

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

RSA-1330-2017

Date of decision:-9.11.2022

Sube Singh

...Appellant

Versus

Dakshin Haryana Bijli Vitran Nigam Ltd. and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Jagmohan S.Ghumman, Advocate
for the appellant.

H.S. MADAAN, J.

1. This regular second appeal is directed against judgment and decree dated 13.3.2015 passed by Civil Judge (Jr.Divn.), Gurgaon dismissing the suit filed by the plaintiff – Sube Singh against Dakshin Haryana Bijli Vitran Nigam Ltd.(hereinafter referred to as DHBVNL) and others as well as judgment and decree dated 25.10.2016 passed by learned Additional District Judge, Gurgaon dismissing the appeal filed by the plaintiff against judgment and decree delivered by the trial Court.

2. Briefly stated, facts of the case are that plaintiff Sube Singh had brought a suit for declaration, permanent injunction and mandatory injunction against DHBVNL, through its Executive Engineer, Manesar

Operation Division, Gurgaon and its officers contending that he is proprietor of one ice factory, which is consumer of electricity supplied by the respondents and has been paying the electricity charges regularly, however he had received bill for the month of December, 2012 for consumption of 500 units and for the month of January, 2013 showing consumption of 37600 units, when ice factory of the plaintiff was not working in the month of January; the bill received by the plaintiff was for Rs.2,50,714, which was erroneous and was case of wrong consumption caused due to jumping of digits of meter. According to the plaintiff, the defendants had removed the electricity meter and sent it to M&P lab but checking was not got done in presence of the plaintiff as required under the rules; further the bill for the month of March, 2013 was sent for Rs.5,68,951/- in which a sum of Rs.2,99,781/- had been added as wrong arrears of previous months and Rs.2,28,270/- under the head of sundry charges without affording any opportunity of hearing or giving reason for making such additions; the bill for the month of April, 2014 for Rs.4,94,249/- was also wrong. The plaintiff challenged such bills as illegal, unlawful and arbitrary, liable to be set aside besides craving for grant of permanent and mandatory injunctions.

3. On getting notice, respondents appeared and filed written statement contesting the suit taking various legal objections including locus standi of the plaintiff to file the suit; no cause of action having arisen to him; suppression of material facts on his part and the Civil Court lacking jurisdiction to entertain and try the suit. Further, the demands raised by the respondents vide the impugned electricity bills were

defended as legal and valid on the basis of actual consumption. According to the defendants, the electricity supplied to the plaintiff was permanently disconnected due to non-payment of dues vide PDCO No.22180 dated 8.3.2013 in presence of the plaintiff; after removing the meter, it was referred to M&P Lab for checking of accuracy and genuineness of the meter; the same was carried out in presence of the plaintiff and it was found to be in normal condition. According to the defendants, the amount of Rs.2,28,172/- is related to another theft case against the plaintiff since he had filed another civil suit which is pending in the Court of Civil Judge. According to the defendants the bills in question had been issued correctly and legally including the arrears of previous unpaid amount and the plaintiff is liable to make necessary payment. The defendants prayed for dismissal of the suit.

4. On the pleadings of the parties, following issues were framed:

- 1. Whether the electricity bills for the months of months 12/2012, 1/2013, 2/2013, 3/2013 and 4/2013 in which illegal amounts have been rendered/added(The bill for the month of 4/2013 is for Rs.4,94,249/- rendered by the defendants to the plaintiff are wrong, inflated, arbitrary, illegal and unlawful and not binding on the plaintiff and are therefore liable to be set aside and quashed? OPP.*
- 2. Whether the plaintiff is entitled to get permanent injunction restraining the defendants from effecting any recovery of the impugned amount of Rs.4,94,249/- of the bill for the month of 4/2013 and mandatory injunction decree directing the defendants*

to restore the electricity connection? OPP.

3. Whether the suit is not maintainable in the present form? OPD.

4. Whether plaintiff has no locus-standi and cause of action to file the present suit? OPD.

5. Whether plaintiff has concealed the true and material facts? OPD.

6. Whether the civil Court has no jurisdiction to try and entertain the present suit? OPD.

7. Relief.

5. The parties were afforded adequate opportunities to lead evidence.

6. After hearing the learned counsel for the parties, the trial Court of Civil Judge(Jr.Divn.), Gurgaon decided issues No.1 and 2 against the plaintiff and in favour of defendants observing that plaintiff has filed a frivolous suit and the other suit has been withdrawn by the plaintiff, thus the suit is barred under Order 2 Rule 2 CPC. Further, the plaintiff has concealed the material facts and was not entitled to any equitable relief. Issues No.III, IV and VI were decided against the defendants for the reason of being not pressed. Issue No.5 was decided in favour of the defendants and against the plaintiff holding that plaintiff had concealed true and material facts regarding pendency of another case filed by him and dismissal of that case as withdrawn. As a collective effect of the findings of the issues, the suit of the plaintiff had been dismissed.

