

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

RSA-924-2021 (O&M)
CM-4382-C-2021
Date of Decision: 14.10.2021

UTTAR HARYANA BIJLI VITRAN NIGAM LTD. AND ANR.

...Appellants

Versus

RAJ PAL KHANNA

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. D.R. Singla, Advocate
for the appellants.

(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

For convenience, parties herein are addressed as per recitals before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, the defendants are in second appeal before this Court assailing the trial Court judgment and decree dated 17.02.2017, as upheld by learned First Appellate Court vide its judgment and decree dated 13.12.2019.

3. Briefly stated, facts as noticed by Courts below are that plaintiff-responentinstituted a suit for mandatory injunction on the averments that he is the user of electricity connection bearing A/c No.MD-22/2536, which is in the name of one Sita Ram. He has been regularly paying the electricity charges. He received a Memo dated 12.02.2016

allegedly committing offence of theft under Section 135 of Electricity Act, vide which he was asked to deposit an amount of Rs.85,158/- as assessment charges. Thereafter, another memo dated 12.02.2016 was issued for compounding the offence, vide which, he was asked to deposit an amount of Rs.8,000/- as compounding fee. No theft of electricity was declared when the meter was removed. Per plaintiff, once the meter itself is removed by the service provider from the site, no case of theft of energy can be fastened on the consumer, unless substantiated by cogent evidence. Even the procedure under Section 126 of the Electricity Act was allegedly not followed in the present case. Upon notice, the defendants appeared and filed their written statement, stating therein, that at the time of checking, the accuracy of meter was found slow by 70%. On internal examination, two additional resistances were found on the original plate connected with the CT's secondary wire of the meter and the meter was, therefore, removed.

4. Based on the rival pleadings, following issues were framed:

- 1. Whether the plaintiff is entitled to the decree for declaration as prayed for? OPP*
- 2. Whether the plaintiff is entitled to a decree with consequential relief of mandatory injunction as prayed for? OPP*
- 3. Whether the plaintiff is not having any locus standi to file and maintain the present suit? OPD*
- 4. Whether the suit is not maintainable? OPD*
- 5. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD*
- 6. Whether the plaintiff has not come to the court with clean hands? OPD*
- 7. Whether the Civil court is not having any jurisdiction to try and entertain the present suit? OPD*
- 8. Whether the suit has not been filed in accordance with amended provisions of CPC? OPD*

9. Relief.

5. The parties adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

6. On appraisal of evidence vis-a-vis pleadings, trial Court decided issue No.1 partly in favour of both the parties and issues No.2 to 8 have been decided in favour of the plaintiff and against the defendants.

7. First Appellate Court dismissed the appeal. Hence Regular Second Appeal before this court.

8. I have heard the learned counsel and perused the judgments of both the Courts below. To my mind, judgments under challenge have been rendered after due and correct appreciation of evidence adduced by the respective parties. Learned First Appellate Court while re-appreciating the cogent evidence gave valid reasons as below :-

“18. There is provision mentioned in Section 126 of the Electricity Act, which provides procedure for the assessment of the amount from the consumer. It is not the case of the appellants-defendants that the plaintiff was found to be abstracting the electricity energy by unauthorized means. So, there was no case of electricity theft by the plaintiff. In the present case, M&T report Ex.D4 is on the file, which goes to show this fact that the working of the meter is within limit. However, despite this fact, the instructions for dealing with the cases of theft of electricity vide sale circular No.U-15/2014 have not been complied with. It is worthwhile to mention here that section 126 of the Indian Electricity Act, 2003 provides that any theft of electricity energy shall be communicated in the shape of order of provisional assessment to the person who may be aggrieved. So, the learned lower court has rightly observed that the requirement of Section 126 for the assessment of amount for theft of electricity has not been complied with by the defendants. Further, the learned lower court has rightly observed that the defendants are not entitled for the recovery of assessment vide impugned notice Ex.P2. However, there is no illegality in service of notice under section 135 of Electricity Act. Ex.P3, as the same was issued for the compounding fee, which is permissible under the provisions of Electricity Act. The learned lower court has rightly

observed that the impugned notice Ex.P2 dated 12.02.2016 for the recovery of Rs.85,158/- is declared as illegal, null and void and not binding upon the plaintiff. However, the notice Ex.P3 for compounding fee was validly served upon the plaintiff. So, the findings of the learned lower court on issue No.1 is well reasoned and justified and the same is hereby ordered to be affirmed. “

9. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. No fresh ground worthy of interference in the appellate jurisdiction of this Court is made out.

10. Furthermore, no question of law, much less substantial, a *sine qua non* for entertaining regular second appeal, is involved herein, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code, 1908.

11. In view of my discussion above and the reasons aforesaid, this appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

12. Pending application/s, if any, shall also stand disposed of.

13. No order as to costs.

October 14, 2021
gurpreet

(ARUN MONGA)
JUDGE

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