

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

RSA-3348-2018 (O&M)
Date of Decision:-1.6.2018

Dakshin Haryana Bijli Vitran Nigal Ltd. and others ... Appellants

Versus

Dr. Pawan Goyal ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Pawan Kumar Longia, Advocate for the appellants.

GURVINDER SINGH GILL, J.(Oral)

CM-8885-C-2018

There is a delay of 8 days in filing of the appeal.

In view of the reasons mentioned in the application the same is
allowed. The delay of 8 days in filing of the appeal is condoned.

The application stands disposed of.

RSA-3348-2018

The appellants/defendants Dakshin Haryana Bijli Vitran Nigal
Ltd. (DHBVNL) along with others have filed this appeal challenging
judgment dated 16.1.2018 passed by learned Additional District Judge,
Rewari upholding judgment of learned lower Court whereby a suit for

declaration filed by the respondent-plaintiff that demand of sundry charges to the tune of ₹ 1,98,226/- is illegal, null and void, had been decreed.

The case set up by the plaintiff is that he received a bill in the month of August 2011 for an amount of ₹ 2,25,493/- including sundry charges to the tune of ₹ 1,98,226/-. Upon inquiries made from the Nigam, he was informed that the said amount of ₹ 1,98,226/- was on account of some previous balance for the year 2007-08. The defendants in their reply took a stand that the plaintiff did not have any *locus standi* or any cause of action to maintain the present suit and that the sundry charges had been imposed as per the rules. The defendants further asserted that in fact the plaintiff had previously approached the District Consumer Disputes Redressal Forum, Rewari, wherein his complaint was dismissed on 10.10.2011. The learned lower Court upon appraisal of the evidence led by the parties decreed the suit and held that the demand of sundry charges to the tune of ₹ 1,98,226/- is illegal, null and void. Upon an appeal having been filed by the defendants, the same was dismissed by the learned lower Appellate Court as well, which has been challenged by way of filing the present appeal.

The learned counsel for the appellants, while assailing the impugned judgment, has submitted that the learned lower Court fell in error in holding that the amount sought to be recovered by way of sundry charges was being recovered beyond the prescribed period of limitation of two years as prescribed under rules. It has further been submitted that in fact the suit was barred by limitation and that the same was not even maintainable once the complaint filed before the District Court stood dismissed.

I have heard the learned counsel for the appellant and have also perused the imugned judgment.

Though, I find that the defendants in their written statement have not attempted to explain the reasons or the ground for effecting recovery of the sundry charges but from the arguments put forth before the lower Courts, it transpires that in fact, it was pursuant to overhauling of account of the plaintiff pertaining to the period 2007-08 that the recovery was sought to be made. In view of the previous consumption pattern, the Junior Engineer had reported that the meter was running fast to the extent of 55% and consequently an adjustment of ₹ 2,02,864/- was made in the account of the plaintiff. However, due to inadvertant mistake on part of Accountant of the Nigam, the said benefit of adjustment was again given to the plaintiff in the month of September 2008 for the same period i.e. for the period July 2007 to December 2007 and an amount of ₹ 1,98,226/- was again adjusted in his account. Subsequently, it was the audit party, which pointed out on 22.9.2009 that the plaintiff is not entitled to the said amount for the second time. It was thereafter that the amount of ₹ 1,98,226/- was sought to be recovered as sundry charges in the bill dated 13.8.2011.

Though, I find that the 'Nigam' could have recovered the excess amount adjusted in the account of consumer, but the same could have been done only after an appropriate notice had been issued to the consumer and that too within the prescribed period of time. In this regard, certain provisions of the Act and as well as the relevant notifications need to be borne in mind, which read as follows:-

“ Clause 6.10.4 of the Notification dated 08.01.2014 (Electricity Supply Code) pertaining to Regulation No.HERC/29/2014.

