

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

RSA No.2560 of 2019 (O&M)
Date of Decision: May 20, 2019

Uttar Haryana Bijli Vitran Nigam Ltd. and another

...Appellants

Versus

Sandeep Kumar

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. R.S. Longia, Advocate
for the appellants.

JAISHREE THAKUR, J. (Oral)

1. The instant appeal has been filed against the judgment and decree dated 01.04.2019 passed by the first Appellate Court whereby, the appeal filed by the appellants-defendants against the judgment and decree dated 16.03.2017 passed by the lower court, allowing the suit of the respondent-plaintiff, has been dismissed.

2. In brief, the facts of the case are, that the respondent-plaintiff filed a suit for declaration with the consequential relief of perpetual injunction, while averring that he is co-owner and co-occupant of premises No.3686, Ward No.5, near State Bank of Patiala Branch, Janta School Road, Thanesar, District Kurukshetra, which is connected with NDS energy supply vide electric connection No.KE22/2032, in the name of his deceased father Ram Chander Sachdeva since around 35 years. It is submitted that there has

been uninterrupted energy supply by the appellants-defendants to the respondent-plaintiff in the premises against price shown in the bills generated and supplied to the respondent-plaintiff. No fault of any kind is found in the outgoing supply from the energy meter of the appellants-defendants to the respondent-plaintiff, by the employees of the appellants-defendants at any time in the last period of 35 years. It is alleged that employees of the appellants-defendants came to the premises of the respondent-plaintiff on 01.10.2015, un-authorisedly checked the meter equipment and at the initial stage, they showed full satisfaction over the matter in issue, however, after some time, they removed the existing energy meter on a plea that it has become old and outdated resulting into slow rating and as such, the connected supply was counted as 0.5 KW only, though the sanctioned load of the premises is 4 KW and the respondent-plaintiff was informed that let the accuracy of the meter be got checked from the M&T lab Kaithal. LL-1 No.461 was filled in on 01.10.2015. The premises of the respondent-plaintiff has two fans of 60 watts each, 2 light tubes of 40 watts etc. a TV of 100 watt and an electric equipment of 200 watts. The total consumption is correctly recorded as 0.5 KW. The respondent-plaintiff also visited M&T Lab Kaithal on 12.10.2015 and signed the memo of presence in the said Lab and he returned back satisfactorily, as nothing was found in the meter as wrong or as foreign insertion. But after three days, the appellants-defendants served office memo dated 22.10.2015 upon the respondent-plaintiff asking him to pay ₹ 1,62,970/- on account of assessment of loss detected by the appellants-defendants. The respondent-plaintiff approached the appellants-defendants

many times, but all in vain. Hence, this suit.

3. Upon notice, the appellants-defendants appeared and filed their written statement, while taking the preliminary objections. On merits, it was submitted that on 01.10.2015, during inspection, theft/dishonest use of electricity was noticed. The respondent-plaintiff has not challenged the checking report LL-1 No.19/461 dated 01.10.2015 before the competent authority nor has he challenged the sale circular No.U-15/2014 prior to filing of the suit, as such, they have become final and binding upon the respondent-plaintiff. It is submitted that checking report dated 01.10.2015 and the memos are quite legal, valid and binding on the respondent-plaintiff.

4. Replication was filed. From the pleadings of the parties, issues were framed and evidence was led by both the parties. After hearing both the parties, the lower court decreed the suit of the respondent-plaintiff. The appellants-defendants challenged the judgment and decree of the lower court before the first Appellate Court, which appeal came to be dismissed by the first Appellate Court. Now both the judgments and decrees passed by the courts below are under challenge in this regular second appeal.

5. Learned counsel appearing on behalf of the appellants-defendants argues that the respondent-plaintiff was guilty of theft of electricity, as such, both the courts below erred in decreeing the suit of the respondent-plaintiff. It is argued that both the courts below have wrongly exonerated the respondent-plaintiff from the liability of theft of electricity on the ground that his meter was not got checked from the manufacturer of the same.

6. I have heard learned counsel for the appellants-defendants and

have gone through the case file.

7. The lower court decreed the suit of the respondent-plaintiff while observing that it is the case of the appellants-defendants that there is theft of electricity as electric component was found in the meter after testing it in the lab, however, when it was removed from the premises there was only a doubt regarding the seals of the meter. This nut type component was not found in the meter later on. But it is not proved that this component was not there in the meter at the time of installation. This meter is of EMCO company and only this manufacturing company can verify whether this nut form type was a foreign component in the meter. The meter was not sent to the manufacturing company nor was its opinion called for. From the perusal of the meter from outside, there was no sign of tampering there. So, in the absence of clear cut proof that this component was not in the meter of manufacturing company, the respondent-plaintiff cannot be said to be involved in that alleged act of theft of electricity. It is also admitted by the appellants-defendants witness that before making any assessment they have not opted to give any notice to the respondent-plaintiff and he was not given an opportunity to challenge this assessment. Provisions of Section 126 of Electricity Act, 2003 has not been complied with by the department and the assessment of penalty amount was declared to be in contravention of the bare provisions. The findings given by the lower court have been affirmed in appeal by the first Appellate Court. Learned counsel for the appellants-defendants has miserably failed to point out anything wrong in the concurrent findings so recorded by the courts below.

8. In view of the above, this court finds no illegality or perversity

in the concurrent findings so recorded by both the courts below. As such, no question of law requiring determination arises in this regular second appeal filed by the appellants-defendants, which has no merit.

9. Dismissed.

May 20, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No