

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

RSA-1048-2019

Date of Decision: August 16, 2023

MANOJ KUMAR

..... Appellant

Versus

UHBVN LTD AND ANR

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Virender Kumar, Advocate for the appellant.

HARKESH MANUJA, J. (ORAL)

By way of present appeal, challenge has been laid to judgments and decrees dated 13.11.2015 and 14.11.2018 passed by the Courts below whereby a suit for declaration as well as mandatory injunction challenging the inspection report dated 12.07.2014 followed by recovery memo dated 15.07.2014 were sought to be declared as illegal with further prayer for grant of mandatory injunction, directing respondents-defendants to refund sum of Rs.1,02,037/- deposited by the appellant-plaintiff on 17.07.2014, in pursuance thereof.

2. Briefly stating, as per the case set up in the plaint, appellant-plaintiff was having an electricity connection bearing No.LS34/3760-X, installed at his residential house regarding which he has been paying the charges regularly. Followed by an inspection carried out on 12.07.2014 by respondents, a report was prepared and based thereupon a recovery memo dated 15.07.2014 was served upon the appellant-plaintiff and in pursuance thereof, a sum of Rs.1,02,037/- was deposited by the appellant on 17.07.2014. By way of present suit the legality and veracity of the inspection report as well as the recovery notice was challenged.

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3. In response, respondents-defendants filed their written statement, stating therein that the theft of electricity was being committed by the appellant-plaintiff by taking direct supply without using the electricity meter. In addition, an issue of jurisdiction of Civil Court so as to adjudicate upon the subject matter was also raised.

4. The trial Court vide judgment and decree dated 13.11.2014, dismissed the suit filed by the appellant-plaintiff. Aggrieved thereof, First Appeal was filed, the same also came to be dismissed vide judgment and decree dated 14.11.2018 passed by Addl. District Judge, Karnal.

5. Impugning the aforementioned judgments and decrees, learned counsel for the appellant submits that though the checking report dated 12.07.2014 bears the signatures of father of the appellant-plaintiff, however, the checking was never done in the presence of appellant or any of his authorized representatives and thus the same was in violation of Section 135(3) of the Electricity Act, 2003. No other argument has been addressed.

6. I have heard learned counsel for the appellant and gone through the paper-book. I am unable to find substance in the submissions made by the learned counsel for the appellant.

7. In order to appreciate and deal with the submissions made on behalf of the appellant, it would be beneficial to refer to Sub-Section 3 of Section 135 of the Electricity Act, 2003 and the same is thus reproduced hereunder:-

“(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the

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course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

Provided that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises."

8. A meaningful reading of the aforementioned provision shows that during search of a place, the occupant or any person on his behalf has to remain present and has to sign the list of all things seized in the course of search. Although the term "consumer" has been defined under Section 2(15) of the Electricity Act, 2003 but no specific meaning has been assigned to the term "occupant". Section 2(15) of the Electricity Act, 2003 is reproduced for reference:-

"15 "consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;"

Legislature in its wisdom has consciously and deliberately departed from using the term "consumer" and has used the word "occupant" who may or may not be a consumer; occupant can be anyone in possession of a premises either being owner or anyone else authorized by the owner and so on. Further, no inspection, search or seizure of any domestic place or domestic premises can be carried out between sunset and sunrise except in the presence of any adult male member occupying such premises.

In the present case, admittedly, inspection/checking was carried out by respondents on 12.07.2014, in the presence of father of the appellant-plaintiff and the checking report was duly signed by him. Nowhere, in the pleadings or in the evidence it has been pleaded or established that the father of the appellant-plaintiff was neither the occupant of the premises nor

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was authorized to be it by the consumer i.e. the appellant-plaintiff or was having any adverse interest against the appellant-plaintiff and thus being an adult member of the family of the appellant-plaintiff, he was duly competent to remain present at the place of inspection and search and thus no illegality can be found either in the inspection or the demand based thereupon.

9. Moreover, a concurrent finding of fact has been recorded by the Ld. trial Court against the appellant-plaintiff, relying upon the report (Ex.D-1), signed by the father of the appellant-plaintiff, besides photographs (Ex. D2-D9) as well as the videography (Ex.D10) so as to record a finding about theft of electricity being committed by the appellant-plaintiff by using direct supply of electricity without the same passing through the electric meter installed in the house of the appellant-plaintiff.

10. Accordingly, in view of the discussions made hereinabove, finding no illegality or perversity with the findings of theft recorded by the Courts below, the present appeal is dismissed.

16.08.2023
tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>