

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

RSA No. 3428 of 2019 (O&M)
Date of decision: 2.9.2019

Dakshin Haryana Bijli Vitran Nigam Limited and others

...Appellants

Versus

M/s Faridabad Hotel Delite Limited

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

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

JAISHREE THAKUR, J.

1. The instant Regular Second Appeal has been filed by the appellants against the judgment and decree dated 5.4.2019 passed by the Additional District Judge, Faridabad, vide which the appeal filed against judgment and decree dated 30.3.2017 passed by the trial court was dismissed.

2. The facts in brief are that the plaintiff/respondent (hereinafter referred to as '**the plaintiff**') is a company having its business activity at Plot No. 23-B, Industrial Area, NIT, Faridabad, wherein it has a banquet hall. For the purpose of running the banquet hall, the plaintiff had taken an electric connection from the defendants/appellants (hereinafter referred to as '**the defendants**'), having sanctioned load of 249 kilowatts. The meter in the premises was installed after it was thoroughly checked and tested by the concerned laboratory and competent officer, who affixed his seal on it.

Further the said meter had been subjected to periodical checks and there has been no adverse report against the plaintiff with regard to inaccurate registration of electric energy charges or slow running of the meter. There has been no neglect or failure on the part of the plaintiff in making payment of actual energy charges from time to time. On the intervening night of 16th and 17th January, 2006, a fire broke out in the premises on account of short circuit. The matter was reported to the police as well as to the defendants on 17th January, 2006. On receipt of report, the officials of the defendants visited the site and a report dated 17th January, 2006 was prepared to the effect that M&P and Vigilance Wing, along with officials of the Operation Division, had noticed that Nigam's metering equipment was in burnt condition and gave a false twist and colour to the genuine act of fire to deliberately burnt and attempt to destroy the device and artificial means for malpractice used for electric energy and thus electric supply was disconnected. It was alleged in the report that the fire in question was deliberately used so as to destroy the electric meter seals, apparatus etc. and imposed a penalty of ₹63,33,347/- on the plaintiff as loss to the defendants. Hence the plaintiff filed the civil suit for declaration to the effect that the report dated 17.1.2006 be declared illegal, unjust, arbitrary and is not binding on the rights of the plaintiffs.

3. The suit was contested by the defendants, inter-alia, taking preliminary objections qua maintainability, cause of action, estoppel and concealment of true facts etc. It was submitted that the penalty as imposed was a valid and legal demand, pursuant to the checking report dated 17th January, 2006, in view of the dishonest use of electric energy being an

offence under Sections 135 and 138 of the Electricity Act, 2003. Outbreak of fire on account of short circuiting was denied and on the contrary it was submitted that the plaintiff deliberately, intentionally and purposely put the meter equipment to fire with dishonest motive and intention to destroy and remove the source, means device and modus operandi being adopted in stealing the electric energy.

4. On completion of pleadings of the parties, the trial court framed as many as eight issues and after due appreciation of the evidence brought on record by the respective parties, decreed the suit. The judgment and decree was unsuccessfully challenged before the first Appellate Court, hence the instant appeal.

5. Learned counsel for the appellants submits that both the courts below have erred in decreeing the suit filed by the plaintiff/respondent herein. It is submitted that the evidence led by the parties has not been considered in its right perspective. It is further submitted that both the courts below have returned findings contrary to the evidence on record only by presuming that the fire that broke out in the plaintiff's hotel was due to short circuiting in the electric equipments, whereas there is no evidence at all on the record except oral assertions of the plaintiff's witnesses that the fire took place due to short circuiting. Learned counsel for the appellants further argues that the report of the Forensic Science Laboratory has been wrongly ignored which had returned a finding that there was a deliberate attempt to damage the meter as residue of diesel had been found on it.

6. I have heard learned counsel for the appellants and have also perused the impugned judgments.

7. In view of the pleadings of the parties, the sole question that arises for consideration in the instant appeal is, whether on the intervening night of 16th and 17th January, 2006, a fire had broken out in the premises in question or not?

8. In order to establish its plea, the plaintiff examined PW-1 to PW-3. PW-1, who produced DDR entry dated 17.1.2006 Ex. P.3, reveals that at around 9.30 a.m. an information regarding breaking of fire in the premises in question was given. PW-2 deposed that on the intervening night of 16th and 17th January, 2006, he was on duty as Security In-charge in the premises in dispute and a fire broke out in the premises due to short circuiting and he immediately informed the local police as well as the Fire Station Office of MCF. He further deposed that he, along with employees of the plaintiff and the police officials, tried to extinguish the fire by throwing water with the help of empty diesel canes which were lying at the site and another fire tender belonging to M/s Whirlpool of India Ltd was also requisitioned by the local police so as to over power the fire. PW-3 deposed that on the intervening night of 16th and 17th January, 2006, an information of breaking of fire was received from the police and has proved Ex. P7 the certificate with regard to the fact that fire extinguishing engine were sent to the premises in question. Ex. P4 is the payment charges qua extinguishing the fire, which were paid by the plaintiff. All the witnesses were cross-examined and nothing adverse came on the record.

9. The first Appellate Authority, while upholding the findings of fact recorded by the trial court, observed as under:-

“31. The appellants-defendants have mainly relied upon two

FSLs reports i.e. Ex. PX1 dated 14.7.2006 and Ex. PX2 dated 14.7.2006. A perusal of these reports reveals that in the meter some diesel residue were noticed in Ex. 2, 3a and 3b. In Ex. PX1 laboratory reported that meter was completely burnt and possibility of fire due to electric sparking could not be ruled out. PW-1 Ram Sharan Bhatia deposed that on reaching the spot he found that police officials were extinguishing the fire by sprinkling water with the help of plastic canes. The water tank was located near the site. PW-2 Kishan Singh who reported the matter to the police and in whose presence the fire brigades reached the spot categorically stated in his examination in chief that police officials who reached the spot tried to extinguish the fire by throwing water by empty diesel canes which were lying on the spot. No material cross examination was conducted on this behalf upon this witness. Meaning thereby statement of this witnesses have gone unrebutted and unchallenged on this count.

32. In the light of above discussion, it is clear that presence of diesel residue in the burnt meter equipment had appeared on account of sprinkling of water with empty canes of diesel. That apart, FSL report on which the appellants-defendants placed heavy reliance itself speaks that the fire incident could be the result of short circuiting.”

10. From the evidence so produced by the plaintiff, it stands proved that a fire had broken out in the premises in question on the intervening night of 16th and 17th January, 2006 and the meter got damaged in that fire. Both the courts below have appreciated the documentary as well as oral evidence on record and the pleadings of the parties in right perspective and no fault could be found in the same. Learned counsel for the appellants has not been able to point out any perversity or irregularity in the impugned judgments. The judgments of both the courts below are well considered. No

question of law, much less substantial question of law arises for consideration in the present appeal.

11. The Regular Second Appeal stand dismissed accordingly.

2.9.2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No