

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

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RSA No.4286 of 2011 (O&M)

Date of Decision : 07.08.2018

M/s Guru Nanak Plastic Ind.

..... Appellant

Versus

Punjab State Electricity Board now
Punjab State Power Corporation Ltd. and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present :- Mr. B.S.Sidhu, Advocate
for the appellant.

Mr. Ramandeep Singh, Advocate
for the respondents.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the concurrent judgments of the Courts below dismissing a suit filed by the appellant.

The brief facts are that the appellant was running a plastic industry at Bathinda. On 14.06.2001 the checking staff checked the meter and finding some discrepancies removed it and took it to the M.E. Lab where it was checked on the next date on 15.06.2001. A hole was found in the meter on the basis of that a notice was issued on 15.06.2001 to the appellant asking him to show cause why recovery of Rs.1,57,138/- be not recovered from him. The appellant challenged that by way of filing a civil writ petition in this Court. That writ petition was ultimately dismissed by giving liberty to the appellant to approach the Dispute Settlement Authority (DSA). The DSA dismissed his claim. He filed an appeal against that but

abandoned the same. Thereafter he filed one other writ petition which was also dismissed and two civil suits which were withdrawn.

In the meantime, as per the directions of the DSA the liability of the appellant was reassessed and after reassessment a notice dated 17.08.2007 was issued to him asking to show cause why recovery of Rs.3,00,701/- be not made from him. The payment not having been made his electricity connection was dis-connected. It was in these circumstances that the instant suit was filed.

Both the Courts below noticed the prolonged litigation which the appellant had initiated. They also noticed that his assertion that the inspection and checking were *ex-parte* was wrong and ultimately dismissed the suit. Before me the only argument raised by the learned counsel for the appellant is that as per Section 56 Sub section (2) of the Electricity Act, 2003 (for short 'the Act') no claim could have been made beyond 2 years. A perusal of that Section however reveals that there is an exception to the two years limitation and that is that the amount is constantly shown as recoverable.

I put it to the learned counsel for the appellant if there was any averment in the plaint that the amount was not shown as recoverable; the counsel for the appellant has produced the copy of the plaint for my perusal. Both of us have perused the same and counsel for the appellant has admitted that there is no specific assertion to this effect though he has tried to explain it by way of saying that there is an assertion that the notice is not as per the Act.

In my opinion, this omnibus assertion would not suffice. Had the appellant taken the specific plea that the amount was not constantly shown as recoverable and the respondents had not filed any reply to it or had not denied the same, the applicability of Section 56 sub Section (2) of the Act would have been undisputed. However, in the absence of any such assertion there was no ground for the respondents to have given any explanation for this.

Though the counsel for the appellant has argued that it is a pure question of law but in the absence of the proper averments it has to be taken to be a mixed question of law and fact and since the same was not raised in the plaint it would not be permissible to allow this question to be raised in second appeal.

Appeal stands dismissed.

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

(AJAY TEWARI)
JUDGE

07.08.2018
pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No