IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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130 **RSA-2815-2023 (O&M)**
Decided on : November 08, 2023

SUB DIVISIONAL OFFICER (O.P.) U.H.B.V.N.L. AND ANOTHER
...... Appellants

Versus

M/S KAMADGIRI EXPORTS (PVT.) LTD.
...... Respondent

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Surinder K. Mahajan, Advocate
for the Appellants.

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NAMIT KUMAR, J. ***(Oral)***

1. This regular second appeal emanates from the judgment and decree dated 16.10.2017 passed by the court of learned Addl. Civil Judge (Sr. Division), Kharkhoda, District Sonepat, whereby the suit for declration, mandatory injunction with consequential relief of permanent injunction filed by the plaintiff-respondent has been decreed as well as against the judgment and decree dated 18.11.2019 passed by the court of learned Additional District Judge, Sonepat, whereby the appeal preferred by the defendant-appellant against the judgment and decree dated 16.10.2017, has also been dismissed affirming the findings of the trial court.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. The facts relevant for disposal of this Regular Second Appeal are that plaintiff/respondent-company had taken an H.T. electricity connection bearing No. S22LS0123060 (old A/c No.LS-59) from Ferozepur Bangar, 33 KV Sub Station of defendant - Nigam through an independent Feeder

and the plaintiff - company was making payment of the consumption bills of the said connection to the Nigam regularly and has paid such dues up to date and nothing was due and payable by the plaintiff - company to the Nigam.

3. The electricity supply was provided to the plaintiff company through an independent feeder (line) and on both ends of the Feeder i.e. on one end of consumer premises (premises of the plaintiff-company) and the other ends of sub station, there were two separate energy meters and CTs installed, which were duly tested and sealed by the M&P Division of the Nigam and for the last more than one year the plaintiff company has been billed up with sundry charges and /or MDI charges to the tune of Rs.35,47,499/- for respective months i.e. from May, 2014 to July, 2015.

4. Thereafter, on enquiry by the plaintiff-company, it was told by the defendants that abovesaid amount charged as sundry charges and /or MDI charges is due to shoot up/exceeding of the MDI from the contract demand and the difference in the units as shown in one extra meter installed on the V.C.B of the plaintiff company at the Ferozepur Bangar Sub Station and that of the meter which was installed at the Sub station i.e. at end of the electricity line (Feeder) of the plaintiff company. It was pleaded by the plaintiff-respondent company that the amount charges as mentioned above charged from the plaintiff company on the alleged ground of difference in units shown in the extra meter is wrong, illegal, arbitrary, null and void and the same are not binding upon the rights of the plaintiff company. Hence, the civil suit was filed by the plaintiff company for decree of declaration to the effect that the act of the defendants in installing the extra Meter on the V.C.B of the plaintiff company in their Sub station at Feropzepur Bangar and their charging of the wrong and illegal amount of ₹35,47,499/- under the head "Sundry Charges" alleging the cost of the difference

in units shown in the extra meter and that of the meter already installed at the Sub station on the independent Feeder of the plaintiff company, is wrong, illegal, arbitrary and void and the same is not binding upon the rights of the plaintiff company and amount of ₹ 35,47,499/- has been charged wrongly and illegally from the plaintiff company and the same is liable to be refunded to the plaintiff company with interest and the extra meter lying installed on the V.C.B of the plaintiff company in the sub Station of the Nigam/defendants is liable to be removed forthwith. It was also prayed that a decree for Mandatory Injunction directing the defendants/appellants to refund the amount of ₹ 35,47,499/-, which was charged as sundry charges and /or MDI charges alongwith interest @ 24% per annum from the date of charging of such amount till the day of refund to the plaintiff company be passed.

3. Upon issuance of notice, defendants appeared through counsel and filed the written statement controverting all the averments made in the plaint by taking number of preliminary objections on the grounds of maintainability of the suit; *locus standi* of plaintiff to file the suit, concealment of true and material facts and non cause of action etc.. On merits, the averments made in the plaint were denied and it was pleaded that the amount of ₹ 35,47,499/- has been legally and rightly charged from the plaintiff company and the plaintiff has no right to challenge the same by way of filing the present suit.

