

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4400 of 2015 (O&M)

Date of decision: 07.08.2018.

Gurjit Singh

...Appellant

Versus

Dakshin Haryana Bijli Vitran Nigam Ltd. and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Rahul Gautam, Advocate for the appellant.

LISA GILL, J.

The appellant is aggrieved of judgment and decree dated 19.12.2014 passed by the learned Additional District Judge, Gurugram, whereby the judgment and decree dated 27.03.2014 passed by the learned Civil Judge (Junior Division), Gurugram has been set aside and the suit filed by the plaintiff has been dismissed.

The plaintiff, who is a consumer of electricity from Dakshin Haryana Bijli Vitran Nigam Ltd. ('Nigam' for short), filed the suit for declaration to the effect that the amount of Rs.85,000/- demanded by respondent-Nigam, vide memo No.1619 dated 03.09.2012, as well as changing of tariff to small power purpose instead of domestic purpose, is illegal, unlawful and unjustified, against the principles of natural justice and against the settled law in violation of the instructions of Nigam. Decree of permanent injunction restraining the defendants from disconnecting the electricity connection and seeking recovery of impugned amount was also sought. It was thus prayed that suit be decreed.

Defendants resisted the suit. Written statement was filed wherein preliminary objections were raised. It was denied that any kind of illegal and unlawful action has been taken by the Nigam. It was specifically pleaded that the sum of Rs.85,000/- had been deposited in excess pursuant to the decree dated 15.03.2011 in favour of the plaintiff. The defendant/Nigam had been directed to refund a sum of Rs.2,00,000/- to the appellant who was acquitted of the charge of theft of electricity. However, an amount of Rs.2,85,000/- was deposited pursuant to the said judgment and decree dated 15.03.2011 (Ex.PW1/3). Thereafter, on realizing the error, notice dated 03.09.2012 (Ex.PW1/7) was issued asking the appellant to refund the deposited excess amount. The suit it was thus pleaded be dismissed.

Replication was filed.

From the pleadings of the parties, following issues were framed by the learned trial Court:-

- “1. Whether the plaintiff is entitled to decree for declaration, permanent injunction and mandatory injunction as prayed for?
OPP
2. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD
4. Whether the plaintiff has not come to the court with clean hands and has suppressed the true and material facts from the court?
OPD
5. Whether the plaintiff has not affixed proper court fee on the plaint? OPD

6. Whether the plaintiff is bound by his own act, conduct, omission, commission etc.? OPD
7. Relief.”

Evidence was led by both the parties. Learned trial Court decided issue No.1 in favour of the appellant. Issues No.2 to 6 were decided against the defendants being not pressed. Suit filed by the plaintiff was accordingly decreed by the learned trial Court, vide judgment and decree dated 27.03.2014.

Defendant/Nigam being aggrieved preferred an appeal against the judgment and decree dated 27.03.2014, which was ultimately allowed by the learned Additional District Judge, Gurugram, vide judgment and decree dated 19.12.2014. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that learned Additional District Judge, Gurugram has erred in setting aside the well reasoned and logical judgment passed by the learned trial Court. Once the amount of Rs.2,85,000/- had been deposited pursuant to the judgment dated 15.03.2011, there was no question of seeking any kind of refund by the Nigam. Respondent/Nigam it is submitted took a novel plea in the notice dated 03.09.2012 that the amount in question was deposited in excess under pressure of the court. It is in fact the component of interest, which has been incorporated. Therefore, no ground is made out for refund of said amount.

Learned counsel for the appellant submits that the amount in question stood deposited by the appellant in 2015. It is further submitted that the appellant specifically pleaded that he had applied for a domestic connection which was subsequently changed in an illegal manner to a small power category connection. The amount charged by the respondent/Nigam

was rightly ordered to be refunded by the learned trial Court. It is thus prayed that this appeal be allowed, impugned judgment and decree dated 19.12.2014 passed by the learned Additional District Judge, Gurugram be set aside while upholding the judgment and decree dated 27.03.2014 passed by the learned trial Court.

I have heard learned counsel for the appellant and have gone through the record with his able assistance.

There is no dispute that the appellant earlier filed a suit for declaration, permanent injunction and mandatory injunction against the defendant/Nigam challenging the penalty imposed upon him pursuant to the case of theft of electric energy. The appellant was acquitted of the charges against him. Learned trial Court vide judgment and decree dated 15.03.2011 directed the refund of the amount of Rs.2,00,000/- which was deposited by the appellant.

Pursuant to the said judgment and decree, sum of Rs.2,85,000/- instead of Rs.2,00,000/- was deposited by the respondent/Nigam. Realizing the error, notice dated 03.09.2012 Ex.PW1/7 was issued. Perusal of the judgment Ex.PW1/J dated 15.03.2011 reveals that the direction was for refund of Rs.2,00,000/-. There is no direction for deposit of interest by the respondent/Nigam as is sought to be projected. In such a situation, it cannot be presumed that it is the component of interest which had been deposited by the respondent/Nigam in compliance with the directions of the Court. Perusal of the notice Ex.PW1/7 makes it crystal clear that the learned Civil Judge (Junior Division), Gurugram had made it amply clear that there was no direction regarding the component of interest. Thus, it is apparent that sum of Rs.85,000/- was indeed deposited in excess by the respondent-Nigam.

In respect to the plea of the appellant that he had taken a domestic connection in view of PW1/1 and it was wrongly changed into small power category connection has also been rightly negated by learned Additional District Judge, Gurugram. Perusal of various documents produced by the defendant/Nigam of the year 2005 itself reveals that it was a small power category connection which was running on the premises of the appellant. There is indeed no evidence on record to substantiate the plea of the appellant/plaintiff. It is rightly held by the learned Additional District Judge that there is nothing on record to indicate what is the excess amount which has been claimed, what was the rate of domestic connection and small power connection to differentiate and the said issue indeed has no connection with the recovery of the amount of Rs.85,000/- in question.

There is no question of law involved in this appeal much less substantial question of law. Learned Additional District Judge, Gurugram has rightly set aside the judgment and decree dated 27.03.2014 passed by learned trial Court and dismissed the suit filed by the appellant/plaintiff. There is no ground whatsoever which warrants interference by this Court in the present second appeal.

There is a delay of 94 days in filing of this appeal. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in filing this appeal has been rendered academic.

Appeal is accordingly dismissed with no order as to costs.

(LISA GILL)
JUDGE

August 07, 2018
Ishwar

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No