

Sr. No.127

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

RSA No.3299 of 2019 (O&M)

Date of Decision: 20.01.2020

Dakshin Haryana Bijli Vitran Nigam Limited and others

... Appellants

Versus

M/s Advance Polytex Industries

... Respondent

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Pawan Kumar Longia, Advocate,
for the appellants.

ARUN MONGA, J.(ORAL)

CM No.8872-C of 2019

Prayer in the application is for condonation of delay of
160 days in filing the appeal is accepted.

Delay stands condoned.

Main case

1. The second appeal herein arises out of the concurrent findings rendered by the Courts below leading to decreeing the suit in favour of the plaintiff/respondent, whereby it has been declared that electricity bill pertaining to months of June and July, 2008 imposing sundry charges of Rs.2,16,317/- is illegal, null and void and consequently an injunction was granted directing the defendants/appellants herein to refund the said amount of sundry charges along with interest @18% per annum with effect from the day of its deposit by the plaintiff/respondent till its actual payment/adjustment.

2. Brief factual sketch first, as noticed by the Courts below. The plaintiff/respondent is a Company and is a consumer of the Appellant Power Distribution Company i.e. Dakshin Haryana Bijli Vitran Nigam Limited having got its electricity connection for supply of power. On 24.06.2008, periodical checking was carried out by the Deputy General Manager of the Appellant-Nigam and vide a report thereof, B Phase was not found available qua the electricity meter of connection leading to imposition of sundry charges in the electricity bill for the month of July, 2008 in addition to the electricity bill of Rs.2,83,697/-. The respondent/plaintiff approached the appellant Nigam for correction of its bill but the said request was turned down with an oblique threat of disconnection of electricity, in case, the bill in question was not paid.

3. Aggrieved, plaintiff/respondent approached the Consumer Forum but the said Forum observed that it had no jurisdiction to decide the disputes regarding High Tension Electric Connections.

4. During the pendency of the Consumer Forum Case plaintiff/respondent deposited the said sundry charges under protest along with electricity consumption charges. Subsequently, it preferred to file a civil suit wherein it was alleged that checking party of the Appellant Nigam, *inter alia*, took a stand that upon checking found that the current/voltage parameters, B-Phase CT Secondary was showing reading as 0.018 i.e. zero whereas other parameters were found in order. The meter was found recording

less energy consumption to the extent of 1/3rd and thus as per the Appellant Nigam Instructions vide sundry item No.1, the plaintiff/respondent was imposed a penalty for slowness of the meter as compared with the previous checking date i.e. 01.03.2008 to 06.08.2008 to the extent of Rs.2,16,317/-. Accordingly, the plaintiff/respondent was held liable to pay the said sundry charges as penalty.

5. Based on the pleadings, the trial Court framed the following issues:-

- 1) *Whether the plaintiff is entitled to the declaration as prayed for? OPP*
- 2) *Whether the plaintiff is also entitled to the relief of permanent injunction as prayed for? OPP*
- 3) *Whether the Civil Court has the jurisdiction to entertain and try the present suit in view of Section 126 of the Electricity Act? OPP.*
- 4) *Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 5) *Relief.*

6. Both the parties adduced their evidence oral as well as documentary in support of their pleadings to discharge their onus of proof as per the issues, *ibid*. The trial Court after appreciation of evidence returned the findings on issues No.1 to 4 against the defendants and in favour of the plaintiff and the same have been duly upheld and reaffirmed by the Appellate Court after independent appreciation of evidence adduced before the trial Court. Hence, the second Appeal by the Appellant-Nigam.

7. I have heard learned counsel for the parties before this Court. Learned counsel for the appellant, *inter alia*, has essentially

been over emphatic about insisting that both the Courts below have committed patent illegality in deciding issue No.3 in favour of the plaintiff inasmuch as holding that civil Court had the jurisdiction to entertain and try the suit despite Section 126 of the Electricity Act. For ready reference, Section 126 of the Electricity Act is reproduced hereinbelow:-

“Section 126: (Assessment): --- (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use.

2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom an order has been served under sub- section (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment of the electricity charges payable by such person.]

(4) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

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[(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.] _____

(6) The assessment under this section shall be made at a rate equal to 1[twice] the tariff rates applicable for the relevant category of services specified in sub-section (5).

Explanation.- For the purposes of this section,-

(a) “assessing officer” means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b) “unauthorised use of electricity” means the usage of electricity –

i) by any artificial means; or

ii) by a means not authorised by the concerned person or authority or licensee; or

iii) through a tampered meter; or

iv) for the purpose other than for which the usage of electricity was authorised; or

(v) for the premises or areas other than those for which the supply of electricity was authorized.”]”

8. A perusal of the above Section leaves no manner of doubt that passing of an assessment order is a *sine qua non* and rightly so for ousting the jurisdiction of the Civil Court and in view thereof the aggrieved consumer has been given the remedy of appeal to challenge the assessment order. However, curiously there is no assessment order passed by the Appellant Nigam while

imposing the penalty of sundry charges along with electricity bill in question. In this background, the trial Court while returning the finding on issue No.1 rightly observed thus:-

“Plaintiff as per the provisions of the CPC, has right to seek declaration qua his civil right. In the present case, the plaintiff has not assailed either the assessment or the checking report but has already deposited the amount under protest and now through the Civil Court he has challenged the correctness and veracity of the sundry charges imposed upon him. In such circumstances, the Civil Court certainly has the jurisdiction to entertain and decide the present suit.

9. As regards the argument of the learned counsel for the appellant that Section 126 bars the jurisdiction of Civil Court since remedy qua an assessment order has been provided under the Electricity Act, there is no quarrel about the same.

10. I am in agreement with the proposition of law that an assessment order passed under Section 126 of the Electricity Act is appealable under Section 127 and in view of Section 145 of the Act, *ibid*, Civil Court jurisdiction is barred. However, in the present case, no such assessment order was passed. Therefore, the trial Court as well as Lower Appellate Court rightly held that jurisdiction of the Civil Court was not barred qua challenge of the Electricity bill vide which sundry charges were imposed on the plaintiff/respondent. As per the provisions of the CPC, plaintiff has right to seek declaration qua his civil right. In the present case, the plaintiff has not assailed either the assessment or the checking report but has already deposited the amount under

protest and now through the Civil Court, he has challenged the correctness and veracity of the sundry charges imposed upon him. In such circumstances the Civil Court certainly has the jurisdiction to entertain and decide the suit. Concurrent findings of facts returned against the appellant are as per record and are neither perverse nor illegal.

- 11. Dismissed.
- 12. Pending application, if any, shall also stand disposed of.

20.01.2020
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No