

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 2207 of 2014(O&M)

Date of decision : May 16, 2018

Parveen Kumar

..... Appellant

Versus

Senior Executive Engineer and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. M. K. Garg Advocate
for the appellant.

Ms. Meena Bansal, Advocate
for the respondents.

AMIT RAWAL, J (oral).

The present appeal is directed against the judgment and decree of both the Courts below whereby suit of the appellant-plaintiff has been dismissed and appeal filed against the illegal demand raised vide Memo dated 13.8.2007 regarding electric connection has been dismissed for want of jurisdiction i.e. as per Section 145 of the Electricity Act, 2003 (hereinafter referred to as 'The Act').

Learned counsel for the appellant submitted that the appellant-plaintiff is in the business of Bakery with small SP 24/2018 connection at the premises. However, the electricity board vide Inspection report Annexure A-1 found it to be a NRS tariff. As per the provisions of Electricity Supply and Instructions Manual the premises which are shown to be falling in the non-residential supply does not fall in any of the business under the non-residential supply. The attention of this Court is drawn to SV.1 which is reproduced as under:-

“Schedule of Tariff for Non-Residential Supply (NRS)

SV.1 Availability:

Supply for lights, fans, appliances like pumping set and air-conditioning units/plants lifts, welding set, small lathe, electric drill, heater batter charger, embroidery machine, printing press, ice candy, dry cleaning machines, power press, small motors etc. in non-residential premises such as business house, cinemas, clubs, offices, hospitals and private educational institutions viz school, colleges and universities, hostels and residential quarters attached thereto where such institutions/installations are not covered under schedule DS/BS hotels/motels, departmental stores, shops, guest houses and restaurants. All private sports institutions/facilities including gymnasiums will also come under this category.”

The department did not initiate the proceedings as per the provisions of Section 126 of the Act i.e. there was no compliance of the provisions of Section 126 of the Act, for, no provisional assessment order was issued giving an opportunity to the appellant to raise objections. Had it been so, the department would have passed the final assessment order. When impugned order is without jurisdiction and remedy despite alternative remedy under provisions of Section 9 CPC can always be invoked

Learned counsel appearing on behalf of the electricity board submitted that there was no illegality and perversity in the judgments and decrees of both the courts below as Section 144 of the Act imposes complete check for trial of the civil suit in view of the action initiated by the Electricity Board for un-authorized use of electricity for running a Bakery business with small power connection, though it fall under the NRS category and thus would be within the expression “un-authorized use”, therefore, jurisdiction of the civil court was barred and urges this Court to

uphold the judgments and decrees of both the Courts below.

I have heard learned counsel for the parties, appraised the paper book and of the view that it is a fit case where the matter requires to be revisited, for, the lower appellate court is a court of fact and law and ought to have examined all the factors. The judgment of the lower appellate court suffers from illegality, for, there is no advertence to the provisions of Section 126 of the Act. For the sake of brevity Section 126 of the Act is reproduced hereinbelow:-

126. Assessment.- (1) *If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.*

(2) *The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.*

(3) *The person, on whom an order has been served under subsection (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.*

(4) *Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:*

(5) *If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such*

unauthorised use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.;

(6) The assessment under this section shall be made at a rate equal to twice the tariff applicable for the relevant category of services specified in sub-section (5) ”

A complete perusal of the aforementioned provisions of Section 126 reveals that a provisional and final assessment order has to be served on account of un-authorized use of electricity and appellant-plaintiff had been prevented from giving any explanation with regard to the demand raised by the Electricity Board on the basis of inspection leading it to be in the 'Non-Residential Supply category'. Prima facie, the bakery does not fall within the 'Non-residential Supply category'. It may seriously prejudice the right of the plaintiff.

In view of the above discussion, the judgment and decree of the lower appellate court is set aside. The matter is remitted to the lower appellate court for deciding the appeal afresh.

The parties are directed to appear before the lower appellate court on 4.7.2018.

Accordingly, the Regular Second Appeal stands disposed of.

(AMIT RAWAL)
JUDGE

May 16, 2018
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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No