

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

RSA-2850-2015(O&M)

Date of decision:-5.8.2019

M/s D.R.S. Logistic Pvt. Ltd.

...Appellant

Versus

S.D.O./A.G.M., DHBVNL, Dharuhera and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Argued by: Mr.C.B.Goel Advocate
for the appellant.

Mr.Deepak Sabharwal, Additional A.G., Haryana.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff - M/s D.R.S. Logistic Pvt. Ltd., Rewari had brought a suit for declaration and permanent injunction against defendants i.e. SDO/AGM, DHBVNL, Dharuhera, District Rewari and DHBVNL, Dharuhera, District Rewari.

As per the version of the plaintiff, it took electricity connection bearing account No.RK-21-0051, which is non domestic supply connection having 15 KVA load; that the plaintiff-firm had been paying the electricity bills regularly and had got constructed a godown through contractor in the year 2009 and it was responsibility of the contractor to provide electricity supply for the work of construction and

electricity of plaintiff firm was not to be used for construction and godown, the contractor used electricity through D.G. Generator sets but the defendants wrongly prepared a checking report with allegations that electricity connection of plaintiff firm was used for temporary load and a memo No.L151 dated 13.3.2009, having penalty amount of Rs.6,48,214/- was sent to the defendants; which according to the plaintiff is null and void not binding upon it, further contending that no instruments had been taken into custody and checking report is wrong; that the plaintiff had filed a complaint before District Consumer Redressal Forum, Rewari depositing 1/3rd of the penalty amount, however, the complaint was dismissed by District Consumer Redressal Forum, Rewari with the observations that it had no jurisdiction to look into the matter; that the plaintiff had requested the defendants several times for cancellation of the impugned memo but to no effect, as such it filed the civil suit in question.

On notice, the defendants appeared and filed written statement contesting the suit raking up various preliminary objections to wit that the present suit was not maintainable; that the plaintiff had no locus standi to file the suit and the suit was liable to be dismissed since the plaintiff had not served notice under Section 80 CPC upon the defendants before bringing the suit. On merits, the defendants contended that the plaintiff was having electricity connection bearing No.NDSRK21-0051 released by the defendants; that the premises of the plaintiff firm were checked by the staff of the defendants on 5.3.2009 in presence of representative of the plaintiff firm and during the course of checking, it was found that connected load for NDS25.070KW and temporary load

33,984 KW was being used for supply to DRS godown logistics and the total load at the site was 59,054 KW; that the site was photographed and documents were prepared at the spot, signed by checking team and also by Lakhan Singh Yadav, representative of the plaintiff firm. According to the defendants, the checking report and memo had been prepared as per the rules of Nigam. Refuting the remaining allegations in the plaint, the defendants prayed for dismissal of the suit.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to a decree of declaration that memo No.L151 dated 13.3.2009 is null and void? OPP.
2. Whether the plaintiff is entitled to a decree of permanent injunction restraining the defendants from disconnecting the electricity connection NDS No.RK-21-0051 on the basis of memo No.151 dated 13.3.2009? OPP.
3. Whether the plaintiff is entitled to a decree of mandatory injunction directing the defendants to restore status quo ante, in case they succeed in their evil design during the pendency of the suit? OPP.
4. Whether the suit of the plaintiff is not maintainable in the present form? OPP.
5. Relief.

In order to prove its case, the plaintiff – firm had examined Sh.Aajad Singh Verma, Director DRS Godown as PW1, Sh.Ishwar Singh Verma as PW2, Sh.Nitanand Kaushik as PW3 besides tendering certain documents.

On the other hand, the defendants had examined Sh.Harish Chand, JE as DW1, Sh.Bhaskar Yadav JE as DW2 and Sh.Avinash Yadav as DW3 besides tendering certain documents.

After hearing learned counsel for the parties, the trial Court dismissed the suit of the plaintiff with no order as to costs. This was so done vide judgment and decree dated 30.9.2014.

Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Rewari which was assigned to Additional District Judge, Rewari, who vide judgment and decree dated 27.3.2015 dismissed the same.

Dissatisfied with the judgments and decrees passed by the Courts below, the plaintiff has knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside.

Notice of the appeal was issued to the respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record and I find that the appeal lacks merit and is doomed for dismissal.

Both the Courts below considering the facts and circumstances of the case and evidence brought on the file by the parties, in light of the legal position have dismissed the suit of the plaintiff. The trial Court has concluded that the Civil Court lacked jurisdiction to deal with such type of disputes and the proper remedy with the plaintiff was to approach Electricity Tribunal provided in the Act. The relevant discussion

contained in paras No.25 and 26 of the trial Court judgment is being reproduced for the purpose of clarity:

25. It has been provided under section 126 of electricity Act that on inspection by the assessing officer if it is found that there unauthorized used the electricity, the officer shall make provisional assessment and thereafter a notice would be served upon the consumer and after hearing the consumer about the objections if any made by him pass a final order of assessment of electricity charges payable by such person and it was the choice of consumer to accept the assessment Section 145 of the Act creates a bar that the civil court would not have jurisdiction to entertain any suit or proceedings in respect of which the assessing officer referred to section 126 of the act or appellate authority referred to section 127 or adjudicating officer appointed under the exist empowered by this act to determine. Section 147 of the act further clarifies that no injunction would be granted by any court or other authority in respect of any action taken.

26. This court draw support from **Gurdeep Singh Versus DHBVNL and others civil revision No. 910 of 2013(O&M)** in which the Hon'ble Punjab and Haryana High Court held that act provided a complete era for dealing with the matters with regard to theft of electricity or penalty imposed or assessment made by the assessing officer in connection with the theft of electricity. It has been further held that the special courts had been constituted to deal with the criminal offences and not the civil matters. It has been categorically held that civil court has no jurisdiction to try the suit then certainly the petitioner cannot be said to have a prima facie case in his favour for grant of injunction.

The First Appellate Court has observed that from the evidence brought on file by the parties, it is clear that no generator was

being used and the impugned checking report is according to the facts found on the spot. Since it had come in the statement of DW2 Bhaskar Yadav, JE, there were several instruments i.e. welding set, grinder, cutter, hand-cutter etc. on the spot, the plaintiff was required to prove that they were not utilizing the electricity for the purpose of construction work and the evidence by the plaintiff on that point is insufficient. It has been concluded that under the circumstances, the checking report LLI Ex.DW1/A is not wrong and on the basis of said report, memos Ex.DW3/A and Ex.DW3/D were correctly issued.

Thus on merits also, the plaintiff was not found to have any case.

During the course of arguments learned counsel representing the respondents stated that in compliance with the directions issued by this Court, the officials of the defendants had gone for restoration of the connection but they were informed that there was no necessity of the restoration of the connection.

Learned counsel for the appellant could not controvert these contentions, rather he had prayed for 50% of the penalty amount deposited in terms of the order passed by this Court be got refunded to the appellant, which request is being opposed by the counsel for the respondents.

After hearing learned counsel for the parties, I find that no such direction can be passed in these proceedings. However, the appellant may move the defendants in that regard, who can then dispose of the request in accordance with law, rules and relevant instructions.

As far as the present appeal is concerned, no substantial question of law arises in this appeal.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments passed by the Courts below.

The appeal stands dismissed accordingly.

5.8.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No