

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

RSA-280-2022 (O&M)
Date of decision: 08.02.2022

Karan Pal	V/s	...Appellant
Uttar Haryana Bijli Vitran Nigam Ltd. and another		...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Parminder Singh, Advocate,
for the appellant.
(Presence marked through Video Conference)

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ARUN MONGA, J. (ORAL)

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

2. Having suffered adverse findings by the First Appellate Court, the plaintiff is in second appeal before this Court assailing the judgment and decree dated 18.10.2021 passed by learned Additional District Judge, Karnal.

3. Briefly stated, facts as noticed by Courts below are that the plaintiff is user of electricity connection for DS purpose for a sanctioned load of 3 K.W. He was paying the electricity bills as per consumption. The meter installed at the premises of plaintiff was burnt and he had moved an application to install a new meter. The staff of the defendants had removed the burnt meter and restored the supply directly. Instead of installing the new meter, the SDO 'Op' Indri checked the premises of the plaintiff on 30.06.2015 and made a false case of theft of electricity energy. It was in the knowledge of the defendants that the meter at the premises of the plaintiff had burnt a few days back before 30.06.2015, the date of checking, as is clear from the fact that the plaintiff had been receiving the electricity

bills on the basis of actual meter reading. This fact was established from the bill dated 31.05.2015 which was issued on the basis of actual units consumed. On 10.05.2015, the reading on the meter was 4853. In spite of that fact, a false case of theft of electricity has been made, which is also against the instructions of the Nigam wherein no case of theft of electricity can be made if the meter is burnt. Moreover, while making case of theft, previous consumption has not been taken into account as the status of the meter was O.K. even up to the last bill issued on 31.05.2015. As per the Code of Supply of HERC, the burnt meter is required to be replaced by the defendants within 7 days from the date of notice, but instead of following the said instructions, a false case of theft has been made just to achieve the targets of theft of electricity and to extract huge amount of penalty from the plaintiff. On the basis of the said alleged checking an order of assessment dated 02.07.2015 issued under Section 135 of the Electricity Act and notice for compounding bearing Memo No.SDIND/2015/354 dated 02.07.2015 have been issued to the plaintiff for depositing Rs.64,962/- and Rs.8,000/-. The plaintiff after receipt of the said notice, requested the defendants to withdraw the said notices, but the defendants have refused to do so and rather forced the plaintiff to deposit the amount as stated above, therefore the plaintiff has no other option but to file the present suit. Hence, this suit. Defendants resisted the suit.

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

1. *Whether the plaintiff is entitled for the relief of declaration as claimed in the body of plaint? OPP*
2. *If issue No.1 is decided in favour of the plaintiff then whether the plaintiff is entitled to decree of permanent injunction as claimed in the body of plaint? OPP*
3. *Whether the plaintiff has no locus standi to file and maintain the present suit? OPD*
4. *Whether there is no cause of action against the defendant? OPD*

5. Relief.”

5. The parties to the suit 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-à-vis pleadings, issue No.1 and 2 were decided against the plaintiff. Issues No. 3 to 8 were decided in favour of the plaintiff and suit was decreed by the learned trial Court.

7. First Appellate Court reversed the findings returned by the trial Court. Hence Regular Second Appeal before this Court.

8. I have heard the appellant’s learned counsel and perused the judgments of both the Courts below. Relevant part of First Appellate Court judgment is as below:

“21. As the plaintiff was found committing theft of electric energy by direct joint, thus, a notice under section 135 of the Electricity Act Ex. D1 was served upon him. Another notice under Section 152 of electricity Act Ex. D2 was also served asking him to deposit compounding fee of Rs.8000/- which he had deposited vide receipt Ex.P4. As there was some difference of Rs.16,302/- in calculating the loss caused to the Board, then, again a notice bearing No.8629 dated 01.12.2015 Ex. D6 was served upon the plaintiff. Difference in calculation was found as per document Ex. D7. Since it was a case of direct theft of electric energy, thus, defendants-appellants had rightly served notice under Section 135 of the Electricity Act.

22. Learned counsel for plaintiff argued that no opportunity of hearing has been afforded to the plaintiff before issuing the impugned order/notices Ex.D1 but this submission of learned counsel for the plaintiff is devoid of any merit as plaintiff would have been entitled to an opportunity of hearing only in case of suspected theft under Section 126 of the Electricity Act but the case of the plaintiff falls within the ambit of established theft under Section 135 of the Electricity Act which only talks of final assessment. Since in this case, the electricity was found abstracted or stolen bypassing the electric meter and thus in view of the law laid down by Hon’ble Supreme Court of India. Notice under Section 135 of the Electricity Act was served upon the plaintiff as per law.

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24. Whereas Section 135 of Electricity Act, 2003 can deal with an offence of theft of electricity and the penalty that can be imposed for such theft, hence, falls within the

dimensions of Criminal jurisprudence and mens rea is one of the relevant factors for finding a case of theft. Section 135(a) to 135 € of the 2003 Act specifies about abstracted energy with dishonest intention and without authorization, like providing for a direct connection by passing the installed meter.”

I am in agreement with the aforesaid reasoning recorded by the First Appellate Court while reversing the findings of learned trial Court. Plaintiff has not produced any document to support his claim that he had made a complaint, upon which his burnt meter was removed and direct supply of energy was restored by the officials of the respondents.

9. There seems no perversity or illegality in the findings of facts returned by the learned First Appellate court. No interference is thus called for to disturb the said finding. In this second appeal, no fresh ground worthy of interference is made out. To my mind, judgment under challenge has been rendered after due and correct appreciation of evidence adduced by the respective parties.

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

11. In view of my discussion above and the reasons aforesaid, this appeal is dismissed, being bereft of any merit. Resultantly, the impugned judgment and decree passed by learned First Appellate Court is upheld.

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

13. No order as to costs.

(ARUN MONGA)
JUDGE

February 08, 2022
vandana

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No