

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

**RSA No.1038 of 1988 (O&M)
Date of Decision.26.03.2019**

Chamkaur Singh

..Appellant

Vs

Punjab State Electricity Board and another

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. G.S. Gandhi, Advocate
for the appellant.

:-

AMIT RAWAL J. (ORAL)

The regular second appeal is directed against the judgment and decree of the lower Appellate Court whereby decree of declaration granted by the trial court setting aside alleged demand raised by the Electricity Board of ₹5119.05 has been reversed.

The appellant-plaintiff received letter dated 8.8.1983 calling him to pay ₹5519.05 paise on the basis of checking report of the flying squad.

Defendant opposed the suit and raised the plea that in inspection, meter was found to be disconnected and electricity was being used from the main supply. It was case of theft. Even otherwise the electricity connection was issued for agricultural purpose but was being used for other purposes and in excess.

Plaintiff appeared himself as PW1 whereas defendant examined two witnesses and brought on record Ex.D1 and D2 i.e. photocopy of register and report of flying squad.

The trial Court had put onus on defendants and decreed the suit but the lower Appellate Court, as noticed above, reversed it.

Mr. Gandhi, learned counsel appearing on behalf of the appellant submitted that the connection was in the name of Dhani Ram and not Chamkaur Singh, therefore, demand of ₹5119.05 could not have been made. The lower Appellate Court has not discussed and taken note of the statement of the plaintiff wherein he specifically denied to having stolen electricity. Report of DW1 R.K. Garg failed to establish theft of electricity. Even if the inspection report bore signatures of Chamkaur Singh, the onus to prove the same is on the Electricity Board.

There is no representation on behalf of the Electricity Board.

The appeal is of the year 1988 and accordingly, I hasten to decide the same.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit for the simple reason that there was no locus of plaintiff to file the suit as it was letter dated 8.8.1983 written by the Electricity Board demanding the amount aforementioned. If the connection was not in his name, theft could not have been attributed to him. The plaint is silent as to who was in occupation of the premises.

During the course of hearing, Mr. Gandhi stated that it was occupied by Dhani Ram. Plaintiff failed to discharge onus as to how he was present at the spot and appended his signatures on the inspection report finding theft of electricity. The finding of fact and law rendered by lower Appellate court, in my view, rightly found that the load detected was 6.440 KW and used for agricultural purpose.

The sanctioned load was 2.0 KW and there was excess use of 4.440 KW of the normal. No person can be permitted to draw electricity than the sanctioned load.

This Court while admitting the appeal stayed the recovery on furnishing security by the appellant. Neither any receipt nor any application has been filed indicating that security as directed by this Court has been furnished.

In view of such circumstances, the finding of fact arrived at by the lower Appellate Court being the last court of fact and law cannot be said to be suffering from illegality and perversity, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the appeal is dismissed and the stay order granted by this Court is vacated.

(AMIT RAWAL)
JUDGE

March 26, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No