

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

CWP No.19699 of 2018
Date of Decision:11.09.2018

Ami Chand Sihag

..... Petitioner

Vs.

Dakshin Haryana Bijli Vitran Nigam Ltd. and others

..... Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.Sushil Kumar Verma, Advocate,
for the petitioner.

RAKESH KUMAR JAIN, J.

The petitioner has challenged the judgment and decree passed by the Special Court, Sirsa dated 17.7.2018 by which the suit filed by him was dismissed.

In brief, the petitioner filed a suit for declaration that the checking report No.050, Book No.378 dated 01.01.2016 prepared by the officials of the respondents and memo Nos.T12/2016/125 and T12/2016/126 dated 16.02.2016 pertaining to the electricity connection bearing No.ST-45/0259 are illegal and arbitrary and are liable to be set aside and also for consequential relief of permanent injunction restraining the respondents from effecting recovery of an amount of ₹2,24,905/- as loss to Nigam and a sum of ₹22,000/- as compounding fee from the petitioners illegally and forcibly.

In short, wife of the petitioner Dayawanti purchased a house bearing No.489 situated at Sector 20, Part-I, HUDA, Sirsa from Jagsir Singh vide registered sale deed No.10214 dated 16.01.2006 along with abovesaid

electricity connection which was in the name of Jagsir Singh. The new account number of the electricity connection of the petitioner is 2531280000. The petitioner received last bill of consumption charges of electricity dated 3.10.2015 for the period from 19.7.2015 to 17.09.2015 with old reading as 47364 and new reading as 47394 i.e. for 30 units but the respondents claimed consumption charges from the petitioner for 1586 units to the tune of ₹13,411/-. The petitioner had allegedly never received such an exorbitant bill after the purchase of the house, therefore, he visited the office of the respondents and was told that the meter had become defective and the petitioner paid a sum of ₹5000/- towards the said bill and lodged a complaint about the replacement of defective meter but the respondents did not take any action and on 17.10.2015, the petitioner sent an email complaint to the respondents but of no avail. He also sent a reminder on 02.12.2015 but no action was taken. Then the wife of the petitioner filed an application under Section 22C of the Legal Services Authorities Act, 1987 [for short 'the Act'] before the Permanent Lok Adalat [for short 'the PLA'] on 29.12.2015. The respondents changed the old defective meter on 1.1.2016 and on 17.2.2016 petitioner was served with checking report dated 1.1.2016 and memos dated 16.2.2016 intimating him that the premises was inspected by the authorized inspecting officer on 1.1.2016 and during the inspection they had found the act of theft/unauthorized use of electricity. The meter was removed and while checking, the seal was found intact but body was found tampered because locks of the meter were broken and after opening the body of the meter, it was found that three numbers of resistances were provided between CT to PSB to disturb the working of the meter. The suit filed by the petitioner was contested by the respondents by filing their reply in which it

Jagsir Singh. It was denied that bill dated 3.10.2015 was served with the old reading 47364 and new reading 47394 rather the old and new reading were 47394 as the meter was dead since November, 2014 and the reading of the meter was stable at 47394 and the consumption charges were assessed on the average basis as per the rules of the respondents. It was admitted that the meter was replaced on 1.1.2016 when the officials of the respondents visited the premises of the petitioner for replacement of the old defective meter, the meter was removed and packed in a cardboard with signature of consumer and checking team and a new meter bearing No.0224901 was installed and the old meter was sent to M&T Lab, Sirsa for checking. It was also averred that the petitioner was present at the spot and was asked to sign the checking report but he refused to sign the same. The petitioner was also asked to be present during testing of the meter in the lab. The son of the petitioner was present in the M&T Lab, Sirsa. It was observed by the officers of the M&T lab that body of the meter was tampered as its locks were broken. It was also found that three number resistances are provided between CT to PCB to disturb the working of the meter.

On these pleadings, the issues were framed by the Trial Court in which issue No.1 was on merits on which both the parties led their oral as well as documentary evidence and a categoric finding has been recorded by the learned trial Court on issue No.1 while discussing the entire evidence led by both the parties and the suit was dismissed.

Learned counsel for the petitioner, while assailing the judgment and decree of the Special Court, has submitted that the meter was removed and packed in his presence at the time it was sent to M&T Lab for inspection which is contrary to record because it has been specifically mentioned in the checking report that the petitioner has refused to sign the checking report.

Otherwise, the meter was checked in the lab in the presence of the son of the petitioner.

The learned Court below has recorded a categorical finding, which is reproduced hereunder for the purpose of ready reference:-

“8. The plaintiff Ami Chand Sihag while appearing as PW1 has reiterated the facts mentioned in the plaint on oath in his affidavit Ex.PW1/A given by him in his examination-in-chief. Rajesh Sharma, ALM (PW2) has proved the calculation Ex.P13 and has admitted that acknowledge Ex.P8 was issued by his department.

