

RA-128-2019(O&M) in
RSA-2850-2015

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

RA-128-2019(O&M) in
RSA-2850-2015
Date of decision:-13.3.2020

M/s DRS Logistic Pvt. Ltd.

...Applicant/Appellant

Versus

SDO/AGM, DHBVNL, Dharuhera, District Rewari and another

...Respondents

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

Present: Mr.C.B. Goel, Advocate
for the applicant/appellant.

Mr.Deepak Sabherwal, Advocate
for the respondents.

H.S. MADAAN, J.

CM-13514-C-2019

Heard.

For the reasons mentioned in the application, the same is
allowed and delay of 18 days in filing of the review application stands
condoned.

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Briefly stated, the facts of the case are that M/s DRS Logistic
Pvt. Ltd., National Highway No.8, Khijuri, Tehsil Dharuhera and District
Rewari had brought a suit for declaration and permanent injunction

against the defendants. i.e. SDO/AGM, DHBVNL, Dharuhera, District Rewari and DHBVNL, Dharuhera, District Rewari through its Executive Engineer etc. on the averments that the plaintiff firm had taken non-domestic supply connection having 15 KVA load; the plaintiff had 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 was used by the contractor through DG generator sets but the defendants wrongly prepared checking report on the allegations that electricity connection of plaintiff was used for temporary load and a memo No.L151 dated 13.3.2009 with penalty amount of Rs.6,48,214/- was illegally sent by the defendants, as such memo was null and void and not binding upon the plaintiff; the plaintiff had filed a complaint before District Consumer Redressal Forum, Rewari and had deposited 1/3rd amount as penalty, however, the complaint was dismissed by District Consumer Redressal Forum, Rewari with the observations that it was not having jurisdiction in the matter. Therefore. the plaintiff had approached the Civil Court for redressal of his grievances.

The suit was resisted by the defendants taking various legal pleas, on merits denying the allegations in the plaint contending that during checking by staff of the defendants, it came out that electricity was wrongly been used for DRS godown and the suit is based upon wrong facts. Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After hearing arguments, the trial Court of Civil Judge (Jr.Divn.), Rewari had dismissed the suit vide judgment and decree dated

30.9.2014. The plaintiff had preferred an appeal before District Judge, Rewari, which was assigned to Additional District Judge, Rewari, who vide judgment dated 27.3.2015 had dismissed the appeal upholding the judgment and decree passed by the trial Court. The plaintiff had approached this Court by way of filing Regular Second Appeal, which too was dismissed vide judgment dated 5.8.2019.

During the course of arguments in Regular Second Appeal, learned counsel representing the respondents had 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 doing that. Learned counsel appearing for the appellant could not controvert those contentions, rather he had prayed that 50% of the penalty amount deposited in terms of the order passed by this Court be got refunded to the appellant, which request was opposed by learned counsel for the respondents. After hearing learned counsel for the parties, it was observed that no such direction could be passed in those proceedings. It was further observed that the appellant may move the defendants in that regard, who can then dispose of the request in accordance with law, rules and relevant instructions. Observing that no substantial question law arose in the appeal and there was no merit in the appeal and no reason was there to disturb the legal, valid and well reasoned judgments passed by the Courts below, the appeal was dismissed.

Thereafter, the appellant has filed the present application submitting that the appellant had approached the authority provided under

the electricity act against the demand notice but the authority instead of considering the request of the appellant has issued a bill dated 26.8.2019 for a sum of Rs.11,21,460/- to be paid by cash or by cheque on 26.8.2019 itself with a rider that if that amount is not paid by due date i.e. 26.8.2019 then a surcharge of Rs.16,809/- would also be payable. The appellant had filed statutory appeal but that was not entertained with the objection that since the matter has been decided by this Court, therefore the authority had no jurisdiction. Under the circumstances, the appellant is not left with any remedy except to approach this Court for clarification of the order that the authorities under the Act are to decide the representation/appeal. which is statutory and the appellant cannot be deprived of his right to challenge the illegal demand made by the department. Therefore, the judgment passed by this Court be reviewed and recalled and the appeal be re-decided again.

This application is opposed vehemently by the respondents and they have filed a written reply in that regard praying for dismissal of the application.

I have heard learned counsel for the parties besides going through the record.

Order XLVII CPC deals with review. For ready reference the provision is being reproduced as under:

ORDER XLVII- REVIEW 1 . Application for review of judgment—

(1) Any person considering himself aggrieved— (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred, (b) by a decree or order from which no appeal

is allowed, or (c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record of for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

A very perusal of this provision goes to show that the case of the applicant is not covered by this provision. The trial Court as well as First Appellate Court had considered and rejected the claim of the plaintiff on merits. The Regular Second Appeal was also dismissed by this Court on merits and the judgments passed by the Courts below were upheld finding no illegality or infirmity therein. Thus there is absolutely no reason to recall the judgment passed by this Court or review it. If the appellant/plaintiff still feels aggrieved by any demand raised by the defendants/respondents from it, it can take recourse to the remedy

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available to him under the law and cannot possibly come to this Court again seeking reopening of the matter by way of filing the present application when it has already attained finality. There is absolutely no reason to recall or review the judgment. The application is found to be without any merit and is dismissed accordingly.

Since the main application stands dismissed, miscellaneous application if any stands disposed of accordingly.

13.3.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No