

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

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**RSA-276-2021 (O&M)
Decided on : 11.07.2022**

Akhtar Ali

. . . Appellant(s)

Versus

S.D.O., U.H.B.V.N. Sub Division, Chhachrauli
and others

. . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Krishan Kumar Thakur, Advocate
for the appellant(s).

MANJARI NEHRU KAUL, J. (Oral)

Suit for declaration and permanent injunction filed by the appellant/plaintiff was dismissed by the trial Court vide judgment and decree dated 26.09.2019, and as even the appeal preferred against the said decree failed and was dismissed on 16.02.2021 by the lower Appellate Court, the plaintiff is now here before this Court in Regular Second Appeal.

Parties to the *lis* hereinafter shall be referred to by their original positions in the suit.

The suit in question was filed by the plaintiff for declaration to the effect that checking report LL-1 No. 7588/19, dated 10.11.2017 and memos No.4649 and 4650, dated 12.01.2018, were illegal, null and void and thus liable to be set-aside, being not binding upon the rights of the plaintiff. It was averred that since the aforementioned checking report LL-1 and memos were an outcome of fraud and misrepresentation of facts, the defendant-Department be restrained from recovery of alleged amount of Rs.3,63,106/- (for theft of electricity) mentioned in memo No. 4649 and the

compounding fee of Rs.1,70,000/- mentioned in memo No. 4650, from the plaintiff. A prayer was also made therein for permanent injunction to restrain the defendant-Department from disconnecting the electricity connection of the plaintiff and from initiating any criminal proceedings against him.

The pleaded case of the plaintiff was that electricity connection bearing No. KR0D0187S was installed in his premises. Since the wires of the electricity meter were hanging loose, he sent a complaint on 04.10.2017 to the defendant-Department in the said regard. Thereafter, the officials of the defendant-Department came to his premises and carried out the repairs in the meter. However, on 07.11.2017, on account of the loose wires hanging, the electricity meter of the plaintiff caught fire and was burnt. The plaintiff immediately moved an application seeking change of meter and deposited the expenses for the said purpose in the defendant-Department. Resultantly, a new meter was installed. However, to his dismay, the defendant No.1 issued memos dated 12.01.2018 (Ex. P-1 & P-2) and demanded an amount of Rs.3,63,106/-, for theft of electricity along with compounding fee of Rs.1,70,000/-.

The plaintiff alleged that the aforesaid memos were issued on the basis of a false checking report and that the Department had maliciously obtained signatures of the plaintiff on blank papers. He further denied that the electricity meter had been tampered with by him. It was claimed by the plaintiff that when the officials of the defendant-Department inspected the meter in question, it was found to be 'OK', which found support from the fact that even on earlier occasions, whenever the meter was checked by the officials, no abnormality was detected by them.

The defendant-Department while filing their written statement

admitted to the issuance of memos No. 4649 and 4650, dated 12.01.2018, for raising a demand of Rs.3,63,106/- on account of theft of electricity and another amount of Rs.1,70,000/- as compounding fee. It was submitted that due to suspicion during checking and inspection, the electricity meter of the plaintiff, was sent for checking to the M&T Lab and the same was checked in the presence of the plaintiff himself and as per the M&T Lab report, it was a case of intentional burning and thus, a case of theft of electricity.

Upon consideration of the matter and on the basis of the evidence led, both the Courts below concurrently concluded that there was enough cogent evidence on record, which proved that it was a case of theft of electricity by the plaintiff and despite issuance of notices to him to deposit the penalty imposed, he had failed to do so.

It is not disputed by the plaintiff himself that on his complaint dated 04th October, 2017, wires installed in his electricity meter were repaired by the defendant-Department, which fact also finds duly corroborated from Ex.P-8/A, which is the complaint report. However, soon thereafter, on 07.11.2017, the electricity meter of the plaintiff was burnt and LL-1 report Ex.D1 was prepared at the spot by the defendant-Department. The meter was then sent to the M&T Lab for checking. The checking by the M&T Lab, was done in the presence of the plaintiff himself, which finds due corroboration from the fact that the signatures of the plaintiff are there on the said report "Mark B". No doubt, it was alleged by the plaintiff that his signatures had been obtained on blank papers, however, this plea of the plaintiff deserves to be rejected outright, as firstly, it cannot be digested that why would the plaintiff have agreed and actually signed on blank papers and secondly no complaint, whatsoever, was made by the plaintiff before the authorities concerned that his signatures had been obtained on

blank papers and thereafter, misused.

Learned counsel appearing for the appellant/plaintiff while drawing the attention of this Court to the testimony of PW-3 – Ramesh Kumar, submits that this witness had categorically deposed that a complaint was received on 04th October, 2017 (Ex.P-8/A), after which he visited the premises of the plaintiff and carried out necessary repairs in the electricity meter, from where some wires were hanging loosely. He further submits that this witness during his cross-examination categorically deposed that the meter had been working fine prior to it getting burnt. Still further, learned counsel drew the attention of this Court to the testimony of DW-1/Krishan Kumar, Junior Engineer, Sub Division HVPN, Chhachhrauli, who deposed during his cross-examination that he was not in a position to comment upon the theft of the electricity. Hence, it was urged that in the aforementioned facts and circumstances particularly the deposition of the officials of the defendant-Department, it was evident that it was not a case of theft of electricity, which fact had been erroneously not appreciated by both the Courts below.

This Court, however, finds no substance and merit in the aforementioned submissions of the learned counsel. No doubt, DW-1/Krishan Kumar, JE, did depose that he was not in a position to tell as to whether there had been any theft of electricity or not, however, it would be pertinent to mention that he was just one of the many officials of the defendant-Department, who reached the premises of the plaintiff, after fire was reported in the electricity meter. The electricity meter as already observed in the preceding paragraphs was not checked by the officials of the defendant-Department, but due to suspicion was sent to the M&T Lab. On checking of the electricity meter by the M&T Lab, all the CT coils, copper

wires were found to be healthy and intact and strangely, only the incoming wires and cables were not present, which indicated that the electricity meter had been tampered with and burnt. Not only this, the seals on the electricity meter were also missing, which further proved that the meter had been tampered with.

In the above facts and circumstances, the only and inevitable conclusion, which was rightly arrived at, by the Courts below, was that it was indeed a case of theft of electricity, for which the plaintiff had been rightly directed to deposit the amount of penalty along with the compounding fee.

Upon being pointedly asked, learned counsel for the appellant/defendant failed to refer to anything on record to show that the conclusions arrived at by the Courts below were either contrary to the record or suffered from any material illegality. The appeal, being devoid of merit, is accordingly dismissed. The judgments and decrees of the Courts below are affirmed.

(MANJARI NEHRU KAUL)
JUDGE

July 11, 2022

J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*