

RSA No.2041 of 2016

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

RSA No.2041 of 2016
Date of decision: 02.05.2018

Dakshini Haryana Bijli Vitran Nigam and others

.....Appellants

versus

Santokh Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Padamkant Dwivedi, Advocate, for the appellants.
Mr. Ajay Pathak, Advocate, for the respondent.

RAMENDRA JAIN, J. (ORAL)

Unsuccessful defendants, after losing in two Courts have filed the instant Regular Second Appeal, challenging the judgments and decrees of both the Courts below, whereby demand notice dated 06.01.2006 (Ex.P5) issued by the appellants-Nigam to the respondent-plaintiff has been set aside.

Put pithily, electricity meter of the respondent-plaintiff got burnt on 29.12.2005. On that very date, respondent-plaintiff informing the said fact to the appellants-Nigam, moved application for change of his electricity meter. Pursuant thereto, officials of the appellants-Nigam inspected the premises of respondent-plaintiff and reported about the burning of meter with seals intact on that very date. Showing non-availability of electricity meter in their stock, officials of the appellants-Nigam asked the respondent-plaintiff to bring a new meter by purchasing the same from the market from his own pocket. Respondent-plaintiff did so, but the officials of the

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appellants-Nigam refused to accept the electricity meter so brought before them on the ground that the same was not suitable, forcing the respondent-plaintiff to spend further from his own pocket for purchase of second meter.

On production of the second meter by the respondent-plaintiff, the same was sent by the appellants-Nigam to its laboratory for its sealing purposes. Thereafter on 05.01.2006, the officials of the appellants-Nigam removed the burnt meter from the premises of the respondent-plaintiff without installation of new meter and issued memo (Ex.P5) on the very next date demanding an amount of ₹2,25,800/- as penalty from the him levelling allegations that he was found committing theft of electricity. The respondent-plaintiff challenged the said demand notice (Ex.P5) before the District Consumer Disputes Redressal Forum and got success vide decision dated 25.01.2007.

Being aggrieved, appellants-Nigam challenged the order aforesaid before the State Consumer Disputes Redressal Commission, which directed the appellants to approach the civil Court showing its inability for want of jurisdiction to entertain such type of disputes. Consequently, respondent-plaintiff approached the civil Court by way of a suit for declaration that notice Ex.P5 was wrong and illegal. Relief for permanent injunction to restrain the appellants-Nigam to effect any illegal recovery from him was also sought.

The trial Court, after due notice to the appellants-Nigam and holding trial decreed the suit vide judgment and decree dated 10.03.2014.

Being aggrieved, appellants-Nigam approached the First Appellate Court, but remained unsuccessful as their appeal too was

dismissed vide judgment and decree dated 28.08.2015.

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Learned counsel for the appellants-Nigam contends that both the Courts below failed to appreciate that their jurisdiction was barred to entertain the suit of the respondent-plaintiff in view of the provisions of Section 145 of the Electricity Act, 2003 (for short the 'Act'). The respondent-plaintiff instead of approaching the civil Court having no jurisdiction in view of above provisions ought to have approached the Special Court constituted under Section 154 of the Act. In support of his contentions, learned counsel for the appellants relied upon the judgments in ***Hari Chand v. Dakshin Haryana Bijli Vitran Nigam Ltd. and another***, 2015(1) R.C.R.(Civil) 58 (P&H), ***Dakshin Haryana Bijli Vitran Nigam Ltd. and another v. Permanent Lok Adalat, Public Utility Services, Gorgaon and another***, 2016(2) PLR 634 (P&H) and ***Sh. B.L. Kantroo v. BSES Rajdhani Power Ltd.***, 2009(1) AD (Delhi) 63.

On the other hand, learned counsel for the respondent-plaintiff vehemently opposing the above submissions of learned counsel for the appellants-Nigam, pleaded the legality and validity of the impugned judgments and decrees.

Having given considerable thought to the submissions made by learned counsel for both the sides, I find this appeal completely devoid of any merit for the reasons to follow.

No question of law muchless substantial has been raised in this appeal.

There are concurrent findings of both the Courts below in favour of the respondent-plaintiff.

Undisputed facts in this case are that meter of the respondent-

plaintiff burnt on 29.12.2005. He reported about the same to the officials of

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the appellants-Nigam on the same day and on the directions of the officials of the appellants-Nigam bought a new meter and handed over the same to them. New meter purchased by the respondent-plaintiff from his own funds was sent by the officials of the appellants-Nigam to laboratory for sealing. Burnt meter of the respondent-plaintiff was removed on 05.01.2006 without installation of a new meter. All these events happened within eight days. Thereafter on ninth day i.e. on the very next day after removal of the meter, appellants-Nigam issued demand notice (Ex.P5) asking the respondent-plaintiff to deposit ₹2,25,800/-, levelling allegations against him that he was found committing theft on the basis of some physical checking at the spot by checking team of the appellants-Nigam and son of the respondent-plaintiff refused to sign the said checking report.

It is quite strange that at the time of removal of burnt electricity meter of the respondent-plaintiff on 05.01.2006 no electricity theft was found by officials of the appellants-Nigam. However, on the same day, checking team vide its another report (Ex.P6) reported that electricity meter of the respondent-plaintiff was found tampered. The said report of the officials of the appellants-Nigam is quite contrary to the checking report of the officials of the appellants-Nigam dated 29.12.2005, pursuant to the application of the respondent-plaintiff, informing him that his meter has burnt inasmuch as on 29.12.2005 the seal of the meter of the respondent-plaintiff was found 'ok', but its terminal plate was found burnt.

In view of the above factual position, when the meter of the respondent-plaintiff had burnt and it was not recording electricity consumption, in that eventuality, there was no necessity for the respondent-

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labelled as a thief by the officials of the appellants-Nigam without any basis and installation of a new meter.

It is noteworthy that giving remark on any report by the checking team of the appellants-Nigam that consumer or his son refused to sign, is very easy being within the domain of the officials of the appellants-Nigam. Therefore, in the absence of any cogent and convincing evidence so to be led by the appellants-Nigam qua the above fact, the remark of the officials of the checking team in its report that the consumer refused to sign is not believable, more particularly, when in most of the cases this illegal exercise is adopted by the officials of the appellants-Nigam to harass the general public at large.

That apart, no show-cause notice was ever issued to the respondent-plaintiff before raising demand Ex.P5 of exorbitant amount of ₹2,25,800/-. Through the said demand notice, only three days' time was given to the respondent-plaintiff to deposit the amount aforesaid. The said action of the appellants-Nigam is totally illegal in view of the settled proposition of law of natural justice. It was mandatory for the appellants-Nigam to issue notice to the respondent-plaintiff to show cause as to why the amount of penalty and consumption charges shown in the demand notice Ex.P5 should not be recovered from him and only thereafter should have proceeded further in the matter.

This Court in ***RSA No.3933 of 2017*** titled ***Dakshin Haryana Bijli Vitran Nigam Ltd. and others v. Jaswant @ Jaibir*** decided on 30.08.2017 in similar situation and circumstances has held that civil Court has jurisdiction to try and decide such type of matters.

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counsel for the appellants are not identical to the facts of the present case, therefore, no benefit of the same can be given to the appellants.

I have gone through the impugned judgments of both the Courts below and find no illegality or perversity in the same. Rather they are well-reasoned.

Resultantly, this appeal being devoid of any merit, is hereby dismissed.

May 02, 2018
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No.