7. The plaintiff went in appeal against the judgment and decree passed by the trial Court. However, the Lower Appellate Court of Additional District Judge, Gurgaon did not find any fault with the

judgment and decree passed by the trial Court and dismissed the appeal vide judgment and decree dated 25.10.2016. The relevant paras of the judgment are as under:

8. *The plaintiff by way of instant suit has challenged the electricity bills for the month of December 2012 and January 2013 to April 2013 on the ground that the defendants – DHBVNL have not mentioned any ground for levying huge amount of bill amounting to Rs.4,94,249/-. The plaintiff is admittedly running an ice factory and he claims that the bill for the month of November 2012 was for consumption of 100 units only. Hence, the inflated bills subsequent to November 2012 are wrong and liable to be set aside, whereas it is the version of defendants-DHBVNL that all the bills of the plaintiff have been issued on the basis of actual consumption. The plaintiff was found committing theft of electric energy and his electric connection was permanently disconnected for non payment of dues per PDCO No.22180 dated 8.3.2013 in his presence.*

9. *The onus was thus upon the plaintiff to prove that the regular bills of his ice factory prior to December 2012 were much below the bills raised by DHBVNL from December 2012 to April 2013, but the plaintiff has not placed on record any previous electricity bills to establish this fact. He has only placed on record the bill for the month of November, 2012 amounting to Rs.7,804/-. Thus, an adverse inference shall be drawn against the plaintiff for withholding such bills and a presumption has to be drawn against*

the plaintiff that if he produced said bills, the same would have gone against him. Rather, perusal of the bills for the month of December 2012 to April 2013 reveals that Rs.2,99,781/- was shown as arrears and Rs.2,28,172/- as sundry charges. Moreover, it is plea of the defendants that the plaintiff was involved in theft of electricity and as such penalty of Rs.1,73,484/- was imposed upon him, but it was never paid by the plaintiff and consequently his electric connection was permanently disconnected. All these facts have been admitted in most unambiguous terms by the plaintiff. He admits that another case of theft of electricity has been made out against him in which an amount of Rs.2,54,000/- is outstanding against him. He admits that both, the instant case and the other case for theft are regarding the same connection. He has admitted that his electric connection was permanently disconnected for theft of electric energy. He has admitted that his factory is lying closed for the past one year on account of non-payment of electricity bills.

10. Moreover, the meter of the plaintiff was got checked by DHBVNL from M&P lab. The lab report Ex.D2 on record reveals that the meter was in perfect working condition and was showing the actual consumption of electricity. Thus, no fault could be found in the meter. Ex.D4 is ledger account which proves the actual units consumed by the electric meter and total amount to be paid by the plaintiff was Rs.2,54,418/-. Thus, where is the fault of DHBVNL? The checking was duly done, the checking report was supplied to the plaintiff and thereafter notice was given to him. The checking

was conducted on 11.9.2004 and notice was given to the plaintiff on 20.9.2004 and the revised notice was issued on 22.9.2004 for recovery of Rs.2,50,714/-. The plaintiff had earlier filed a suit in the Court of Ms.Iram Hussain which was withdrawn. Meaning thereby, the plaintiff had knowledge and reasons for levying such electricity bills. He has no case at all. As such, the learned trial judge was perfectly justified in returning the findings on issues No.1 & 2 against the plaintiff. Accordingly, the same are hereby affirmed.

8. Dissatisfied with the judgments and decrees passed by the Courts below, the plaintiff has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and the suit filed by him be decreed.

9. I have heard learned counsel for the appellant besides going through the record.

10. Both the Courts below by proper appraisal of evidence and correct interpretation of law have returned the finding that the demand raised by the defendants from the plaintiff was on account of actual consumption of electricity as well as amount of penalty levied upon the plaintiff for theft of electricity and no fault could be found with the impugned bills. Consequently the plaintiff was not found entitled to any permanent or mandatory injunction, rather it has been observed that the plaintiff had concealed the material facts from the Court disentitling him to the relief prayed for in the suit. The judgments and decrees passed by

the Courts below are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

11. No substantial question of law arises in this appeal.

12. Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments and decrees passed by the Courts below.

13. The appeal stands dismissed accordingly.

9.11.2022

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No