

**RA No.73-C of 2017 in
RSA No.6138 of 2016**

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

**RA No.73-C of 2017 in
RSA No.6138 of 2016
Date of Decision.15.11.2017**

Jawahar Lal

.....Appellant

Vs

Sub Divisional Officer and others

.....Respondents

Present: Mr. Sunil Polist, Advocate
for the applicant-appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

C.M. No.10030-C of 2017

For the reasons stated in the application, delay of 186 days in filing the review application is condoned.

Application is allowed.

RA No.73-C of 2017 in RSA No.6138 of 2016

The present review application has been filed seeking recall of the order dated 09.12.2016 on the premise that the inspection of the premises with regard to the alleged theft was done on 22.03.2002 whereas the new Electricity Act came into force from 26.05.2003 and therefore, order of this Court relegating to the applicant to avail the remedy of approaching the Appellate Court against the alleged demand could not have been granted.

After noticing the aforementioned fact, this Court vide order dated 19.09.2017 called upon the counsel for the applicant-appellant/plaintiff as to how the civil suit was maintainable, once the action

Supreme Court in proceedings taken under the Consumer Protection Act.

The operative part of the order reads thus:-

“Mr. Sunil Polist, learned counsel for the review applicant/appellant submits that the remedy under 2003 Act could not have been availed as inspection of the premises was done on 22.03.2002, whereas the new Act has come into force w.e.f. 26.05.2003, even the provisions of Section 185 of the 2003 Act, dealing with the repealing and saving clause, do not come into rescue or aid. The benefit of Section 14 of the Limitation Act has also been declined. Review applicant/appellant is unable to pursue the remedy of pending appeal in view of the judgment and decree intact.

This Court after going into the aspect of the matter, called upon Mr. Sunil Polist, to answer the query with regard to the maintainability of the suit, after having availed the remedy before the Consumer Court upto Hon'ble Supreme Court, though that remedy is an additional remedy, but the fact of the matter is in what manner the fresh cause of action accrued in filing the civil suit, even if, according to the applicant/appellant, the entire proceedings at the behest of the Electricity Board were vitiated by fraud.

At this stage, learned counsel for the review applicant/appellant prays for short accommodation to show the copy of the plaint.

Adjourned to 09.10.2017.”

On going through the grounds in the original complaint, appeal before the State Consumer Disputes Redressal Commission, revision before the National Consumer Disputes Redressal Commission and grounds of SLP before the Hon'ble Supreme Court, I am of the view that the applicant-appellant had challenged the action of the Electricity Board of having not getting checked the meter, taken from the premises of the applicant-appellant, by the laboratory before the Hon'ble Supreme Court in SLP. For the sake of brevity, relevant portion of paragraph 5 of grounds of the SLP and paragraphs 9, 10, 11, 14 and 15 of the suit for declaration, prohibitory

and mandatory injunction filed before the Civil Court reads thus:-

“5. Grounds:

xxxx

xxxx

xxxx

xxxx

It is submitted that the above finding/observation of the National Commission is factually incorrect, as the meter was never sent to any M&T Lab for inspection. The respondent placed some M&T Lab report dated 09.01.2002 to show that the meter was sent for lab inspection, however, it is inconceivable that when the premises of the petitioner was checked on 22.03.2002 how could a lab report of 09.01.2002 could have come with respect to the meter that was taken away on 22.03.2002.

Paras 9, 10, 11, 14 and 15 of the suit:

9. *That the defendants indulged in malpractice and contempt of court/Dist. Consumer Forum, Kaithal to obtain judgment in their favour and against the plaintiff by tendering a false lab report of some other meter not belonging the plaintiff.*
10. *That the defendants not only mislead the Dist. Consumer Forum, Kaithal but also State Consumer Forum, continuing their fraudulent conduct of misrepresenting of facts regarding the theft of electricity by the plaintiff, which was never done by the plaintiff as the defendants submitted theft report of some other meter not belonging to the plaintiff.*
11. *That due to fraud of defendants the appeal of plaintiff failed before the National Commission as well as Apex Court as the highest forums did not enter into the facts finding regarding the meter of the plaintiff which was allegedly involved in the theft case of the plaintiff.*
14. *That in the execution of the order of DCDRF, Kaithal dated 14.10.2004 which has been obtained by the defendants by per pertaining fraud on the DCDRF, Kaithal and against the defendants and have demanded Rs.1,65,469/- by getting a notice from the DCDRF,*

Kaithal.

15. That the defendants have fraudulently issued a bill for the recovery of Rs.1,65,469/- i.e. by artificially hiking the amount of fine of Rs.42,225/- which was originally imposed by the defendant on the plaintiff by way of registering false case of theft of electricity against the plaintiff. The said bill is arbitrary, false, illegal and based on false lab report of some other meter not belong to plaintiff, fraudulently misused by the defendants in various judicial forums to obtain judgment in their favour.”

Keeping in view the aforementioned, I am of the view that there is error apparent on the face of record by this Court in granting liberty to the applicant-appellant to avail the alternative remedy as provided under the Electricity Act, 2003. Resultantly, the finding given in the order dated 09.12.2016 directing the applicant-appellant to avail the alternative remedy is hereby recalled.

As regards the maintainability of the suit, I am of the view that both the Courts below dismissed the suit and appeal on the ground that the matter had already attained finality in proceedings initiated by the applicant-appellant under the Consumer Protection Act upto the Hon'ble Supreme Court and therefore, the matter could not be re-agitated by filing the suit, particularly when one of the grounds taken in the SLP and the suit is identical. Rather the suit was dismissed on the doctrine akin to *res judicata*.

Learned counsel for the applicant-appellant has not been able to controvert, though had taken a plea that in all the grounds of challenge, the point *viz-a-viz* non-checking of the meter by the laboratory had not been taken upto the proceedings before the National Consumer Disputes

Redressal Commission but the fact of the matter as indicated above reveals that in the SLP before the Hon'ble Supreme Court, the aforementioned plea was availed. On having attained the finality, the applicant-appellant cannot rack up the issue under the garb of civil suit.

I do not find any illegality and perversity in the judgments passed by the Courts below. No ground for interference is made out. The liberty granted by this court is recalled and consequently, the appeal stands dismissed.

The review application is disposed of in above terms.

**(AMIT RAWAL)
JUDGE**

November 15, 2017
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No