

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

RSA No.3939 of 2019(O&M)
Date of decision: 24.10.2019

Dakshin Haryana Bijli Vitran Nigam Ltd. and others

... Appellants

Versus

Naveen Chaudhary

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

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

ARUN PALLI, J. (Oral)

Suit filed by the respondent-plaintiff was decreed by the trial Court vide judgment and decree dated 09.01.2018. And as even the appeal preferred against the said decree failed and was dismissed by the appellate Court on 18.05.2019, the defendants are before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff prayed for a declaration with consequential relief of injunction. In brief, the case set out by him was that he had *Low Tension* (LT) electricity connection in his name, installed at plot No.P-46, Neelam Bata Road, NIT, Faridabad. He received electricity consumption bills for the month of April, 2015, dated 15.10.2015, wherein defendants debited amounts of Rs.42,240.00 and Rs.1,02,600.00 under the Head: '*Sundry Charges*'. However, no prior notice setting out the details of the amount as also the basis of the said demand were furnished. Plaintiff met defendant

No.1 and disputed the alleged demand, upon which, defendant No.3 informed the plaintiff that amount was debited on the basis of an audit report, but still defendant No.3 failed to provide any copy of the said report. However, under the threat of disconnection of electricity supply he deposited the disputed amount. Again plaintiff received bills dated 15.03.2016, 15.07.2016 and 15.10.2016, wherein defendants had debited amounts of Rs.19810/-, Rs.17820/- and Rs.10679.42, respectively, under '*Sundry Charges*'. This time also, no prior notice was served upon the plaintiff. Like earlier, plaintiff again satisfied the demand to avoid disconnection. But, it did not end there, for the defendants again debited an amount of Rs.81,663.00 as '*Sundry Charges*' in the bill for the month of September, 2016. Thus, the suit.

In the written statement filed by the defendants, it was maintained that plaintiff received the bills of April, 2015 dated 15.10.2015, wherein the defendants had debited amounts of Rs.42,240.00 and Rs.1,02,600.00, respectively, under the Head of '*Sundry Charges*'. Plaintiff was habitually using excess load than the sanctioned load, hence, notice dated 05.11.2014 was served upon him for depositing Rs.98,240.00 and to remove the unauthorized extended load. When plaintiff failed to do so, penalty for excess load to the tune of Rs.42,240.00 was transferred to his account for the month of April, 2015. Further, during audit, plaintiff was again found using excess load and as a result penalty and fixed charges to the tune of Rs.1,02,600/- were imposed upon him. Thus, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that Ashok Rathi, CA, SDO

(OP), NIT, Faridabad (DW1), admitted in his statement that he never checked electricity connection of the plaintiff. He also conceded that copies of memo dated 05.11.2014 (Ex.D1) and dated 23.02.2016 (Ex.D4) do not bear the signatures of the plaintiff to prove if he was ever served with those notices. Likewise, defendants failed to prove that pursuant to audit report any notice was served upon the plaintiff. Rather, Ashok Rathi (DW1) conceded in his testimony that memo(s) dated 23.02.2016 (Ex.D4) and dated 31.03.2016 (Ex.D6) were never delivered to the plaintiff. Plaintiff had proved on record copy of instructions No.5.33, issued by the electricity department, which envisaged that penalty pointed out during audit shall be chargeable only after affording 7 days notice to the consumer/industrial consumer so that objections, if any, could be filed thereto. Accordingly, it was concluded that before any action could be initiated by the defendants for disconnection of supply of consumer, the competent authority was obliged to give notice to the effected party. That being so, action of defendants was void being contrary to the principle of natural justice.

On being pointedly asked, learned counsel for the appellants could not refer to anything on record to show if the conclusions recorded by both the Courts were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent findings recorded by both the Courts.

The appeal being devoid of merit is, accordingly, dismissed.

(Arun Palli)
Judge

24.10.2019
Rajan

Whether speaking / reasoned:
Whether Reportable:

YES
NO