

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.313 of 2021 (O&M)

Date of decision:04.08.2021

Uttri Haryana Bijli Vitran Nigam Limited and others ...Appellants

Versus

Mahabir Techno Limited ... Respondent

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Himanshu Arora, Advocate,
for the appellants.

(The proceedings are being conducted through video
conferencing, as per instructions.)

G.S. Sandhawalia, J. (Oral)

The present appeal filed by the Uttri Haryana Bijli Vitran Nigam Limited (hereinafter referred to as the “Nigam”) is firstly barred by 261 days as the appeal was filed on 20.05.2021 against the judgment of the lower Appellate Court, Kurukshetra dated 30.04.2019, though the certified copy of the said judgment had been prepared on 07.05.2019 and delivered on 15.05.2019. The sufficient cause given, as such, is that due to administrative reasons, the filing of the appeal got delayed. The application for condonation of delay is totally bereft of the details, as such, as to how the file proceeded and where and why the delay occurred. Thus, this Court is not inclined to condone the delay.

Even otherwise, the findings recorded by the trial Court in its order dated 12.05.2017 have been upheld by the lower Appellate Court on justified reasons.

The suit, as such, filed by the plaintiff-respondent challenged the notices dated 14.08.2013 and 25.03.2014 along with office order dated

25.02.2014, whereby the demand of ₹27,88,821/- had been raised in the bill for the month of April, 2014. No relief, as such, was given by the Courts below with regard to the additional demand of ₹1,06,229/-, which were debited in the account of the plaintiff-respondent. Since the said demand of ₹1,06,229/- was as per the notice dated 19.07.2013, therefore, the said fact is not relevant.

The demand of ₹27,88,821/-, as such, was on the basis of the checking done on 09.07.2013 at the premises of the plaintiff-respondent on the basis of a complaint made by the plaintiff-respondent itself on 05.07.2013 that the meter installed in its premises has become defective. It was found that the meter was running slow and, thus, it was removed and sealed and sent for checking to the M&P Lab, Dhulkot. The report was received that the load survey data could not be retrieved due to failure of meter memory and the magnetic temper event recorded by the meter was for 36 seconds. Resultantly, the meter was also sent to the manufacturing unit at Udaipur to know the reason for failure of the meter memory and recording of magnetic events. In spite of the fact that no negative report was received, order dated 25.02.2014 (Ex.P13) was passed by the Superintending Engineer, Operation Circle, Kurukshetra that the consumer be charged only for slowness of the meter as per the Nigam's instructions to the tune of 33.33%. The said officer had also opined that the welding and internal circuit of the meter were checked and found in order and no abnormal circuit was found in the meter, but it had led to the demand being raised upon the consumer. The demand was, thus, challenged and the defence, as such, was the lack of jurisdiction of the Court and that it was a case of suspected theft and notice under Section

135 of the Electricity Act, 2003 had also been issued.

Both the parties examined their sole witnesses and the trial Court observed that from the department side, despite being given numerous opportunities, the sole witness Satpal, SDO (DW1) had not appeared for cross-examination. In such circumstances, the suit was decreed on the ground that the plaintiff was not involved in any foul play with the meter and the meter had not got slowed down on account of plaintiff's fault., therefore, the demand, as such, was not tenable. The facts would, thus, go on to show that in absence of the report of any defect in the meter from the manufacturing unit, the huge demand, as such, has been raised though the Superintending Engineer himself was of the opinion that it was not a case of theft. The officer of the appellant-defendants also did not step into the witness box to pursue the suit as he did not have the courage to face the cross-examination regarding the illegal demand which had been raised. The alleged magnetic tempering event was also recorded by the meter only for 36 seconds and that too at midnight. The meter memory itself was found in a failed condition due to which the load survey data could not be retrieved. In such circumstances, the authority was not justified, as such, to raise the huge demand of ₹27,88,821/- which has rightly been set aside.

The lower Appellate Court has also relied upon the judgment of a Coordinate Bench of this Court rendered in the case of **Dakshin Haryana Bijli Vitran Nigam Ltd. and others vs. Jaswant @ Jaibir**, RSA No.3933 of 2017, decided on 30.08.2017, wherein the question of law has been decided against the Nigam to the extent that the jurisdiction of the Civil Court, as such, cannot be shut out. The alternative remedy, which is now being

suggested in the matter that the assessment should have been challenged before the authorities, could not substitute the remedy of civil suit. The facts also in the present case demonstrate that after raising the huge demand of ₹27,88,821/-, the department even did not bother to defend the said demand in its true perspective and, thus, no interference is liable to be called for in this regular second appeal.

Even it has been noticed that the appeal itself is time barred by 261 days and no tenable reason has been shown for the delay which had occurred in filing of the appeal.

Keeping in view aforesaid facts and circumstances, the application for condonation of delay of 261 days in filing of the appeal as well as the main appeal is hereby dismissed in limine.

August 04, 2021
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Whether speaking/reasoned:
Whether Reportable:

(G.S.Sandhawalia)
Judge

Yes/No
Yes/No