9. D.R. Verma, Executive Engineer while appearing as DW1 has reiterated the facts mentioned in the written statement on oath in his affidavit Ex.DW1/A given by him in his examination-in-chief. Surender Kumar, SDO (DW2) and Wazir Chand, JE (DW3), while corroborating the statement of DW1, have also reiterated the facts mentioned in the written statement on oath in their affidavits Ex.DW2/A and Ex.DW3/A respectively given by them in their respective examination-in-chief.

10. Checking report dated 01.01.2016 Ex.D1/Ex.P3 shows that the consumer refused to sign the same and this fact and the

checking report Ex.D1/Ex.P3 have been duly proved by the witnesses of the defendants.

As per checking report Ex.D1/Ex.P3, old meter was removed and new meter was installed. The defendants gave a letter No.32 dated 06.01.2016 to Dayawanti, the wife of the plaintiff, asking her to come to M&P lab on 07.01.2016 at 11.00 AM to get the meter checked in her presence. The defendants further gave a letter No.99 dated 18.01.2016 to Jagsir Singh, in whose name, the removed meter was, asking him to come present in M&P lab on 21.01.2016 at 11.00 AM to get the meter checked in his presence. Vide joint checking report Ex.D4/Ex.D1 dated 11.02.2016, the removed meter of the plaintiff was checked and the seals were found intact but body was found tampered because locks were broken. It was also observed in joint checking report Ex.D4/Ex.D1 dated 11.02.2016 that there was no need to check the accuracy of the meter because body of the meter was found tampered and therefore, any manipulation could have been done at any time and after opening the body of the meter, it was found that three numbers of resistances were provided between CT to

PCB to disturb the working of the meter. The said joint checking report has been signed and proved by Wazir Chand (DW3) and Surender Kumar (DW2) and the same has been signed by Amit Kumar, the son of the plaintiff. It has been admitted by the plaintiff Ami Chand Sihag in his cross-examination that under Section 22-C of Legal Services Authority Act, an application was given by him before Permanent Lok Adalat and that the defendants had appeared there and had filed written statement. This witness again said that the application was given by his wife Dayawanti, who is the owner of the house. This witness has admitted in his cross-examination that in that very application, the defendants had given an application to the Permanent Lok Adalat that they wanted to get the meter checked from the laboratory and that order be given to the plaintiff to be present while checking of the meter. This witness has further stated in his cross-examination that he did not appear at the time of checking. The plaintiff admitted in his cross-examination that his son Amit Kumar had appeared during the checking of the meter and this witness has admitted the

signature of his son Amit Kumar on the joint checking report Ex.D4/Ex.D1. No objection of any kind was raised at that time by Amit Kumar, the son of the plaintiff and Dayawanti. Therefore, on the basis of calculation Ex.D7, memo No.T12/2016/125 dated 16.02.2016 Ex.D5/Ex.P1 was issued by the defendants as order of assessment by licensee of theft under Section 135 of the Electricity Act, 2003 and memo No.T12/2016/126 dated 16.02.2016 Ex.D6/Ex.P2 was issued by the defendants as a notice to consumer by licensee for compounding of the offence of theft of electricity under Sections 135 and 152 of the Electricity Act, 2003. Therefore, it does not lie in the mouth of the plaintiff to say that the meter Ex.P9 was not the same which was removed on 01.01.2016 which has been duly packed on the spot by Surender Kumar (DW2). Learned counsel for the plaintiff has relied upon the law laid down in Harbans Singh Versus Punjab State Power Corporation Limited and others 2017 (4) Law Herald (P&H) 3210 wherein it has been observed by the Hon'ble Punjab and Haryana High Court that presence of

consumer is required at the time meter is removed and such meter shall be packed and sealed in the presence of consumer for further checking in ME labs. In the present case, at the time of checking, the plaintiff refused to sign the checking report Ex.D1/Ex.P3 and at the time of checking of the meter, the son of the plaintiff was present. Therefore, the requirements of Harbans Singh's case (supra) have been fulfilled by the defendants. Further, the house, in which, the meter was installed, is in the name of Dayawanti, the wife of the plaintiff who filed an application before Permanent Lok Adalat. The electricity connection is in the name of Jagsir Singh, from whom, the house was purchased by Dayawanti. The present suit has been filed by Ami Chand Sihag, the husband of Dayawanti and their son Amit Kumar was present at the time of checking of the meter in M&P lab.

11. The plaintiff has miserably failed to prove that the impugned notices Ex.D5/Ex.P1 and Ex.D6/Ex.P2 and checking report Ex.D1/Ex.P3 are wrong, illegal, null and void and are liable to be set aside

whereas the defendants have fully established their case by leading oral as well as documentary evidence. It is a settled law that oral evidence is excluded by documentary evidence i.e. when there is documentary evidence on record, then oral evidence has no value. Accordingly, issue No.1 is decided against the plaintiff and in favour of the defendants.”

In view of the aforesaid, I do not find any reason to interfere in this petition and the same is hereby dismissed though without any order as to costs.

11.09.2018

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking /reasoned : Yes/No

Whether Reportable : Yes/No