IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 6091 of 2018 (O&M)
Date of Decision:11.07.2019

Dakshin Haryana Bijli Vitran Nigam Limited and others

......Appellants

Versus

M/s B &C Textile Private Limited

...... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

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

*****

LISA GILL, J.

Appellants-defendants are aggrieved of judgement and decree dated 22.09.2016, passed by learned Civil Judge (Jr. Division), Gurgaon, as well as judgement and decree dated 27.02.2018, passed by the learned Additional District Judge, Gurugram.

Plaintiff-respondent filed a suit for declaration, permanent injunction and mandatory injunction. It was prayed that order dated 03.06.2014, bill for the month of February, 2009, show cause notice dated 05.03.2014, be declared null and void, being illegal and arbitrary. It is further prayed that the defendants be restrained from charging ₹5,76,971/- as sundry charges from the plaintiff-respondent and from disconnecting the electricity connection of the plaintiff. A decree for mandatory injunction was also sought to the effect that the defendants be directed to return the amount of ₹3,00,209/- along with interest.

Facts as pleaded in the plaint are that plaintiff is a consumer of electricity from the defendant-Nigam, having electricity connection no. DLS-176 under H.T, category, with a sanctioned load of 250KVA. As it is a H.T., Connection, reading of the meter is taken by the Sub-Divisional Officer, who visits the premises of the plaintiff in the first week of every month and had been raising the bill at site personally. Working of the meter was found to be in order (O.K) by the Sub Divisional Officer and nothing prejudicial was noted. However, bill for the month of January 2009 was raised for₹3,41,020/- which is claimed to be incorrect as an amount of ₹1,49,267/- was wrongly added under the head of 'sundry charges'. The same was later on corrected by the Sub Divisional Officer. Thereafter, in the month of February 2009, as per consumption, a bill of ₹1,86,944/- was required to be raised, but in this bill, additional amount of ₹6,12,419/- has been added. As per circular of the Nigam, no extra amount should be charged from any consumer, without issuing notice of seven or fifteen days. The plaintiff had challenged the bill *qua* imposition of 'sundry charges' before the civil Court and vide judgement dated 22.09.2012, passed by the learned Civil Judge (Jr. Division), Gurgaon, the suit was decreed. The defendants were directed to issue show cause notice and afforded an opportunity of hearing to the plaintiff. Appeal against the said judgement was also dismissed by the learned Additional District Judge, Gurgaon. Thereafter, defendants issued the impugned show cause notice to the plaintiff. Plaintiff filed reply to that show cause notice, but the defendants did not pass any speaking order but imposed a penalty of ₹5,76,971/-. It is further pleaded that plaintiff had deposited a sum of ₹3,00,209/- with the defendants on

10.03.2009, but the defendants did not refund that amount and issued the bill imposing penalty of ₹8,15,437/-. Hence the present suit.

Suit was contested by the defendants. Various preliminary objections were raised. It is pleaded that when the premises of the plaintiff were checked by Maintenance and Protection (O&P) Staff of the Nigam, meter was found defective as it was not showing the reading on display. The audit party, pointed out that the consumer was billed on average basis from October 2006 to 2007 and average bill was on lesser side. Therefore, his account was overhauled and a sum of ₹5,76,971/- was charged. Dismissal of the suit was prayed for.

Replication was filed by the defendants. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether plaintiff is entitled for a decree for declaration in favour of the plaintiff declaring that the order dated 03.06.2014, is illegal, null and void and further the bill for the month of February 2009 may be tendered as illegal, arbitrary and wrong; further the show cause notice dated 5.03.2014, issued by the defendants may also be declared illegal, null and void, further the defendants may be directed not to charge any sundry charges from the plaintiff and to struck the amount of Rs. 5,76,971/- illegally imposed upon the plaintiff?OPP
2. Whether the plaintiff is entitled for a decree of permanent injunction restraining the defendants from disconnecting the connection of the plaintiff?OPP
3. Whether the plaintiff is entitled for a decree of mandatory injunction directing the defendant that the amount of Rs.3,00,209/- along with interest which was deposited against the said illegal imposition of the penalty with costs of the suit?OPD
4. Whether the suit of plaintiff is not maintainable in the present for,?OPD
5. Whether plaintiff has not come to Court with clean hands and concealed the material facts in the Court?OPD
6. Whether the plaintiff is estopped by his own acts, conduct and acquiescence from filing the present suit? OPD
7. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the facts and circumstances, as well as the evidence on record held the show cause notice dated 05.03.2014 as well as final assessment order dated 03.06.2014, to be unjustified. Suit was accordingly decreed and refund of ₹3,00,000/- along with interest at the rate of 6% per annum, was directed.

Appeal preferred by the present appellants was dismissed by the learned Additional District Judge, Gurugram, vide impugned judgement and decree dated 27.02.2018

Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellants vehemently argues that the average bill being raised by the department was pointed out to be on the lower side by the Audit Party after the inspection of the premises of the plaintiff. His account was overhauled and it is as per instructions of the Nigam that a sum of ₹5,76,971/- was charged. It is submitted that there is a clear cut misinterpretation of circular no. 58 of 2006 by both the learned Courts below. It is thus prayed that the present appeal be allowed and the judgements and decrees passed by the learned Courts below be set aside.

