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

RSA No. 3246 of 2016 (O&M)
Date of decision: 24.5.2018

UHBVNL and another

… Appellants

Versus

Megh Nath

… Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Ms. Geeta Sharma, Advocate
for the appellants.

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<u>ARUN PALLI, J.</u> (Oral)

The suit filed by the respondent-plaintiff was decreed by the trial court, vide judgment and decree dated 9.12.2014. As even the appeal preferred against the said decree failed, and was dismissed on 3.12.2015, the defendants are in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for a declaration that memo Nos. 91 and 92, dated 15.1.2013, served upon the plaintiff, were illegal, null and void, and not binding upon him, thus, liable to be set aside, with consequential relief of mandatory injunction, requiring the defendants to restore his electric

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supply, and refund the amount that had since been recovered.

On a consideration of the matter in issue and the evidence on record, both the courts concurrently concluded that ex facie, the assessment made by the defendants, vide memo No. 91 dated 15.1.2013, was in breach of the provision of Section 126 of the Electricity Act, 2003. For, in terms of Section 3 of the Act, a provisional order of assessment was required to be served upon the person in occupation of the premises, in which the electricity connection was installed. Whereupon, the objections could be filed against the provisional assessment before the Assessing Officer. Still further, the Assessing Officer before passing a final order of assessment, was required to afford reasonable opportunity of being heard to the person at whose instance the amount was payable. However, as per the case set out by the defendants themselves, checking report was not signed by the plaintiff. Ex facie, nothing was brought on record to show that any order of provisional assessment or penalty was ever passed. Likewise, the defendants also failed to show that the plaintiff was, indeed, afforded any opportunity of hearing before the final assessment was made. Thus, in the matter at hands, the Assessing Officer straightway imposed final assessment and served notices upon the plaintiff, which showed that no provisional assessment was made, though mandatory in terms of Section 126 (2) of the Act. That being so, the only and the inevitable conclusion that could be reached: the impugned memos No. 91 and 92, dated 15.1.2013, were liable to be declared as null and void. And, the plaintiff was required to be refunded the amount recovered pursuant thereto.

On being pointedly asked, learned counsel for the appellants could not show if the findings recorded by both the courts were either

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contrary to the record or suffered from any material illegality.

No question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit, is accordingly dismissed.

24.5.2018
AK Sharma

(ARUN PALLI)
JUDGE

Whether speaking / reasoned: YES
Whether Reportable: NO