

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

RSA No.4347 of 2013 (O&M)

Brij Lata Parmar

....Appellant

Versus

Punjab State Electricity Board and Ors.

....Respondents

Date of Order: 14.3.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vijay Lath, Advocate for the appellant.

Mr. Mukul Aggarwal, Advocate for the respondents.

AMIT RAWAL, J (ORAL)

CM No.11739-C of 2013

For the reasons stated in the application, which is supported by an affidavit, the same is allowed. Delay of 83 days in re-filing the appeal is condoned.

RSA No.4347 of 2013

Appellant-plaintiff is aggrieved of the concurrent findings of facts recorded by both the courts below vide judgment and decree dated 31.7.2012 passed by learned Addl. Civil Judge (Sr. Division), Rupnagar whereby his suit has been dismissed and vide judgment and decree dated 10.1.2013 the appeal filed before the lower Appellate Court also met with the same fate.

Plaintiff filed the suit for declaration of the letter No.403 dated 10.3.2008 in respect of recovery of Rs.3,96,846/- qua Account No.HF-52/2137 issued by defendant No.3-Assistant Executive Engineer, D.S Division, PSEB, Ropar to be null and void; with further declaration of

recovery of Rs.4,09,436/- to be illegal along with Consequential relief of permanent injunction restraining the defendants from recovering any amount or disconnection of the electricity connection. It was pleaded that the plaintiff was having electricity connection bearing No.HF-23/2137 which was installed at Parmar Nursing Home, Ropar for the last many years with the sanctioned load of 87.26 KW. Defendant No.3 issued the aforesaid letter claiming an amount of Rs.3,96,886/- to be recovered from the plaintiff on the premise that as per the Audit Report, the difference of 12590 units was found for the period w.e.f June 2003 to December 2007 and the meter was changed in the month of June 2003. It was also pleaded that thereafter vide another letter, the amount in respect of demand was changed from Rs.3,96,886/- to Rs.409436/-,. The Department could not have recovered the amount after the lapse of five years and it was time barred recovery. Plaintiff had been paying electricity bills as per actual consumption and on verification also, no case of meter tampering or violation of any principles of the Electricity Regulations was found.

Upon notice, the defendants filed written statement and raised objections qua maintainability, jurisdiction, concealment of material facts and cause of action etc. On merits, it was stated that in respect of the bills being sent to the plaintiff, the formula MF-2 was to be applied in place of MF-1. It was stated that the trial Court did not have jurisdiction to try the suit in terms of Section 143 of the Electricity Act, 2003. The trial Court on the basis of pleadings of parties, framed the following issues:

- “1. Whether plaintiff is entitled to the declaration as prayed for ?OPP*
- 2. Whether plaintiff is entitled to the permanent injunction as prayed for?OPP*

3. *Whether the suit is not maintainable in the present form?OPD*
4. *Whether this Court has no jurisdiction to entertain and try the present suit?OPD*
5. *Whether the plaintiff has not come to the Court with clean hands and has suppressed the true and material facts from the Court?OPD*
6. *Whether the plaintiff has no cause of action to file the present suit?OPD*
7. *Whether the suit is bad for non-joinder of necessary party?OPD*
8. *Relief.”*

In order to prove their case, both the parties led their evidence and tendered in evidence certain documents and the trial Court on the basis of material placed on record, dismissed the suit observing that the suit was not maintainable as the Civil Court was not empowered to entertain any suit under 2003 Act. Feeling dissatisfied the plaintiff filed an appeal, which has also been dismissed by the lower Appellate Court, hence the present appeal.

Learned counsel for the appellant submitted that the findings returned by both the courts below are not sustainable in law. The jurisdiction of the civil Court is only barred where the matter pertains to passing of an order by the Assessing Officer under Section 126 of the Electricity Act, 2003 or by the Appellate Authority under Section 127 of the 2003 Act whereas in the present case, there was no such provisional assessment calling upon the consumer to raise objection resulting into final assessment. He submitted that no show cause notice or any opportunity of hearing was given to the appellant before arbitrarily calculating the amount of the bills nor any material was placed on record to show that the Forum

was not empowered. He further submitted that the respondents could not claim bill beyond the period of limitation of three years but both the Courts below have failed to appreciate all the relevant evidence and material placed on record in this respect.

Per contra, learned counsel for the respondents-defendants submitted that the jurisdiction of the Civil Court, in the light of provisions of Section 145 of the Electricity Act was barred. In fact, due to change of the meter, inadvertently the MF-1 formula was applied whereas the actual amount as levy-able per formula MF-2 was liable to be recovered from him, therefore, the plaintiff cannot be allowed to take the benefit of this clerical mistake. He therefore submitted that the suit of the plaintiff-appellant has rightly been dismissed by both the courts below.

After hearing learned counsel for the parties and appraising the paper book, I find merit in the contention of learned counsel for the appellant. Concededly, it has been brought on record that before raising the demand vide aforesaid letter under subject matter of challenge, no opportunity of hearing or any show cause notice was given to the plaintiff. The Electricity Board was at fault while raising the demand by applying the formula MF-1 instead of MF2. The respondents-Board neither placed on record any previous bill to show that previously, the Formula MF2 was being applied nor examined any witness to prove this fact.

Both the courts below have committed illegality and perversity in not adjudicating the controversy on merit since the jurisdiction of the Civil Court would be barred only in those cases where the provisions of the 2003 Act are not complied with. As noticed above, the demand raised by the respondents was without jurisdiction and in such circumstances, the

plaintiff had remedy either to approach the writ Court or the Civil Court. Once, it has been proved on record that the respondents-Department did not adhere to the principles of natural justice or was not confronted with the audit report, in my view, the Electricity Board was not justified in raising demand after a lapse of approximately five years.

Since both the courts below have not adjudicated the controversy on merit, it is a fit case where the lower Appellate Court being the last court of facts be directed to decide the matter on merits without taking into consideration the objection raised qua maintainability of the suit.

Accordingly, the appeal is accepted. Both the judgments and decrees of the courts below are set aside and the matter is relegated to the lower Appellate Court to decide the appeal on merits in accordance with law. Parties are directed to appear before the lower Appellate Court on 16.4.2018.

March 14, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No