I have heard learned counsel for the appellant and have gone through the record with his assistance.

At the outset, it is relevant to refer to Sale Circular No. 58 of 2006, Ex.P-10/DW2/D, which relates to provisional billing. Relevant part of the said circular reads as under:-

> "The consumer shall be billed on the basis of

consumption of the same month of the preceding year. In case the same is not available, the consumer shall be billed on the basis of average of last six months. If consumption of last six months is not available, the consumer shall be billed on the basis of average of last three months.

In case no previous correct meter consumption is available, consume may be billed as per sales circular D-68/2002. The account of the consumer so billed finally be overhauled on the basis of average of the succeeding three bills consumption after the installation of the correct meter."

The said circular is clear and categoric inasmuch as a consumer is to be billed on the basis of consumption of the same month of the preceding year and in case the same is not available, the consumer shall be billed on the basis of the average of last six months. In a situation where even six months figure is not available, the consumer is to be billed on the basis of average of last three months. It is further provided that in case, no previous correct meter consumption is available, the consumer may be billed as per sale circular no.D-68/2002.

It is to be noticed that Sale Circular No. D-68/2002 is not on record. However, learned counsel for the appellant has produced copy of the said circular in Court today. The said circular provides for billing of domestic and non-domestic consumers during the period when the meters remains defective/dead stop and billing has been raised on 'Faulty Meter' basis.

There is no pleading in the written statement to the effect that the reading in respect to the premises of the plaintiff were not available in regard to the same month of the preceding year or that the reading of consumption of the last six months, was faulty or that the consumer could not be billed on the basis of the last three or six months. In this view of the matter, the learned trial Court has rightly observed as under:-

> "Vide judgement dated 22.09.2012, Ld. Trial Court has restrained defendants from recovering of Rs.6,12,419/- from plaintiff without issuing show cause notice. Therefore, vide memo No. 531 dated 05.03.2014, show cause notice of short assessment of Rs.5,76,971/- was issued to the plaintiff which is Ex.P-2. Plaintiff filed reply of above said show cause notice which is Ex.P-3. After considering the reply, defendants have issued final notice of short assessment vide memo No. 1413 dated 03.06.2014 and the same is on record as EX.P-6. Defendants have placed on record half margin report as Ex.DW2/B which is said to have been part of final notice of short assessment (Ex.DW2/C) Defendants have pleaded in written statement that as the plaintiff was charged on average basis from October, 2006 to February 2007, therefore, as per objection of audit team, electricity of plaintiff was overhauled. Show cause notice no. 531 dated 05.03.2014 (Ex.P-2), was served on account of average billing from 10.2006 to 02.2007. However, perusal of final notice of short assessment Ex.P-6, shows that period of short assessment for defective period is not in conformity with show cause notice for provisional assessment. Furthermore, provisional assessment of defective period should be in conformity with sale circular no. 58/2006 which is stated to have been applicable at that time. However, perusal of half margin report Ex.DW2/B shows that assessment has been done after taken into consideration bill of corresponding month of succeeding year and that too of 6 months instead of 4 months. From bare perusal of Ex.P-10 it is clear that provisional billing shall firstly be taking into consideration the consumption of the same month of the proceeding year but the defendants did not comply with it. It is not the case of the defendants that prior to October 2006, meter

> of the plaintiff was defective and meter readings of corresponding month of preceding year were not available. Even from cross-examination of PW-1, it is clear that present electricity connection was installed at the premises of the plaintiff either in the year 2003 or 2004 therefore, there must be available correct readings of the corresponding months of preceding year.
>
> Furthermore, account of consumer finally be overhauled on the basis of average of succeeding 3 bills consumption after the installation of new meter. But half margin report Ex.DW2/B is also not in compliance of the aforesaid instruction because defendants have assessed the final amount taking into consideration of difference between the units charged on average basis and on actual consumption after installation of the new meter. Thus it is clear that defendants have failed to prove on record that the amount assessed by defendants on the basis of half margin report Ex.DW2/B is in conformity of the circular 58/2006. Therefore, show cause notice dated 05.03.2014, as well as final assessment order dated 03.06.2014 of short assessment are not sustainable in the eyes of law and same are declared null and void. Hence, issue no.1 is decided in favour of plaintiff and against defendants."

Learned counsel for the appellants, is unable to point out any question of law much less a substantial question of law which may be involved for consideration in this regular second appeal. Both the learned Courts below, after proper appreciation and consideration of the evidence on record have returned concurrent findings vide impugned judgements, which call for no interference.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 22.09.2016 and 27.02.2018 passed by the learned Civil Judge (Jr. Division) Gurgaon and learned Additional District Judge, Gurugram, respectively, are upheld.

There is delay of 6 days in re-filing and 100 days in filing of this appeal. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in re-filing or filing of this appeal has been rendered academic. Applications are accordingly disposed of.

Present appeal is, consequently, dismissed with no order as to cost.

[LISA GILL]
Judge

11.07.2019
s.khan

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.