

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**103****RSA No.4141 of 2019 (O&M)****Reserved on : 06.07.2022****Date of Decision : 13.07.2022**

Kuljas Rai

.....Appellant

Versus

Punjab State Power Corporation Limited Service

.....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. V.K. Sandhir, Advocate for the appellant.

ALKA SARIN, J.

The present regular second appeal has been preferred by the plaintiff-appellant against the judgments and decrees passed by both the Courts below partly decreeing his suit for declaration with a consequential relief of permanent injunction and mandatory injunction.

Brief facts relevant to the present *lis* are that the plaintiff-appellant filed a civil suit for declaration to the effect that the demand raised by the defendant-respondent vide bill dated 29.04.2016 in respect of Account No.A42 MS420153A raising a demand of Rs.34650/- is wrong, illegal, arbitrary, against the principle of natural justice and is liable to be set-aside/quashed with a consequential relief of permanent injunction restraining the defendant-respondent from disconnecting the electric connection in question forcibly and illegally with a further consequential relief of mandatory injunction directing the defendant-respondent to refund the amount if deposited by the plaintiff-appellant along with interest from the date of payment till its actual payment. As per the averments in the plaint, in the year 2012 the plaintiff-appellant applied for an electricity connection for 95 KW and in this regard he deposited the requisite fee of

Rs.77,600/- vide receipt No.315. However, the junior officials of the department reported that the business of the plaintiff-appellant is a seasonable one and that he was not consuming electricity to that extent and therefore, it was recommended a load of 20.90 KW. As per the plaintiff-appellant, since May 2015 the defendant-respondent had been issuing excessive bills to him by adding sundry charges. Regarding this the plaintiff-appellant moved an application dated 19.08.2015 but to no avail. Now the plaintiff-appellant had received bill dated 29.04.2016 wherein the defendant-respondent raised a demand of Rs.1,76,600/- in which Rs.34,650/- was added which was illegal and to which it had no right to do so. It is alleged that the plaintiff-appellant approached the office of the defendant-respondent and requested to withdraw the said bill and also sanction the load of 95 KW as the plaintiff-appellant had deposited the requisite fee. However, instead of listening to the genuine requests of the plaintiff-appellant, the defendant-respondent threatened that in case the amount was not deposited the electricity connection of the plaintiff-appellant would be disconnected. The officials of the defendant-respondent further asked the plaintiff-appellant to deposit security fee of Rs.2,47,700/- for the electric poles, cable and fixing for which they had no right to do so.

The suit was contested by the defendant-respondent who raised certain preliminary objections. On merits, while it was admitted that plaintiff-appellant had applied for an electric connection with 95 KW load and deposited the requisite amount, it was submitted that on 16.11.2012 the plaintiff-appellant had moved an application that he be provided load to the extent of only 21 KW and that he would build-up the remaining load within a period of six months. The plaintiff-appellant also gave an undertaking that

he will build-up the load to the extent of 94.784 KW within a period of six months and would make up the demand to the extent of the load and the demand sanctioned within a period of six months from the date of connection failing which, in the event of any part of load being disconnected later, his application may be deemed to have been duly modified for the demand actually connected at the time of expiry of the said period. It was averred that the plaintiff-appellant did not build-up the load and was making the payment of bills pertaining to a load of 21 KW. A notice was served to the plaintiff-appellant to build-up his remaining load else his balance load would be forfeited. According to the defendant-respondent, the plaintiff-appellant did not build-up the load within a period of six months and in April 2016 he extended his load without giving a new application for extension of the load. The defendant-respondent further stated that as per the tariff order, if a consumer exceeds his contract demand over the sanctioned demand then he will be penalized with demand surcharge of Rs.750/- per KVA and that since the plaintiff-appellant used load in excess of 21 KW, he was bound to pay the said amount to the defendant-respondent.

The plaintiff-appellant filed a replication denying the allegations made in the written statement and reiterated the pleas taken in the plaint. The Trial Court framed the following issues:

1. Whether the plaintiff is entitled to declaration as prayed for ? OPP
2. Whether the plaintiff is entitled to injunction as prayed for ? OPP
3. Whether the plaintiff is entitled to mandatory injunction, as prayed for ? OPD

4. Whether the suit is not legally maintainable ? OPD
5. Whether the plaintiff has got no cause of action to file the present suit ? OPD
6. Whether the plaintiff is estopped by his own act and conduct from filing the present suit ? OPD
7. Relief.

The Trial Court, vide judgment and decree dated 21.08.2017, partly decreed the suit of the plaintiff-appellant holding that his electricity connection should not be disconnected subject to clearance of the dues. Aggrieved by the said judgment and decree passed by the Trial Court, an appeal was preferred by the plaintiff-appellant which was, however, dismissed vide judgement and decree dated 29.07.2019. Hence, the present regular second appeal.

Learned counsel for the plaintiff-appellant has contended that the Courts below have erred in non-suiting him and not granting the relief of declaration and mandatory injunction. According to counsel, the Courts below did not appreciate the pleadings and evidence on the record which proved that the plaintiff-appellant had applied for a 95 KW electricity connection and had also deposited the requisite fee. The undertaking Ex.D2 furnished by the plaintiff-appellant has also been questioned and it is contended that the plaintiff-appellant had built-up the load as required by the defendant-respondent.

I have heard counsel for the plaintiff-appellants and perused the paper-book.

The Courts below have found that the plaintiff-appellant had applied for an electricity connection of 95 KW load but vide application

Ex.D1 he had requested for a 21 KW load and had undertaken to build-up the remaining load within a period of next six months. It has been found that the plaintiff-appellant admitted the filing of the said application Ex.D1 and also the furnishing of the undertaking Ex.D2 but he was unable to build-up the load to the extent of 95 KW within time. Subsequently, without the sanctioned load being increased, the usage by the plaintiff-appellant was in excess thereof making the plaintiff-appellant liable to pay the surcharge of Rs.750/- per KW as per the instructions of the defendant-respondent. Since the plaintiff-appellant was consuming electricity in excess of the sanctioned load there is no occasion for him being refunded any amount by way of issuing a mandatory injunction. Learned counsel for the plaintiff-appellant has simply reiterated the submissions that were advanced before the Courts below and which submissions were rejected after due and comprehensive consideration.

No question of law, much less, any substantial question of law arises in the present case. Both the Courts below have recorded concurrent findings of fact warranting no interference by this Court.

In view of the above, I do not find any illegality and infirmity in the judgments and decrees passed by the Courts below. The appeal is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

13.07.2022
jk

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
 Whether reportable : Yes/No