

In the High Court of Punjab and Haryana at Chandigarh

Regular Second Appeal No. 1088 of 2013 (O&M)
Date of Decision: 20.2.2019

Vijay Singh

.....Appellant

Versus

Dakshin Haryana Bijli Vitran Nigam Ltd.
and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. G.K.Chawla, Advocate
for the appellants.

Mr. Nitin Rathee, Advocate
for the respondents.

HARNARESH SINGH GILL, J.

The present appeal arises out of the judgment and decree dated 3.3.2012 passed by Additional Civil Judge (Senior Division), Gurgaon and against the judgment and decree dated 18.2.2013 passed by Additional District Judge, Gurgaon vide which suit for declaration, permanent injunction and mandatory injunction preferred by the appellant-plaintiff was dismissed.

The case of the appellant-plaintiff, in brief, is that an electricity connection bearing Account No. CC-715 for non-domestic purpose with sanction load of 1 K.W. was in his name. In February 2009, the electricity department issued a bill amounting to Rs. 9950/- for sundry charges. It is the case of the appellant-plaintiff that before issuing the electricity bill, no

notice was issued which is mandatory as per sales Circular No. 27/96 and D-22/2006. A letter bearing No. 290 dated 3.9.2008 was issued by defendant-respondent No. 2-SDO/AGM, I.D.C., Operation Sub Division wherein it was mentioned that the premises of the appellant-plaintiff was checked by the department and during investigation it was found to be a case of theft/dishonest use of electricity. This act of the department has been challenged by the appellant/plaintiff for declaring bill null and void and restraining respondents/defendants from disconnecting electricity connection.

As per the stand of the defendants, the premises of the appellant-plaintiff was checked on 21.8.2008 and it was found that there was an unauthorized extension of load. The appellant-plaintiff was using 2.550 KW load against the sanctioned load of 1 K.W. and notice under challenge had since been withdrawn and a fresh notice under Section 126 of the Electricity Act, 2003 ('Act' for short) dated 22.12.2009 had been served upon the appellant-plaintiff.

On the pleadings of the parties, following issues were framed by the trial Court:-

1. *Whether the plaintiff is entitled to the relief of declaration as well as injunction as prayed for by him with respect to his electric connection bearing account No. CC-715 on the grounds so mentioned in the plaint? OPP*
2. *Whether the plaintiff has got no locus standi and cause of action to file the suit ? OPD*
3. *Whether the suit is not maintainable ? OPD*
4. *Relief.*

Trial court vide judgment and decree dated 3.3.2012 dismissed

the suit of the plaintiff. The said judgment and decree were upheld by the

first Appellate Court in appeal filed by the plaintiff, vide judgment and decree dated 18.2.2013. Hence, the present appeal by the appellant-plaintiff.

I have heard the learned counsel for the appellant and the counsel for the respondents.

As per the learned counsel for the appellant, the electricity bill in question was issued without issuing notice to the appellant which is mandatory as per the sale circular issued by the respondents-defendants/Nigam.

Learned counsel for the respondents has argued that no case remains when the department had withdrawn the notice under challenge and fresh notice was issued under Section 126 of the Act dated 22.12.2009. He further submits that since the fresh notice issued by the department has not been challenged in the present suit, the suit was liable to be dismissed.

It is the admitted case of the parties that the electricity department had sanctioned electricity load, through Account No. CC-715 for 1 K.W. The department had issued the electricity bill with sundry charges amounting to Rs. 9950/-. It is not disputed that the respondents-department had issued notice to the appellant-plaintiff and only after hearing, the amount could have been added in the electricity bill or can be charged. But in the written statement, it has been stated that the department had already withdrawn the notice which has been challenged by the appellant and fresh notice under Section 126 of the Act dated 22.12.2009 was served upon the appellant-plaintiff. The fresh notice dated 22.12.2009 has been placed on record as Ex. D3. Since the notice under challenge has been got withdrawn by the department, as per their specific stand in the written statement, the suit preferred by the appellant-plaintiff has become

infructuous.

Learned counsel for the appellant-plaintiff has argued that instead of dismissing the suit, the Courts below should have returned the suit for presenting the same before the appropriate authority. Reliance has been placed on ***Phulya @ Phool Chand Meena versus Jaipur Vidhyut Vitran Nigam Limited, Jaipur and another 2012 (7) R.C.R. (Civil) 1961.***

The appellant-plaintiff at no stage had made any prayer to withdraw the suit nor there is any ground in the grounds of appeal. Thus, the contention raised by learned counsel for the appellant is devoid of any merits. The judgment relied upon by the counsel for the appellant, does not cover the case of the appellant as in the said case, the suit was dismissed due to lack of jurisdiction whereas in the case in hand, the suit of the appellant-plaintiff has become infructuous as the notice under challenge had been withdrawn by the respondents/defendants.

Learned counsel for the appellant has further relied upon ***Bijli Vitran Nigam and another versus Tech Plast India 2016(1) RCR (Civil) 215.*** This case pertains to natural justice and to show cause notice before imposing any penalty and order of recovery. Even this citation does not cover the case of the appellant-plaintiff as in the case in hand, notice issued to the appellant-plaintiff for payment of sundry charges had been withdrawn and fresh notice was issued on 22.12.2009 which was not under challenge in the present suit.

No substantial question of law arises for consideration in the present appeal.

The judgment and decree dated 3.3.2012 passed by Additional Civil Judge (Senior Division), Gurgaon and the judgment and decree dated

18.2.2013 passed by Additional District Judge, Gurgaon do not require any interference.

The appeal is dismissed.

(HARNARESH SINGH GILL)
JUDGE

February 20, 2019
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes