

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

RSA No.5415 of 2016 (O&M)

Date of Decision: 19.07.2018

U.H.B.V.N. and another

... Appellants

Versus

Vijay Kumar

... Respondent

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Sumit Jain, Advocate,
for the appellants.

TEJINDER SINGH DHINDSA, J.

CM No.14074-C of 2016

Instant application has been filed under Section 5 of the Limitation Act seeking condonation of delay of 161 days in filing the accompanying appeal.

Perusal of the application and the contents thereof reveal that routine grounds have been cited by the State's instrumentality seeking condonation of delay.

In the considered view of this Court, the grounds raised in the application do not constitute sufficient and justifiable basis for condonation of delay.

Prayer is declined.

Application dismissed.

Main case

Defendant Uttar Haryana Bijli Vitran Nigam Limited is in second appeal before this Court.

Brief facts of the case are that plaintiff (respondent herein) Vijay Kumar instituted a suit for declaration assailing two notices served upon him under Section 135 and Section 152 of the Electricity Act.

Consequential relief of permanent injunction was sought restraining the defendant from disconnecting the electricity connection of the plaintiff under the garb of the impugned notices. It was averred in the plaint that on 17.09.2013, Dinesh Kumar, Junior Engineer checked the premises of the plaintiff and removed the electricity meter installed on the basis of suspicion of theft of electricity. Power was restored by installing another meter. Notice regarding assessment of theft of electricity and penalty amounting to Rs.63,328/- was served. The second notice dated 17.10.2013 under Section 152 of the Electricity Act was also issued regarding compounding fee of Rs.16,000/-. Case set up on behalf of the plaintiff was that after installation of the check meter, if the meter is found to be faulty, the consumer was required to be intimated. The defendant Nigam has replaced the defective meter without observing the rules and procedure laid down under the Act itself. Further more, it was asserted on behalf of the plaintiff that the seals which were provided at the time of installation of meter were existing at the time of alleged checking, therefore, there was no conclusive evidence with regard to theft.

Suit of the plaintiff was contested. In the written statement, it was submitted that on 17.09.2013 premises of the plaintiff was inspected by the authorized official. The meter was

checked and it was found that the body of the meter had been tampered with and had been refixed by some adhesive. Thereafter, meter was removed and tested in the M & T lab and the meter in question was found slow by 80%. It was further stated that the entire process had been videographed and the checking of the meter had been done in the presence of the plaintiff.

Trial Court decreed the suit of the plaintiff vide judgment and decree dated 18.09.2014. Civil appeal preferred by the defendant Nigam has been dismissed vide decision dated 17.11.2015 passed by the learned Additional District Judge, Karnal. Resultantly, the instant second appeal.

Counsel for the appellant has been heard at length.

The issuance of the impugned notices with regard to assessment of theft and compounding fee has been justified by the appellant Nigam on the strength of M & T lab report which apparently reflected that the meter in question was operating at a lower level i.e. 80% slow. As per appellant Nigam, this would be conclusive of tampering and theft on the part of the consumer.

In the considered view of this Court such presumption is flawed. A technical glitch may occur in an electricity meter thereby slowing it down. It will not always be a case of tampering. It was incumbent and obligatory for the appellant Nigam to corroborate the M & T lab report by adducing on record certain documents in the shape of electricity bills of the previous period as also after installation of the new meter which would reflect the consumption pattern of electricity by the plaintiff/respondent and

to demonstrate that for a particular time period, the consumer had committed theft of electricity by 80%.

Counsel for the appellant has during the course of hearing fairly conceded that no such document reflecting such consumption pattern had been relied upon even though the entire record was with the Nigam. To the contrary, the plaintiff had adduced and placed on record electricity bills Ex.P-1 to P-5 which were the subsequent bills that had been issued by the Nigam after installation of the new meter and which would reflect that the units of electricity consumed by the plaintiff even after installation of the new meter were more or less same as recorded by the old meter and which was alleged to have been tampered.

In the facts and circumstances of the case, this Court does not find any basis that would warrant interference in the view taken by the trial Court and as affirmed by the Lower Appellate Court.

Instant appeal does not raise any substantial question of law.

Appeal is dismissed on merits as well as on the ground of delay.

dismissed.

19.07.2018

vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No