suit? OPP
4. Whether the plaintiff has not come to the Court with clean hands and has suppressed true and material facts? OPD
5. Whether the present Court is having jurisdiction to try the present suit? OPD
6. Relief.

Trial Court, after going through the evidence led by the parties, dismissed the suit in view of the judgment passed by this Court in ***UHBVN Panipat and others vs. Vinod Kumar,*** 2009 (4) RCR (Civil) 199 (P&H), whereby it was held that cognizance of civil court is excluded by statory provisions by necessary implication. However, on appeal, the first appellate Court reversed the findings of the trial Court and decreed the suit of plaintiff-respondent. While accepting the appeal, reference was made to a judgment passed by Hon'ble the Supreme Court in ***The Executive Engineer vs. M/s Sri Seetaram Rice Mill,*** 2012 (3) Civil Court Cases 68 (SC) and held that where the fundamental provisions of the statute have been given a clear go bye, as in the present case, whereby notice of assessment has not been issued upon the plaintiff in the letter and spirit of Section 126 of the Act and further the guidelines provided by the Nigam in sales circular No.43/07 have also been flouted, the jurisdiction of the Civil Court cannot be ousted. The lower appellate Court proceeded to examine the facts of the present case in view of the sales circular No.43/07, as per which, it was evident that where there were allegations against the consumer that he had tampered with the meter and meter seals were found to be fake or tampered and there was breakage of glass window or existence of hole in th emeter, loose glass, then the electricity team shall refer the said factum as suspected theft cases, unless it is corroborated by consumption pattern of consumer and valid tamper information. As per instruction II (10), the evidence of dishonest abstraction or artificial means should be photographed and seized and memorandum of seizure should be prepared at the spot. But, nothing was done in this case. However, as per instruction II (12) (B), in the case of suspected theft (broken/tampered, fake seals of meter or metering cubicle/cut in incoming PVC cable or any other instance where evidence is not available at site, in that case, inspection team shall not disconnect the supply and shall restore the supply through a new meter of appropriate rating after sealing the original metering equipments at site by Johnson's paper seals. After inspection, the authorised inspecting officer shall prepare a checking report giving details such as connected load/MDI conditions of seals, working of meter and mention other irregularities noticed during checking. If needed, AIO shall remove the meter and put it in a properly sealed cardboard box in presence of consumer or his representative which shall be duly signed by checking team and consumer. Seizure memo would also be prepared. The AIO shall record the particulars of the same in the report before sealing and taking the meter/seals/metering equipments for testing in M&T Lab as per clause (d) or any other agency. The report must be signed by each member of the joint team.

In the present case, the meter was not sent to M&T Lab in order to get the accuracy report. Manoj Yadav, XEN, DHBVN, Gurgaon, while appearing as DW-1 did not state that any seizure memo of meter was prepared, sealed and thereafter, sent to M&T Lab. In his deposition, he did not state anything regarding inspection in an independent lab or issuance of notice to the plaintiff for his appearance in the lab. During cross-examination, this witness has admitted that he was aware about the instructions contained in sale circular No. D 43/2007. No videography was done as per the above said instructions. Rather, after disconnecting the electricity, the instructions were not followed.

Since, Manoj Yadav, XEN, DHBVN, Gurgaon, while appearing as DW-1, himself admitted that no notice was given to the plaintiff to appear in the lab and no videography was done at the time of inspection, the suit of the plaintiff has been rightly decreed by the lower appellate Court, as it was a clear violation of the instructions provided in sales circular No. D 43/2007.

Having examined the impugned judgment of lower appellate Court, no illegality, much less perversity, has been found therein, warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Dismissed

(RITU BAHRI)
21.09.2017 **JUDGE**
ajp