

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

RSA No.4692 of 2019 (O&M)
Date of decision: 6th February, 2020

Narveer Singh & another

... Appellants

Versus

Dakshin Haryana Bijli Vitran Nigam Ltd. & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Saurabh Gulia, Advocate for the appellants.

Mr. Pawan K. Longia, Advocate for the respondents.

FATEH DEEP SINGH, J.

After having gone through the rigor of legal roller coaster, when initially the suit of the present appellants stood decreed vide judgment and decree dated 06.03.2018 by the Court of learned Civil Judge (Jr. Divn.) Gurugram and subsequently the appeal by the present respondents namely Dakshin Haryana Bijli Vitran Nigam Ltd. (in short, 'DHBVNL') was allowed by the Court of learned Additional District Judge, Gurugram through impugned judgment and decree dated 26.08.2019 setting aside the findings of the Court below, the unsuccessful plaintiffs are before this Court in this regular second appeal.

The brief facts are that the plaintiffs namely Narveer Singh and Nirmala Devi, both son and mother respectively, had filed a suit against DHBVNL for declaration to the effect that the demand of

₹13,58,033/- raised vide notice dated 01.07.2015 is illegal, void, unlawful, unjustified and against the principles of natural justice and not binding on the plaintiffs and not recoverable from them.

Admittedly, the plaintiffs were availing electricity connections under accounts No.FACS-0097 and FACS-0099 for their commercial use and by virtue of the impugned demand note, supply of the electricity of their premises through the above detailed meters was snapped and they were asked to pay the amount so imposed. The plaintiffs state that the electricity meter under account No. FACS-0099 suffered burns and a complaint was made in writing which was marked to concerned JE on 23.06.2015. The plaintiffs purchased a fresh electricity meter and handed it over to the department for testing and installation for which requisite fees too stood deposited on 23.06.2015. Further it is alleged that on 24.06.2015 a lineman of the office of defendants came and connected the current to their premises through above said meter but to the dismay of the plaintiffs on 30.06.2015 officials of the defendant department visited the premises and framed a case of electricity theft and that is how the present case has come about.

The stand of the defendants is of denial of the case of the plaintiff, lack of locus standi, non-maintainability of the suit and concealment of the material facts as well as jurisdiction of the Civil Court. On merits, the defendants claimed that it was a clear cut case of theft of electricity.

The trial Court framed following issues:-

1. Whether the plaintiff is entitled to declaration as prayed for? OPP
2. Whether the plaintiff is entitled to decree for permanent injunction as prayed for? OPP
3. Whether the plaintiff is entitled to decree for mandatory injunction as prayed for? OPP
4. Whether the plaintiff have not come to Court with clean hands? OPD
5. Whether the present suit is not maintainable? OPD
6. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD
7. Whether the suit is not properly valued for Court fee and jurisdiction? OPD
8. Whether the plaintiff is estopped from filing the suit by his own act and conduct? OPD
9. Relief.

The plaintiffs proved documents Ex.P1 to Ex.P11 through plaintiffs Narveer Singh as PW1 and examined PW2 Umrao Singh. The defendants on the other hand, examined Kuldeep Nehra as DW1, Vikas Yadav as DW2 and Mahender JE as DW3, and proved documents Ex.D1, Ex.D2/1 and Ex.D2/2, and that is how initially the suit of the plaintiffs was decreed and consequently the first appellate Court reversed the findings.

In view of the recent pronouncement in '**Kirodi (since deceased) through his LR vs. Ram Parkash & others**' Civil appeal

No.4988 of 2019; SLP(C) No.11527 of 2019 decided on 10.05.2019, the Hon'ble Supreme Court has clearly held under Section 41 of the Punjab Courts Act, 1918 which has its application to the States of Punjab and Haryana, that there is no necessity of framing substantial question of law for disposal of an appeal. Learned counsel for the appellants has relied upon '**Sunita vs. Uttar Haryana Bijli Vitran Nigam Ltd. and another**' **2017(3) RCR (Civil) 406** to enliven his arguments.

