

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

RSA No.3227 of 2019 (O&M)
Date of Decision: July 08, 2019

The Uttar Haryana Bijli Vitran Nigam Limited and others

...Appellants

Versus

Shakuntla

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

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

JAISHREE THAKUR, J. (Oral)

1. This is a regular second appeal filed by the appellants-defendants (hence called 'the appellants') seeking to challenge the judgment and decree dated 01.05.2019 passed by the first Appellate Court whereby, the appeal filed by the appellants against the judgment and decree dated 03.09.2016 passed by the lower court, decreeing the suit of the respondent-plaintiff (henceforth called 'the respondent'), has been dismissed.

2. In brief, the facts are that the respondent herein filed a civil suit seeking declaration to the effect that notice dated 27.06.2012 served by the appellants upon the respondent be declared as illegal, null and void, besides seeking the relief of mandatory injunction to the effect that the appellants be directed to refund the amount of ₹ 78,408/- along with

interest at the rate of 24% per annum from the date of deposit. It was averred that the respondent has got installed an electricity meter bearing account No.H-1164 in her house and she has been paying the electricity bills regularly. On 16.07.2012, the respondent received notice dated 27.06.2012 from the appellants, vide which she was called upon to deposit an amount of ₹ 78,408/- for the alleged commission of theft of electricity. On 19.07.2012, the respondent deposited the entire amount, assessed towards penalty and compounding fee, under protest and thereafter, she approached the appellants to make a complaint against the false case of theft of electricity and she was assured that action will be taken and amount deposited by her will be refunded, if the respondent was found innocent. It was alleged that on 27.06.2012, four persons from the Nigam visited the house of the respondent at about 7.00/7.30 a.m. and one of them demanded ₹ 25,000/- from her and threatened to implicate her in the case of theft of electricity, in case, she did not fulfill their demand. Thereafter, all of them left the house of respondent and later on, she was surprised to see that a false allegation of theft of electricity was levelled against the respondent and notice for demand of ₹ 78,408/- was served upon her. It was alleged that no checking was conducted by the officials of the appellants at her house and also no checking report was prepared and no photographs were clicked. Hence, the present suit.

3. Upon notice, the appellants appeared and contested the suit by filing their written statement. It was alleged that on 26.06.2012, the officials of the appellants checked the premises of the respondent and it was found that the respondent had taken direct connection from the main

PVC joint with the help of VIR wire and she was found committing theft of electricity. It was further submitted that the proceedings conducted at the spot were videographed and checking report was also prepared, which was signed by the officials of the appellants, but the respondent refused to sign the same. Intimation was also sent to the concerned Police Station for lodging an FIR against the respondent. Thereafter, the respondent was called upon to deposit ₹ 78,408/- on account of penalty and compounding fee. It was claimed that notice of imposition of penalty and assessment of compounding fee are legal and valid.

4. From the pleadings of the parties, issues were framed and evidence was led by both the parties. After hearing both the sides, the lower court decreed the suit of the respondent with costs. Aggrieved, the appellants herein filed an appeal before the first Appellate Court, which was dismissed by the District Judge, Sonipat. Now, both the judgments and decrees passed by the courts below have been assailed in this regular second appeal.

5. Learned counsel appearing on behalf of the appellants argues that the respondent has not produced any cogent evidence in support of her case except filing her own affidavit and affidavits of two near and dear, which were not sufficient to prove her case. It is contended that the action taken by the appellants was in accordance with the procedure prescribed by the Nigam in its sale circular.

6. I have heard learned counsel for the appellants and have also gone through the case file.

7. The lower court, while decreeing the suit of the respondent,

has observed that checking report in this case was an important document, however, the checking report was not produced on record by the appellants to show that any checking was done as per the provisions of the Electricity Act. The appellants only produced on record the assessment, which too did not bear the signature of the respondent or any other person of the locality, in whose presence checking was done. The findings recorded by the lower court were affirmed in appeal by the first Appellate Court.

8. During the course of arguments, learned counsel for the appellants has failed to point out any perversity in the findings so recorded by the courts below. On the one hand, the case set up by the respondent was that no checking of electricity meter was done at her house and a false case of theft of electricity was implanted upon her. On the other hand, the appellants did not examine even a single witness, who was the member of the raiding party, in order to establish that the respondent was found committing theft of electricity by taking the direct connection from the main line. Further, no checking report was produced on record by the appellants. In their written statement, the appellants had pleaded that the proceedings were got photographed and videographed when the raid was conducted, however, no such material was produced before the court by the appellants. Moreover, no wire was produced on record, which was allegedly used by the respondent, while committing theft of electricity from the main line.

9. 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.

10. Dismissed.

July 08, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No