

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

CR No.972 of 2018

Date of decision: 6th March, 2020

SDO, CCC, Dakshin Haryana Bijli Vitran Nigam Ltd.

... Petitioner

Versus

M/s Bharti Reality Limited

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Vishal Garg, Advocate for the petitioner.

FATEH DEEP SINGH, J.

The plaintiff M/s Bharti Realty Limited filed against Dakshin Haryana Vidyut Vitran Nigam (in short, 'DHBVN') and another a suit for declaration that the electric connection granted for running their business premises for a connected load of 1850 KW fell within the category of HT Industrial and the act of the defendants in considering this connection for non-domestic supply and consequent demand raised on the basis of the same by way of electric charges was highly uncalled for, illegal and unenforceable. The stand of the defendants is that since the plaintiffs were using the electric connection for running a call-centre and therefore being a non-domestic supply, did not fall under HT Industrial category. The defendants claimed that as per the rules, the plaintiffs were bound to pay a sum of ₹ 13,91,740/- for the period September 2002 to

June 2006. The plaintiffs filed replication and vide orders dated 27.07.2010 following issues were framed:-

1. Whether the demand for ₹ 51,97,697/- contained in bill dated 30.04.09 is void and non domestic as alleged?
OPP
2. Whether the plaintiff is entitled to declaration and injunction? OPP
3. Whether the plaintiff has locus standi to file the present suit as alleged? OPD
4. Whether the plaintiff has not come to the Court with clean hands and has suppressed the true material facts from the Court? OPD
5. Relief.

The plaintiff examined PW1 Harish Kumar and tendered documents Ex.P1 to Ex.P4. The defendants did not appear and were proceeded against ex-parte vide orders dated 21.12.2012 and as a consequence of which the Court of learned Civil Judge (Junior Division), Gurgaon through judgment and decree dated 24.01.2013 decreed ex-parte the suit of the plaintiff with costs to the effect that defendants are not entitled to recover the amount of ₹ 51,67,697/- based on electricity bill of 30.04.2009 and 30.05.2009 for a period between September 2002 to June

2006 and further restraining the defendants from disconnecting the electricity connection No.DLS-124.

The defendants subsequently moved an application under Order IX Rule 13 CPC for setting aside ex-parte judgment and decree dated 24.01.2013. The Court of learned Civil Judge (Junior Division), Gurgaon vide impugned findings dated 20.05.2015 dismissed the application, against which the present revisionist filed an appeal and the Court of learned Additional District Judge, Gurugram through judgment and order dated 04.10.2017 dismissed the appeal being hopelessly time barred. It is against the same, the present revision petition has come about.

Upon hearing Mr. Vishal Garg, Advocate for the petitioner and perusing the records of the case.

It is the own case of the revisionist (then defendant) made in the submissions that in consequence of the notice of the suit the defendants had put in appearance, filed written statement, followed up by replication by the plaintiffs and thereafter the Court had framed issues. The plaintiffs examined their witnesses and thereafter on closure of the plaintiff's evidence the case was adjourned to 21.09.2012 for defendants' evidence and when they failed to lead their evidence and put in appearance on 21.12.2012 were proceeded against ex-parte leading to passing of the judgment and decree ex-parte on 24.01.2013.

Learned counsel for the petitioner has sought to claim that the previous counsel engaged by the petitioner (then defendant) was handed over the brief with documents and who failed to attend each and every date of hearing and intimate the petitioner about the fate of the case. It is claimed that they came to know of the ex-parte judgment and decree on 30.05.2013 when copy of the judgment was supplied by the counsel to them and thereafter the application for setting aside ex-parte judgment and decree was made.

The plaintiffs had opposed this stand on the ground that it was the own negligence on the part of the applicant/defendants has led to the passing of the ex-parte judgment and decree on 24.01.2013 for which they cannot be allowed to rake up any plea. The trial Court had framed following issues:-

1. Whether the exparte judgment and decree dated 24.1.2013 are liable to be set aside or not? OPA
2. Relief.

The applicant department examined AW1 Raj Kumar Commercial Assistant, AW2 Gaurav Chaudhary SDO and the plaintiff examined Partho Sarothi Gupta as RW1. It is consequent thereupon, the application of the present petitioner stood declined and dismissed.

Appreciating the submissions of the two sides, learned counsel for the petitioner fairly concedes at the bar that the department

was fully aware of the pendency of the proceedings and had been contesting the suit of the plaintiffs till the closure of their evidence and thereafter failed to either lead evidence or make any submissions or put in appearance. The judgment and decree was passed ex-parte on 24.01.2013. The application under Order IX Rule 13 CPC was filed on 02.07.2013. The application for setting aside the ex-parte judgment and decree which was passed on 24.01.2013 ought to have been filed within 30 days and having filed it on 02.07.2013, there is apparent delay of more than four months. Even otherwise, as has been observed by the Court below and well highlighted in the submissions of learned counsel for the petitioner as well, when posed with the query by the Court as to what bona fide and substantial grounds have been set up in the application necessitating setting aside of the ex-parte judgment and decree. Even the testimony of AW1 Raj Kumar Commercial Assistant shows that one Akshay, Lower Division Clerk was pursuing the case on behalf of the department but who has never been examined by the applicant as to enumerate the reasons which led to passing of this judgment and decree. Even otherwise, the plea that it was on account of fault of learned counsel for the applicant, has been well controverted by the Court holding that their plea that he remained incommunicado was not corroborated and was in fact contrary to the factual position, as at that time the counsel was very much in practice. The testimony of AW2 Gaurav Chaudhary SDO is more based on hearsay as he clearly accepts the fact that he never used to

attend the proceedings. Even the delay between passing of the ex-parte judgment and decree dated 24.01.2013 and their claimed knowledge of the same on 30.05.2013 is itself reflective of the gross negligence by the department which did not bother to verify the next date of hearing nor their counsel did so informing them about the same. The Court has rightly brushed aside the testimonies of these witnesses, as their lone witness Partho Sarothi Gupta RW1 has testified that the defendant department failed to lead evidence despite sufficient opportunities and did not present themselves on 21.12.2012 and were proceeded ex-parte. Even otherwise, the application for setting aside the same is bereft of finer details besides lack of bona fide on the part of the defendant department. In the present case, as has been detailed in the impugned findings that there was no occasion for the Court to set aside ex-parte judgment and decree as it was not a case where the applicant defendants were not supplied any information or there being any justifiable and condonable reason for remaining away from the Court and has rightly returned the findings. The lower appellate Court in the appeal of the department, in the impugned findings has delved at length the stand of the two sides holding how and by what means the then appellants (now petitioner) had acted in a most insolent manner in protecting the interest of a public body and after almost five months of the passing of the judgment and decree had moved the Court and unable to explain the reasons for this delay and the reasons leading to passing of the impugned

judgment and decree. It is essential to highlight that the Court has also observed that as per the own claim of the petitioner, the opinion of the LR was received on 09.09.2015 and the appeal has been filed on 07.10.2015 for which even no plausible explanation is forthcoming and has rightly concluded that the department officials have not acted diligently or had remained inactive, and there is no justifiable ground to condone the delay. Learned counsel could not convince this Court how the impugned findings were unsustainable in law and as such the present petition being hopelessly devoid of any merit stands dismissed.

Since the petitioner happens to be an instrumentality of the State and such a massive loss of its revenue cannot be swept under the carpet, necessitates directing the petitioner to hold its own inquiry into this gross lapse, which appears to be of more intentional and not unintentional one, and to recover the losses from the officials/officers responsible for this goof-up.

(FATEH DEEP SINGH)
JUDGE

March 6, 2020

rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No