

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

325

RSA-1870-1987 (O&M)
Date of decision: 12.09.2018

TARLOK NATH

... Appellant

Versus

JALANDHAR IMPROVMENT TRUST AND ORS ... Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Kabir Sarin, Advocate for the appellant.

Mr. S.C. Pathela, Advocate for the respondents.

AJAY TEWARI, J. (Oral)

This appeal has been filed against judgment of the Appellate Court reversing that of trial Court. The appellant had filed suit for permanent injunction claiming that in auction held by respondent No.1, he had emerged as a highest bidder for plot No.320 in 110 acres which was allotted to him and total price was fixed at Rs.71739-13p. He had paid a sum of Rs.2000/- as earnest money and was to pay remaining amount in four installments. He paid three installments along with the applicable interest. However, he discovered that there was an electricity pole which was situated outside his house and from that electricity pole high tension wires emanated over a portion of his house. He immediately represented to respondent No.1 that he could not enjoy the property with the high tension wire and they should immediately have the high tension wire removed. Despite many such representations, nothing was done but on the other hand, respondent No.1 started claiming penal interest on the fourth installment and that was the stage when the instant suit was filed praying that penal interest could not be demanded.

Respondent No.1 appeared and filed written statement wherein the existence of the pole was not disputed but denied that it had caused any obstruction to the appellant. It was further pleaded that whether or not there

was obstruction, the contract between the parties was binding and the appellant could not be absolved from paying the penal interest on the delayed payment. Two other facts are not disputed; that during the pendency of the suit, instructions were issued to respondent No.1 that in cases where possession could not be delivered, penal interest should not be charged, and that during the pendency of the suit, the respondent deposited the due amount with the erstwhile Punjab State Electricity Board for removing the pole. The trial Court decreed the suit holding that the high tension wire was an obstruction to the plot of appellant and consequently, he was entitled to injunction restraining respondent No.1 from realising penal interest.

The Appellate Court having allowed the appeal, parties are before this Court.

In my opinion, the judgment of the trial Court is correct and that of the Appellate Court is wrong. The Appellate Court has erred in treating the case in a most pedantic manner. It is common sense that if there is high tension wire going over the plot it would cause obstruction in the enjoyment. Once there were instructions (although subsequent) that in such a case, penal interest should not be charged, that principle could well have applied even when those instructions were not strictly applicable. In the circumstances, the judgment of the Appellate Court is set aside and that of the trial Court is restored.

Appeal is allowed.

Since, the main case is decided. Pending civil miscellaneous if any also stands disposed of.

12.09.2018

ashok

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No