IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 560 of 2020 (O&M)
Date of Decision: 10.02.2020

Uttar Haryana Bijli Vitran Nigam Ltd. through its Managing Director, Shakti Bhawan, Sector 6, Panchkula and others

......Appellants

Vs.

M/s Krishna Udyog situated at Patel Nagar, S.K. Road, Yamuna Nagar, through its Proprietor Sh. J.P. Goenka.

.........Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. P.K. Longia, Advocate,
for the appellants.

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AMOL RATTAN SINGH, J. (ORAL)

CM No. 1624-C-2020

The delay in re-filing the accompanying appeal is sought to be condoned vide this application, with it stated in paragraph 2 thereof that the appeal having been filed on 18.12.2019, it was returned with some objections, including to the effect that the decree sheet issued by the trial court had not been annexed alongwith.

The decree sheet having been applied for and having been received on 04.02.2020, thereafter the appeal was re-filed, leading to a delay of 09 days in such re-filing.

The application is duly accompanied by the affidavit of an SDO of the appellant corporation and consequently, finding the reason for the delay to be not unreasonable, the application is allowed and the aforesaid delay is condoned.

The application stands disposed of accordingly.

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<u>RSA No. 560 of 2020 (O&M)</u>

By this appeal, the defendant-UHBVNL and its officers impugn the judgments of the learned Civil Judge (Junior Division), Yamunanagar, and the Additional District Judge, Yamunanagar, decreeing the suit of the respondent-plaintiff in its favour, such suit being one seeking a declaration to the effect that the amount of Rs. 49,450/- debited to the electricity bill of the plaintiff on 15.02.2011, is illegal, null and void and not binding upon the plaintiff in any manner whatsoever.

The respondent-plaintiff is a firm running a factory, with J.P. Goenka shown to be its proprietor, with an electricity connection bearing account no. S2-445 sanctioned to it after the electricity connection earlier running in the same premises, bearing account number S2-348, (stated to have been sanctioned in the name of the father of the proprietor of the respondent-firm), was 'closed'.

That connection was disconnected on the request of the respondent-plaintiff, with the outstanding amount (as is contended to have been disclosed to the respondent), of Rs. 995.20/-, stated to have been deposited vide receipt number 184/378 on 13.06.1994, with therefore there being no outstanding amount remaining to be paid qua that account, as per the case of the respondent-plaintiff.

However, in the electricity bill for the month of February 2011, qua the new connection, i.e. S2-445, an amount of Rs. 54,033/- was shown to be outstanding. That amount included a sum of Rs. 49,450/-, as had been shown as "sundry charges", which the respondent was directed to deposit by 24.02.2011.

The respondent-plaintiff, as per its plaint, had shown the documents closing the earlier connection, including the receipt issued in respect of payment of Rs. 995.20/-, to the appellant-Corporation, but was however told that if it does not pay the total amount of Rs. 54,033/- by 24.02.2011, the electricity would be

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disconnected.

It was further contended in the plaint that no notice in fact was given to the proprietor of the plaintiff firm for personal hearing, and that no details had been provided as to the amount demanded.

The plaintiff had earlier filed a consumer complaint before the District Consumer Disputes Redressal Forum, Yamunanagar, which was withdrawn "on technical grounds" on 29.02.2012, after which the suit in the present *lis* was instituted.

Upon notice having been issued to the appellant-defendants, in their written statement, it was stated that the old connection was got disconnected by the proprietor of the plaintiff-firm "as per his own will", without depositing "the defaulting amount" and that he had also "deliberately obtained the new connection" bearing no. S2/445.

He had however, deposited 25% of the disputed amount, pursuant to an order of the trial court itself, in the present *lis*.

As regards the plea of limitation taken by the plaintiff in its suit, it was stated in the written statement that it was public money and there was no limitation that would operate to recover the amount due.

On the aforesaid plea, the following issues were framed by the trial court:-

> *"i). Whether the plaintiff is entitled to a decree for declaration as prayed for? OPP*
>
> *ii). Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP*
>
> *iii) Whether the suit of the plaintiff is legally not maintainable? OPD*
>
> *iv) Whether the plaintiff has no locus*

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standi to file the present suit?

v) Whether the plaintiff has not come to the court with clean hands? OPD

vi) Relief.".

The plaintiff, other than examining its Proprietor, by way of documentary evidence produced the following:-

"*Ex. P1:*	*Memo no. 2160/HSEB dated, 08.07.1994;*
Ex.P1/A & P2	*Bill receipts (electricity connection no. S2/348);*
Ex.P3:	*Electricity bill dated 15.02.2011 and*
Ex. P4:	*Copy of judgment dated 29.02.2012 passed in Consumer Complaint."*

The appellant-defendants, other than tendering a ledger book as Ex. D-1 before the trial court, did not examine any witness.