Upon hearing Mr. Saurabh Gulia, Advocate for the appellants; Mr. Pawan K. Longia, Advocate for the respondents and on perusal of the records.

The unrebutted and unrefuted stand of the plaintiffs shows that on account of defect in their meter on 26.06.2015 they made a complaint in writing to the department which was duly marked to the Junior Engineer which is proved on the record as Ex.P6. The own witness of the defendant department DW1 Kuldeep Nehra SDO in his cross-examination clearly accepts the fact that the block of the meter was burnt and has admitted the endorsement Ex.D1 to this effect and further admits that for replacement of the meter and reconnection usually takes a week's time and accepts that he cannot categorically state that it was a case of theft of electricity, therefore, nullifies the very stand of the department to that effect. The most intriguing evidence has come in the cross-examination of DW2 Vikas Yadav SDO who accepts that the connection in respect of the meter bearing account No. FACS-0099 was found to be

defective and on written complain he marked the same to JE Inder, substantiating the claim of the plaintiffs that it was a case of abrupt defect in the meter due to burning of the block which was duly reported to the authorities who failed to act into the matter; and further states that commensurate with the rules and procedure they have reconnected it thus, it cannot be, as has been sought to be projected by the learned counsel for the appellants, taken to be a case of theft of electricity. Furthermore, there is a positive admission by this witness in his cross-examination that neither case of theft of energy nor malpractice was apparently made out and that the meter was found to be '*dead stop*'. When confronted with this aspect of the evidence, learned counsel for the respondents was clearly at loss of words. More so, it was on the next very day i.e. 23.06.2015, the plaintiffs have purchased a new meter regarding which bill Ex.P7 has been proved and receipt for installation and testing of this meter is shown to have been deposited the same very day through Ex.P8.

Learned trial Court considering the fact that the very fundamental provisions of the Statute applicable to DHBVNL have been given a clear go-by and that the provisions of the sales circular were not complied with and therefore, has rightly concluded that the jurisdiction of the Civil Court does not stand ousted. More so, Section 9 CPC empowers the Civil Court to exercise its jurisdiction where it finds that there is apparent and imminent threat of civil injury. In the present case, on

account of serious violations of the provisions of the Electricity Act, 2003 especially Section 126, is a matter which escaped the judicial notice of the learned first appellate Court. Relying on the ratio laid down by Hon'ble the Supreme Court in '**Southern Electricity Supply Co. of Orissa Ltd. vs. Sri Seetaram Rice Mill**', Hon'ble Andhra High Court in the matter of '**M. Varalakshmi and others vs. The Superintending Engineer (Assessments), Eastern Power Distribution Co. of Andhra Pradesh**' Writ Petition No.5422 of 2004 decided on 18.03.2014, has held as under:

*“16. The Hon'ble Supreme Court in **Southern Electricity Supply Co. of Orissa Ltd. V. Sri Seetaram Rice Mill**, examined the scope and distinction between Sections 126 and 135 of the Act and the position was settled. In the said decision, the Hon'ble Supreme Court examined the issue of the case of consumer who consumes electricity in excess of the maximum of the contracted load in the light of Section 126, its scope and interpretation. While examining the said issue, the Hon'ble Supreme Court also considered the distinction between Sections 126 and 135 and held that the contents of Sections 126 and 135 are distinct and different provisions which operate in different fields and have no common premise in law. Sections 126 and 127 read together constitute a complete code in themselves covering all relevant considerations for passing of an order of assessment in cases which do not fall under Section 135 and ultimately, the Hon'ble Supreme Court held as follows:*

29. *Thus, it would be clear that the expression unauthorised use of electricity under Section 126 of the 2003 Act deals with cases of unauthorised use, even in the absence of intention. These cases would certainly be different from cases where there is dishonest abstraction of electricity by any of the methods enlisted under Section 135 of the 2003 Act. A clear example would be, where a consumer has used excessive load as against the installed load simpliciter and there is violation of the terms and conditions of supply, then, the case would fall under Section 126 of the 2003 Act. On the other hand, where a consumer, by any of the means and methods as specified under Sections 135(a) to 135(e) of the 2003 Act, has abstracted energy with dishonest intention and without authorisation, like providing for a direct connection bypassing the installed meter, the case would fall under Section 135 of the Act.*

