

In the High Court of Punjab and Haryana at Chandigarh

Regular Second Appeal No. 1506 of 2013 (O&M)
Date of Decision: 20.2.2019

Kaptan Singh

.....Appellant

Versus

Sub Divisional Officer, Dakshin Haryana
Bijli Vitran Nigam Ltd. and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

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

Mr. Nitin Rathee, Advocate
for the respondents.

HARNARESH SINGH GILL, J.

The present appeal arises out of the judgment and decree dated 20.3.2012 passed by Civil Judge (Junior 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 brief facts emerging out of the present case are that Late Sh. Goverdhan Dass, father of appellant-plaintiff executed a Will dated 21.9.1985 in his favour for transferring the electricity connection in the name of the appellant. The appellant-plaintiff had got the load extended from .50 K.W. To 3 K.W. after depositing the requisite security amount. It is the further case of the plaintiff that the defendants/department had been

harassing him since January, 2002 regarding consumption of bill for the

month of January 2002, vide which the consumption worked out to 44 units as the old reading of the meter recorded was 3642 and the new reading was 3686 but the bill was wrongly rendered for 80 units. It is further pleaded that again the bill for the month of March 2004 was rendered for 28 units but for non-domestic tariff whereas the connection was for the domestic purpose. Thereafter by pointing out the discrepancies, the bill was corrected and subsequently, bill for the month of May 2004 was rendered for domestic tariff. On the representation of the appellant-plaintiff to Sub Divisional Officer-respondent No. 1, the meter was checked by Mool Chand Yadav, the then Junior Engineer and the seal was reported to be intact. It is alleged that defendant No. 4-Rohtas Singh checked the premises of the appellant-plaintiff and demanded Rs. 500/- as illegal gratification qua which the plaintiff had refused. It is the stand of the appellant-plaintiff that the load was within the sanctioned parameters. Defendant No. 1 had issued order No. 640 dated 12.2.2004 showing that M&P seal was found to be broken during checking on 6.2.2004 and a sum of Rs. 8220/- was imposed as penalty and Rs. 700/- as costs. Later the respondent-defendant No. 2 had accepted Rs. 5755/- and Rs. 700/- for restoration of the electricity connection which was paid under protest. Appellant/plaintiff has challenged the penalty being illegal and unjust as the bills for the months of March 2008 and May 2008 stand fully paid. However, while rendering the bill for July 2008, defendant No. 1 had added another sum of Rs. 8634/- under the 'sundry charges' head without any prior notice to the appellant-plaintiff.

As per the specific stand of the respondents-defendants, the electricity connection is not in the name of the appellant-plaintiff and as per the electricity rules, the electricity connection cannot be sold or gifted. The

electricity connection was existing in the name of Goverdhan Dass and challenging the bill for the month of January 2002 is barred by limitation. It has been stated that the meter was never checked by Mool Chand Yadav, J.E. and the bill pertaining to month of February 2004 cannot be challenged at this stage.

It is the specific stand of the respondents-defendants that on 4.12.2007, the premises of the plaintiff was checked and 2 BGP motor was found in use for 'Atta Chakki'. Thus, it was found that the appellant-plaintiff was using the unauthorized electricity connection. Accordingly, notice dated 5.12.2007 was served upon the appellant-plaintiff but the same was withdrawn by the department as it was not in the proper form and a fresh notice was issued to the appellant-plaintiff as he had not made the payment of the said amount.

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

1. *Whether the plaintiff is entitled to decree for declaration along with interest if so at what rate? OPP*
2. *Whether the plaintiff is entitled to an amount of Rs. 8634/- added in the bill for the month of 7/08 in addition to current consumption bill is illegal, unlawful, arbitrary, against the principles of natural justice, without show cause notice, against the instructions of the Nigam, against settled law and not binding on the plaintiff on the grounds explained in the plaint and is liable to be quashed/set aside? OPP*
3. *Whether the plaintiff is entitled to a decree for permanent injunction as prayed for ? OPP*
4. *Whether plaintiff is entitled to a decree for mandatory injunction directing defendants to refund the amount with interest if so at what rate ? OPP*

5. *Whether the plaintiff has no locus standi to file the present suit ? OPD*
6. *Whether the plaintiff has not come to the Court with clean hands and suppressed the true and material facts from the Court ? OPD*
7. *Whether the Court has no jurisdiction under Section 145 of the Electricity Act, 2003 ? OPD*
8. *Relief.*

Trial Court vide judgment and decree dated 20.3.2012 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.

Section 145 of the Electricity Act, 2003 reads as under:-

*“145. **Civil Court not to have jurisdiction**- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in [Section 126](#) or an appellate authority referred to in [Section 127](#) or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”*

It is not disputed that the case of the appellant-plaintiff falls under the Indian Electricity Act, 2003 ('Act' for short). The appellant-plaintiff was found using 'Atta Chakki' for commercial use and accordingly, penalty was imposed upon him. Thus, it is a clear-cut case against the appellant regarding committing theft of electricity. The assessment of

Rs. 8634/- was made under Section 126 of the Act. The jurisdiction of the civil Court is barred under Section 145 of the Act. It is only the appellate authority or the adjudicating officer appointed under the Act to adjudicate the dispute between the parties. In *UHBVN, Panipat and others versus Vinod Kumar 2009 (4) R.C.R. (Civil) 199*, it has been held that the civil Court has no jurisdiction in view of Section 145 of the Act.

Thus, the Courts below have rightly taken into consideration that when the jurisdiction of the civil Court is barred, the appellant-plaintiff cannot be allowed to bypass the statutory mechanism constituted in the Indian Electricity Act, 2003.

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

Taking into consideration the facts and circumstances, the judgment and decree dated 20.3.2012 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