

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.106 of 2019 (O&M)
Dated of decision:11.01.2019

M/s Sarup Chand and sons

....Appellant

Versus

Punjab State Electricity Board, Patiala and another

...Respondent

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present:- Ms. Riti Aggarwal, Advocate for the appellant.

LISA GILL, J.

This appeal has been filed by the plaintiff/appellant being aggrieved of judgments and decrees dated 28.07.2016 and 22.03.2018 passed by the learned Additional Civil Judge (Senior Division), Batala and learned Additional District Judge, Gurdaspur, respectively.

Brief facts necessary for adjudication of the case are that the plaintiff filed a suit seeking declaration to the effect that memo No.203 dated 05.02.2008 issued by defendant No.2 to the plaintiff-firm is illegal, null, void and inoperative. Amount of Rs.2,79,454/- had been raised by the Electricity Department on account of consumption charges of electricity as well as penalty imposed for commission of theft of electric energy. It is pleaded that the plaintiff a partnership firm, was duly registered under the Indian Partnership Act, 1932. Sh. Parshotam Kumar Gupta is one of its registered partners, who accordingly signed and verified the pleadings on behalf of the plaintiff-firm. The plaintiff was allotted the work on contract basis by CPWD Amritsar Division, for construction of a school building, residential quarters (4 numbers T-II (D/S) 4 numbers T-III (D/S) and 1

number T-IV (S/S), Sentry Post, Canteen and Cycle/Scooter shed including development work for Kendriya Vidyalaya at Dera Baba Nanak Shikar, District Gurdaspur for Border Security Force (BSF). The plaintiff-firm required electric power for the said construction work. The Commandant BSF provided electric energy to the plaintiff-firm and set up a system for recording the consumption of electricity energy by the plaintiff-firm. The Commandant BSF, it is pleaded, was receiving the consumption charges from the plaintiff-firm and further depositing the amount with the defendant department. The said fact is stated to be clear from the copy of letter dated 09.09.2008. It was stated that defendant Nos. 1 and 2 issued a memo no. 203 dated 05.02.2008 to the plaintiff with the allegations that the plaintiff was found guilty of theft of electric energy as discovered during checking/inspection by the XEN Enforcement Batala on 04.02.2008. A sum of Rs.2,79,454/- was imposed upon the plaintiff as penalty. It was claimed that in fact no such checking was ever conducted by the defendants nor the plaintiff was caught red handed, as alleged by the defendants. The plaintiff, it was pleaded, never committed any type of theft of electricity energy, nor any checking was ever conducted as alleged in the said notice dated 05.02.2008. It was stated that the defendants threatened that they will demand/ charge the said payment of Rs. 2,79,44/- from CPWD Amritsar or Principal Kendriya Vidyalaya Shikar Dera Baba Nanak on behalf of the plaintiff.

Written statement was filed by the defendants resisting the suit filed by the plaintiff. It was stated that XEN Enforcement Batala conducted checking/inspection on 04.02.2008 and found the plaintiff committing the theft of electric energy from 200 K.V.A. Transformer at the spot. The plaintiff-firm was found using electricity without any authorized meter for running submersible motors of 1 B.H.P. (3 Nos) and one motor of 3 B.H.P.

for running them and was thus committing theft of electric energy for Floor Grinding Machine and also running five light bulbs of 100 watts each without legal authorization from the board. It was stated that total load 4.976 K.V. was used by the plaintiff illegally and unauthorizedly. On receipt of the checking report, Memo No.203 dated 05.02.2008 was validly issued to the plaintiff-firm for making payment of Rs.2,79,454/- towards the theft of Electricity committed by the plaintiff. Checking report was duly signed by P.K.Gupta, a partner of the plaintiff-firm. Commandant BSF was not competent to authorize the plaintiff to use the electricity illegally and unauthorizedly without getting proper connection from the P.S.E.B. It was pleaded that the plaintiff was caught red handed for committing theft of electricity for which he has been legally and properly penalized as per the rules of the defendant board. Dismissal of the suit was prayed for. Replication was not filed.

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

1. Whether the plaintiff is entitled to declaration as prayed for? OPP
2. Whether the plaintiff is entitled to the permanent injunction as prayed for? OPP
3. Whether the jurisdiction of Civil Court is barred to entertain and try the present suit? OPD
4. Whether the plaintiff has got no cause of action to file the present suit? OPD
5. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
6. Relief.”

Learned trial Court dismissed the suit filed by the plaintiff while concluding that it was proved on record that the plaintiff-firm committed theft of electric energy and consumption charges were not deposited either

with the Commandant BSF or with the Electricity Department. The plaintiff-firm, it was held, could not prove the payment of the consumption charges. While rejecting the plea of the defendants that the Court has no jurisdiction to entertain the suit, it was held that the plaintiff did not approach the Court with clean hands and had suppressed the material facts from the Court. Appeal filed by the plaintiff/appellant was dismissed by learned Additional District Judge, Gurdaspur. Apart from deciding the matter on merits, it was held that jurisdiction of the Civil Court to entertain such a suit was barred. Aggrieved therefrom this appeal has been filed.

Learned counsel for the appellant vehemently argues that it is proved from the evidence on record that consumption charges for the energy used were paid by the appellant to the Commandant BSF. Therefore, both the Courts below have grossly erred in dismissing the suit filed by the plaintiff. It is, thus, prayed that the appeal be accepted and impugned judgments and decrees be set aside.

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

Case set up by the plaintiff/appellant is that the work on contract basis was allotted to it by CPWD Amritsar Division for the construction of school building, residential quarter (4 numbers T-II (D/S) 4 numbers T-III (D/S) and 1 number T-IV (S/S), Sentry Post, Canteen and Cycle/Scooter shed including development works for Kendriya Vidyalaya at DBN Shikar, District Gurdaspur for BSF. The plaintiff required electric power for the said work. For this purpose, the Commandant BSF provided electric energy to the plaintiff. A system for recording the consumption of electric energy by the plaintiff-firm was set up and accordingly consumption charges were being deposited by the plaintiff-firm with the Commandant BSF, who in turn deposited the same with the Electricity Department.

Reference is made to the letter dated 09.09.2008 (Ex.P4) issued by the Commandant BSF, besides, Ex.P5 i.e., Memo No.203 dated 05.02.2008 which was issued by defendants No.1 and 2 to the plaintiff-firm to substantiate the plea that the amount for usage of electric energy was to be deposited by the plaintiff with the Commandant BSF.

Learned counsel for the appellant is, however, unable to deny that there are number of letters written by Commandant BSF to the plaintiff-firm, wherein it was clearly mentioned that the plaintiff-firm was not even paying the consumption charges of electricity to the said office. BSF authorities in one of the letters even threatened to disconnect the electric supply of the plaintiff-firm. One submersible pump of 1 BHP, one motor of 3 BHP, one floor grinding machine and 5 bulbs of 100 watts were found to be in operation. Inspection of the spot was conducted by XEN, Enforcement, Batala on 04.02.2008. Report Ex.D2 is on record. Partner of the plaintiff-firm appeared as PW1 and admitted his signatures on the report. It is mentioned in the report that the plaintiff-firm was found committing theft from 220 KVA transformer unit 2 by placing a direct 'kundi' and total load of 4.976 KV was used by the plaintiff-firm illegally. Learned counsel for the appellant is unable to produce any evidence on record to indicate that the entire consumption charges for electric energy, were indeed paid by the plaintiff-firm to the BSF. There is only one receipt i.e., Ex.D1 dated 18.06.2007 which reflects that a sum of ₹5,304/- has been paid by the plaintiff-firm to the office of BSF Commandant. This is a document produced by the defendants to indicate that the entire consumption charges of electric energy were not paid/deposited by the plaintiff. There is another receipt (Ex.P4) for a sum of ₹9,288/-. However letter dated 09.09.2008 (Ex.P3) reveals that the entire electricity

consumption charges were not deposited by the plaintiff even to the Commandant BSF. There is no evidence on record to show that the Commandant BSF was even authorized to permit the plaintiff to use electric energy for construction work. No sub-meter was installed for the construction work. Learned courts below have rightly held that raising of the demand vide order (Ex.P5) is legal and valid.

No other argument has been raised.

Learned counsel for the appellant-plaintiff 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 impugned judgements are well reasoned and rendered 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 28.07.2016 and 22.03.2018 passed by the learned Additional Civil Judge (Senior Division), Batala and the learned Additional District Judge, Gurdaspur, respectively, which warrants any interference by this Court.

There is a delay of 43 days in filing and 17 days in re-filing of this appeal. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in filing and re-filing of this appeal has been rendered academic.

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

(LISA GILL)
JUDGE

January 11, 2019
Ishwar / om

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