6.10.4:- If the licence establishes during review or otherwise or as a result of audit observation that a consumer has been under-charged, a 15 days notice shall be served upon the consumer to enable him to contest the demand. However, in case of additional demand being made out by internal; audit in respect of any consumer the officer concerned shall satisfy himself in the matter before giving notice to the consumer. After receipt of reply from the consumer, the licensee shall review the amount charged after taking into account the facts submitted by the consumer. For the amount which is chargeable, after considering reply of the consumer, the licensee shall recover the amount without levy of surcharge from the consumer by issuing a separate bill and in such cases at least 30 days shall be given to the consumer to pay the bill. In case the consumer fails to pay the bill by the due date, he shall be liable to pay, in addition, surcharge for the period of delay.”

The sales circular bearing No.27/96 would also be relevant. Para Nos.2 and 3 of the same read as follows:

“It is regular feature in the Electricity Board that Audit Parties audit the consumer’s account and penalty is imposed whenever any discrepancy is pointed out by the Audit Party. It is understood that whenever any discrepancy is pointed out by the Audit Party, the SDO concern is required to check the report but in practice the penalty is imposed without any cross checking by the SDO concerned. Before imposing penalty etc., notice is required to be given to consumer to explain his position.”

Section 56(2) of Electricity Act, 2003 dealing with recovery of arrears reads as follows:

“Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

Not issuing a notice before effecting recovery of a substantial amount of ₹ 1,98,226/- especially even when circular No.27/96 (Supra) provides for issuance of a notice amounts to violation of principles of natural justice. Recovery made in violation thereof cannot be upheld.

Though, the learned counsel for the appellants has submitted that since it was in the year 2009 that the audit party had pointed out the discrepancy and the said recovery on account of sundry charges was sought to be made in August 2011, therefore, even if it is held that the limitation for recovery is two years still the same was within the prescribed period of limitation, but I am unable to agree with the aforesaid contention inasmuch as the amount in question stood credited in the account of the consumer in the month of September 2008 and the bill in question seeking recovery was issued on 13.8.2011, which is beyond a period of two years.

It has also been submitted that the plaintiff could not have been extended the benefit in terms of Section 14 of the Limitation Act, as the Consumer Forum was not competent to extend the limitation. A perusal of the order dated 8.7.2014 passed by the Consumer Forum reads as follows.

“ In view of the above discussion and for the foregoing reasons, this Forum has no jurisdiction to try this complaint for want of jurisdiction and as such the same is hereby dismissed. Needless to say that time spent before this Forum bonafidely shall be excluded for the purpose of limitation as provided under Section 14 (2) of the Limitation Act, 1963, if the complainant approaches the appropriate court of law, if so advised, within prescribed period. File be consigned to the record room after due compliance.”

It is the Court where the civil suit is filed which has to examine as to whether benefit of exclusion time spent in prosecuting another civil proceeding has to be extended in terms of Section 14 of Limitation Act, 1963, whether or not any observations regarding exclusion have been made by the Court where plaintiff was prosecuting earlier. A consumer Forum is a statutory authority constituted under Consumer Protection Act, 1996 and proceedings before the Forum to a large extent have trapping of a Civil Court. Consequently time spend by a person in prosecuting in good faith before such Forum when infact the Forum did not have jurisdiction can certainly be excluded while computing limitation.

A perusal of the above reproduced order of Consumer Forum shows that the matter had been dismissed solely on account of the jurisdiction of the forum and it has specifically been recorded that the plaintiff is being extended the aforesaid benefit.

Even if, no specific issue was framed in this regard by the trial Court, still the said matter has been discussed by the Courts below and it has been found that the plaintiff had approached a wrong forum under *bona fide* belief and was thus entitled to the concession of extension of limitation in terms of Section 14 of the Limitation Act, 1963.

No other arguments have been raised or urged before this Court. I do not find any infirmity in the impugned judgment and the same is upheld. There is no merit in this appeal and the same is hereby dismissed.

1.6.2018

pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No