On the pleadings and the evidence led by the parties, the trial court held that as per Ex. P-1, the father of the petitioner, i.e. the previous owner of the electricity connection bearing number S2-348, was asked to make a payment of Rs. 995.20/- and vide Exs. P1-A and P-2, the said payment had been duly made.

The impugned electricity bill was shown to have described the amount of Rs. 49,450/- simply as "sundry charges", with the total amount of the bill being Rs. 54,033/-, qua the new electricity connection bearing no. S2-445.

It was further found by the trial court that as per the evidence led, no notice had been issued to the plaintiff as regards any personal hearing to be given to the proprietor of the firm, with even the ledger, Ex. D-1, not actually proved (by way of examining any witness in support thereof).

Further, no details of the account qua the previous electricity connection had been given, as to how 'the impugned amount' had been arrived at, with further no order or rule of the Department having been placed on record to

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show as to how the said amount could have been charged from the plaintiff (simply as sundry charges).

Subsequently however, at the time of arguments, counsel for the appellant-defendants had relied upon a sale circular no. U-63/2006, which the trial court found was one that stipulated that at least a 7 day notice was necessary to be issued to any consumer qua any objections he/she might have qua any demands raised.

Consequently, finding that no such notice had been issued and in any case, no details having been given as to how the amount of Rs. 49,450/- was being demanded from the plaintiff, other than by way of "sundry charges", the suit was decreed in favour of the respondent-plaintiff, it already having been observed by that court earlier that the demand had been raised 16 years after the previous connection had been disconnected.

In the first appeal filed by the present appellant, the learned Additional District Judge noticed the aforesaid facts, as also the argument raised before that court that there was no period of limitation prescribed "in the present case".

However, the said argument was found to be bereft of logic, on the ground that the period of limitation (to recover any money), is no different for any Government department and universally applies to all; and even as regards the appeal, it was found to have been filed beyond the period of limitation, (with no specific period of delay however given in the judgment).

As regards the recovery itself, of allegedly old dues, having been sought to be made 16 years after the old connection had been disconnected, that court also found no reason to entertain the appeal, which was dismissed with costs of Rs. 5,000/- imposed, with it further directed that the amount of Rs. 49,450/- as

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shown to be loss to the corporation, was obviously due to carelessness, non-seriousness and non-efficiency of its officers/officials and consequently, the corporation ('*Bijli* Board') would be entitled to recover it from the "personal pockets of the appellants."

Before this court, the factual position as has been noticed in detail by the trial court and referred to by the first appellate court, obviously, could not be denied by learned counsel for the appellant, to the effect that other than the ledger Ex. D-1, no evidence whatsoever was led as to in what manner the amount of Rs. 49,450/- had accrued to the account of the respondent-plaintiff, though learned counsel submitted that other than the testimony of the plaintiff, as regards the amount of Rs. 995.20/- having been paid, he did not even seek to get the receipt ledger produced in court.

Having considered even that argument, I find myself absolutely unable to interfere in the impugned judgments, with no evidence whatsoever having been led by the appellant-defendants as to in what manner the "sundry charges" of Rs. 49,450/- had accrued as regards the account pertaining to the previous electricity connection installed in the premises, which in any case was simply added to his bill as such charges, 16 years after the previous connection had been disconnected.

Even before this court, nothing has been even attempted to be shown, as to what constituted "sundry charges" to the tune of Rs.49,450/-.

In any case, I also agree with the learned courts below that such amount, even if explained (which it has not been), could not have been demanded qua a connection admittedly closed 16 years earliier.

Consequently, finding no merit in this appeal, it is dismissed in *limine,* with costs of Rs. 10,000/- to be deposited towards the funds of the Haryana

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Legal Services Authority, with the costs of the suit to be borne throughout by the appellant-defendants.

It needs to be noticed that as regards the earlier complaint filed before the learned District Consumer Disputes Redressal Forum, no argument has been raised, nor is one seen to be raised in the grounds of appeal, as regards that complaint operating as *res judicata.*

CM No. 1625-C-2020

The appeal itself having been dismissed on merits, this application, seeking condonation of a delay of 12 days in filing the accompanying appeal, has been rendered infructuous and is disposed of as such.

February 10, 2020 **(AMOL RATTAN SINGH)**
nitin/dinesh **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable Yes

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