

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

RSA No.707 of 1989 (O&M)

Date of Decision.21.05.2019

Punjab State Electricity Board, Patiala and another ...Appellants

Vs

Punjab Spinning and Weaving Mills Ltd. ..Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. P.S. Thiara Advocate
for the appellants.

Mr. Sukant Gupta, Advocate
for the respondent.

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AMIT RAWAL J. (ORAL)

The present regular second appeal is directed against the judgment and decree of the lower Appellate Court whereby suit of the respondent-plaintiff for perpetual injunction, though dismissed by the trial Court, has been decreed.

The respondent-plaintiff alleged that it was consumer of the appellants-defendants since 1977 having sanctioned load of 3423.26 KW with contract demand of 1600 KVA. Vide letter dated 5.2.1978, plaintiff was called upon to intimate the phased requirement for contract demand for making necessary arrangement for release of load. Plaintiff deposited certain service charges and on 26.03.1979, requested Superintending Engineer for extension from 500 to 1200 KVA from the feeder of milk plant. The aforementioned request was

accepted and contract demand was extended. However, the plaintiff received impugned bill for making payment of ₹1,10,675/- for consumption charges, which was stated to be void and illegal.

The erstwhile Electricity Board now Punjab State Power Corporation Limited hotly contested the suit and stated that the connected load with the contract demand of 1600 KVA was to be in a phased manner within a period of two years but was not availed. They justified the demand for the period from March 1979 to December, 1979.

The trial Court initially framed three issues and thereafter additional issues 3-A and 3-B were framed.

While denying plea of the plaintiff that the demand was not justified, the trial Court dismissed the suit by holding that Electricity Board was entitled to claim charges. However, the lower Appellate Court reversed the finding by holding that the demand was claimed after expiry of more than three years.

Mr. Thiara, learned counsel appearing for the appellants submitted that even if the right to recover the amount is barred by limitation but it cannot take away the defence in suit filed by the consumer. Simpliciter suit for perpetual injunction in the absence of relief of declaration was not maintainable. The demand could not be said to be time barred as it was in accordance with the terms and conditions of the contract, for, the consumer did not avail the remedy of use of electricity in a phased manner.

Per contra, Mr. Sukant Gupta, Advocate, who is present in Court, at the asking of the Court appeared for the respondent and

stated that the Electricity Board was not justified in raising demand as it was a time barred claim and issued notice out of the blue and rightly so, the lower Appellate Court had enjoined them from recovering the amount as they could not justify the demand.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit. Section 29 of the Limitation Act does not bar for imposition of limitation other than the one prescribed but in the instant case, the Electricity Board could not place on record any material or Regulations enabling them to recover the amount beyond three years. In such circumstances, provisions of Article 137 of the Limitation Act would apply. No doubt, it was a case for recovery but as defence, they cannot raise the demand compelling the affected party to approach the Court. In a suit seeking perpetual injunction restraining Electricity Board to raise the demand in respect of bill dated 4.2.1985, relief of declaration was inherent.

In view of judgment rendered by Constitution Bench of Hon'ble Supreme Court in *Pankajakshi (dead) through LRs and others Vs. Chandrika and others (2016) 6 SCC 157* reiterated in *Kirodi (since deceased) through his LR Vs. Ram Parkash and others* passed in Civil Appeal No.4988 of 2010 on 10.05.2019, in State of Punjab and Haryana, a second appeal being filed under Section 41 of Punjab Courts Act do not require formulation of a substantial question of law.

In view of aforementioned circumstances, the judgment and decree rendered by the lower Appellate Court cannot be said to

be suffering from illegality and perversity and accordingly upheld.

No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 21, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No