IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

Regular Second Appeal No. 5897 of 2018(O&M)

Date of Decision: October 25 , 2018.

Uttar Haryana Bijli Vitran Nigam Ltd. and others ...... APPELLANT (s)

Versus

M/s Mascot Flour Mills ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. R.D.Bawa, Advocate
for the appellants.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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LISA GILL, J.

The appellants/defendants are aggrieved of judgments and decrees dated 01.10.2016 and 21.07.2018 passed by the learned Additional Civil Judge (Senior Division), Bahadurgarh and the learned District Judge, Jhajjar, respectively, whereby suit for declaration filed by the respondent/plaintiff was decreed to the effect that the electricity bill dated 27.03.2014 for a sum of ₹4,09,686/- is illegal, null and void alongwith decree of permanent injunction restraining the defendants from disconnecting the electricity connection of the plaintiff and recovering of the said amount.

Brief facts necessary for the adjudication of the case are that, the

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plaintiff/respondent filed a suit for declaration alongwith consequential relief of permanent injunction pleading that he was running a business in the name and style of Mascot Flour Mills at 1499 MIE, Bahadugarh since long time. Plaintiff claimed that he was a consumer of the defendants, consuming electricity energy through an electricity meter installed at his premises. A L.T. Connection of 49.863 KV was running on the premises of the plaintiff and electricity bills were cleared by the plaintiff on a regular basis. It was pleaded that electricity bill dated 27.03.2014 was issued by appellant No.2 imposing a penalty of ₹4,09,686/- as sundry charges on the ground that the aforesaid amount was found due towards the plaintiff in an audit carried out for the period pertaining to year 2010 till the date of issuance of the said bill. It was alleged that the plaintiff was consuming energy in excess of the sanctioned load. The plaintiff however pleaded that the said amount has been wrongly added in the head of 'Sundry Charges'. Despite requests, the defendants did not admit his genuine claim. Hence, the suit.

The present appellants/defendants contested the suit and filed written statement taking various preliminary objections, besides, denying the averments on merits. It was stated that the amount of ₹4,09,686/- was rightly imposed upon the plaintiff as penalty under the head of sundry charges. Dismissal of the suit was sought.

The following issues were framed by the learned trial court on the basis of pleadings of the parties:-

> "1. Whether the plaintiff is entitled for declaration, declaring that the electricity bill of ₹4,09,686/- is illegal, null & void and not binding upon the rights of the plaintiff/- ?OPP
>
> 2. Whether the plaintiff is entitled for permanent injunction, restraining the defendants from disconnecting the electricity

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> connection of the plaintiff and restrained the defendants their agents, officials etc. from recovering the illegal bill amounting to ₹4,09,686/- ? OPP
>
> 3. Whether the suit of the plaintiff is not maintainable in the present form? OPD
>
> 4. Whether the plaintiff has no locus standi to file the present suit? OPD
>
> 5. Relief."

Both the parties led evidence to substantiate their case. The learned trial court after considering the evidence on record, facts and circumstances of the case, concluded that notice regarding the penalty of ₹4,09,686/- was never served upon the plaintiff prior to its imposition. Procedure as envisaged under the applicable provisions of law was not adhered to, therefore, suit filed by the plaintiff/respondent was decreed vide judgment and decree dated 01.10.2016. Appeal filed by the appellants/defendants against the said judgment and decree was dismissed by the learned District Judge, Jhajjar vide judgment and decree dated 21.07.2018. Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellants argues that inspection of the premises of the plaintiff was conducted and it was found that the plaintiff was using more than 50 KW electric energy whereas, the sanctioned load was below 50 KW. As per Ex.D1 i.e., the report submitted by the audit party, penalty of 25% of the total amount paid for the period from September 2010 to July 2013 was imposed and this amount was reflected in the bill for the month of March 2014. It is further contended that as per Section 56(2) of the Indian Electricity Act, 2003, the said amount could have been recovered as it was raised against the plaintiff vide Ex.D1 on 06.09.2013 and was added in the bill on 05.03.2014 i.e.,

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within two years from the date it came to the notice of the defendants. The appellants, it is stated, are well within their rights to claim the penalty and charges for excess drawing of the electric energy over and above the sanctioned load. It is thus prayed that this appeal be allowed. Judgments and decrees dated 01.10.2016 and 21.07.2018 passed by the learned courts below be set aside and suit filed by the respondent/plaintiff be dismissed throughout.

I have heard learned counsel for the appellant and have gone through the file.

It is not in dispute that the amount of ₹4,09,686/- imposed as a penalty for excess usage of power/energy over and above the sanctioned load is sought to be recovered from the plaintiff/respondent by way of demand raised under the head sundry charges/allowances in the electricity bill dated 27.03.2014 issued to the plaintiff. Learned counsel for the appellants is unable to deny that as per circulars/instructions (Ex.DX), a notice was indeed required to be served upon the plaintiff before assessing the penalty of₹4,09,686/-. Relevant extract of Ex.DX reads as under:-

> "If any amount is sought to be charged from consumer due to audit objection for the period for which bill has already been settled, non-charging of due to oversight or any other similar dispute then such an amount should not be charged by way of sundry. It would be appropriate that a notice be duly served to the consumer by giving details of amount to be charged with reasons justifying the action to be taken against him by affording him a reasonable opportunity, failing which amount may be charged from him as per instructions/rules."

The argument that the bill dated 27.03.2014 itself was a notice, is

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untenable, hence rejected. Admittedly, the procedure as envisaged under the relevant provisions of law as well as circulars/instructions (Ex.DX) has not been followed by the appellants. Therefore, there is no infirmity in the impugned judgments and decrees whereby the said amount of ₹4,09,686/- raised by the appellants by way of sundry charges has been set aside.

No other argument has been raised.

Learned counsel for the appellants/defendants is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the learned courts below have returned concurrent findings of fact after proper appreciation and consideration of the evidence on record.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decrees dated 01.10.2016 and 21.07.2018 passed by the learned Additional Civil Judge (Senior Division), Bahadurgarh and the learned District Judge, Jhajjar, respectively, which warrant any interference by this Court.

It is however clarified that this decision shall not be a bar to any permissible proceedings in accordance with law, in respect to excess energy allegedly consumed by the plaintiff/respondent.

Present appeal is, consequently, dismissed with no order as to cost.

(LISA GILL)
JUDGE

October 25 , 2018.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No

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