17. *While examining the scope of Section 126 of the Act, the Hon'ble Supreme Court held as follows:*

37. *Wherever the assessing officer arrives at the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if such period cannot be ascertained, it shall be limited to a period of 12 months immediately preceding the date of inspection and the*

assessment shall be made at the rate equal to twice the tariff applicable for the relevant category of service specified under these provisions. This computation has to be taken in terms of Sections 126(5), 126(6) and 127 of the 2003 Act. The complete procedure is provided under these sections. Right from the initiation of the proceedings till preferring of an appeal against the final order of assessment and termination thereof, as such, it is a complete code in itself.

<i>XXXX</i>	<i>XXXX</i>	<i>XXXX</i>
<i>XXXX</i>	<i>XXXX</i>	<i>XXXX</i>

*19. The Hon’ble Supreme Court relied on the decisions in **Bhilai Rerollers V. M.P.Electricity Board and Orissa SEB V. IPI Steel Ltd.** and held that the power to impose penal charges or disconnect electricity has been held to be not violative of Article 14 of the Constitution of India. The expression malpractices does not find mention in the provisions under the Act but as a term coined by judicial pronouncements. Thus the expression malpractices has to be construed in its proper perspective and normally may not amount to theft of electricity as contemplated under Section 135 of the Act. Such acts/malpractices would fall within the mischief of unauthorised use of electricity as stipulated under Section 126. Cases of pilferage of electricity by adopting malpractices which patently may not be a theft would be the cases that would fall within the jurisdiction of the Board in furtherance to the terms and conditions of*

*supply. For this proposition, the Hon'ble Supreme Court relied on **Hyderabad Vanaspathi Ltd. V. A.P.SEB.***

20. Dealing with the procedure prescribed, it was held that the person consumer has to be served with a notice inviting him to file objections, if any, within the time stipulated in Section 126(3) of the Act and the assessing officer is required to pass final orders within 30 days from the date of service of such order of provisional assessment. If the consumer does not pay the provisional assessment amount and file objections, then after affording an opportunity to the consumer, the assessing officer shall assess the amount and pass an order of final assessment under Section 126(5). The assessment under Section 126(6) shall be made at a rate equal to twice the tariff applicable for the relevant category of services specified in sub-section (5). A right of appeal is provided under Section 127. The said appeal has to be filed only against the final order passed under Section 126 that too within 30 days of the said order and no appeal shall lie against notice or provisional order of assessment as may be made by the assessing officer."

Thus, from this all, since the learned counsel for the respondents could not show if any notice has been served upon the consumer to enable them to file objections within the timeframe enunciated under Section 126(3) of the Act or that there was passing of final assessment order within a period of 30 days from the service of such an order of provisional assessment, are matters of much relevance impinging judicial conscience. Even if at the most the arguments of

learned counsel for the respondents are considered, the act of the plaintiffs at the most can be termed to be unauthorized use of electricity, which expression has a wider connotation and thus, abhors such a recourse as has been adopted by the Court below. The learned trial Court has with great efforts scrutinized the entire evidence and materials and discussed each and every provision of the law applicable to the present case and thus, has rightly come to a justifiable conclusion. Rather what one can foresee is that the learned first appellate Court in its endeavour and haste has thrown off to the wind all these mandatory provisions and therefore, the findings of the impugned judgment go to the roots of the present case and thus need to be set aside by way of acceptance of the instant appeal thereby setting aside the judgment of the learned first appellate Court and upholding the findings arrived at by the learned trial Court. The appeal stands disposed off in those terms.

(FATEH DEEP SINGH)
JUDGE

February 6, 2020

rps

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