

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

RSA No.1793 of 2016 (O&M)

Date of decision:12.11.2018

Viom Networks Ltd. (earlier known as Tata Indicom,
Wireless TATA Tele Infotech Services Ltd.) ... Appellant

Vs.

Rajesh ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vishal Gupta, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-defendant has not been successful in defending the appeal preferred by the respondent-plaintiff against the judgment and decree of the trial Court whereby suit claiming damages to the tune of ₹3,52,000/-, dismissed by the trial Court, has been decreed by the Lower Appellate Court.

The case set up before the Courts below was that owing to erection of tower by the appellant-defendant, damages had been caused to the house of respondent-plaintiff which was quantified in terms of money. The defendant contested the suit by denying the damages on the basis of erection.

Learned counsel appearing on behalf of the appellant-defendant submitted that except the valuation report, Ex.PW1/A, no other evidence

has been led on behalf of the plaintiff to establish that damage was on account of erection of tower, in essence, its age and duration. On the basis of aforementioned evidence, the trial Court rightly dismissed the suit. The the Lower Appellate Court has ignored the fact that house of the plaintiff is at the distance of 10 feet from the tower installed by the defendant company. It has been proved on record that wall of the house has been erected with mud mortar. It is not in permanent in nature, therefore, there is gross illegality and perversity in the judgment and decree rendered by the Lower Appellate Court.

I am afraid the aforementioned argument is not sustainable in the eyes of law as this Court had asked Mr. Gupta, to apprise whether any permission from the competent authority to erect the pole has been taken or not? The answer was in negative, though it has not been noticed by the Lower Appellate Court but I cannot remain ignorant of the aforementioned fact. No person can be permitted to erect the tower on the land belonging to the Government and cause damages. The finding of the Lower Appellate quantified the damages to the tune of ₹2,46,400/- cannot be said to be a ground for interference and suffering from illegality and perversity.

The appeal is accompanied by two applications seeking condonation of delay of 224 days in re-filing and 276 days in filing the appeal. The explanation given in the applications is also bereft of the cogent reasons to bring the case within the reasonable cause.

The appeal is dismissed on limitation as well as on merits.

(AMIT RAWAL)
JUDGE

November 12, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No