4. No replication to the written statement was filed by the plaintiff.

5. From the pleadings of the parties, the learned trial court framed the following issues :-

(1) Whether the plaintiff is entitled to a decree for declaration as prayed for?OPP

(2) Whether the plaintiff is entitled to a decree for mandatory injunction as prayed for?OPP

(3) Whether th suit of the plaintiff is entitled to a decree for permanent

injunction as prayed for?OPP

(4) Whether the suit of the plaintiff is not maintainable in its present form?OPD

(5) Whether the suit of the plaintiff has no cause of action and no locus standi to file the present suit?OPD

(6) Whether the plaintiff has not come to the court with clean hands?OPD

(7) Relief.

6. The parties led their respective evidence. The Court of first instance, after appreciating the evidence on record decreed the suit for declaration filed by the plaintiff company with the finding that the charges imposed by the defendants amounting to the tune of ₹ 35,47,499/- under the Sundry charges (May, 2014 to July, 2015) are wrong, illegal, arbitrary and void and do not binding on the plaintiff company and since the amount in question has already been deposited therefore, the plaintiff company is liable to recover the same from the defendants and the defendants were directed to refund the amount of ₹ 35,47,499/-/- to the plaintiff company without any further delay. It was further held that the third check meter installed on the V.C.B of the plaintiff company at sub station Firozpur Bangar is also illegal, therefore, the same is liable to be removed. The defendants were directed to remove the check meter so installed at Sub station as it has no legal sanctity.

7. Feeling aggrieved against the said judgment and decree of the trial Court, defendants preferred an appeal before the Lower Appellate Court, which has been dismissed vide judgment and decree dated 18.11.2019 affirming the findings of the trial court.

8. Learned counsel for the appellants contended that the judgments and decrees passed by both the Courts below, allowing the suit of the plaintiff-respondent for declaration and consequential relief of mandatory injunction, are against law and the evidence on record and suffer from perversity being based on

misreading of evidence, therefore, the Judgement and decree of the courts below be set aside and suit of the plaintiff/respondent be dismissed with costs**.**

10. I have heard learned counsel for the appellants and perused the record.

11. The plaintiff-company had filed a suit seeking declaration to the effect that the act of the defendants in installing the extra Meter on the V.C.B. of the plaintiff company in their Sub station at Feropzepur Bangar and their charging of "Sundry Charges" to the tune of ₹ 35,47,499/- alleging as a cost of the difference in units, as shown in the extra meter and that of the meter already installed at the Sub station on the independent Feeder of the plaintiff company, is illegal and arbitrary and the same is not binding upon the plaintiff - company and said amount of Rs. 35,47,499/- has been charged wrongly and illegally from the plaintiff company and the same is liable to be refunded to the plaintiff company with interest and the extra meter installed on the V.C.B of the plaintiff -company in the Sub Station of the Nigam/defendants is liable to be removed forthwith. It was also prayed that a decree for mandatory injunction directing the defendants/appellants to refund the amount of Rs.35,47,499/-, ,which was charged as sundry charges and /or MDI charges, alongwith interest @ 24% per annum from the date of charging of such amount till the day of refund to the plaintiff company.

As per provisions of the Electricity Act, 2023, there is no scope for using a check meter for accounting and billing of electricity, unless there is failure of main meter or so long, as main meter was functioning properly. Further, under the Central Electricity Authority provisions, as framed by Regulation 2 (1), a check meter shall be connected to the same core of the current transformer and voltage transformer to which main meter is connected and shall be used for accounting and billing of electricity in case of failure of main meter. From the admissions made by the SDO concerned namely Amit Garg, when he was examined as DW1, it is an admitted fact that the third meter was installed by the Nigam, despite the fact that both the meters were working properly, therefore, it is crystal clear that the check meter, which was installed by the defendant-appellant, was illegal and not as per rules.

12. Concurrent findings have been recorded by both the Courts below that appellants-defendants have failed to produce any record to prove that the already installed meters were defective, moreover, no sanction to install the third meter on the Feeder of the plaintiff-respondent was ever accorded, therefore, act of the appellants-defendants in installing third meter on the Feeder of the plaintiff as a check meter and charging the amount from the plaintiff-company, on the basis of difference in reading of third meter and the meter installed on the Feeder of the Plaintiff at Sub Station is manifestly illegal, so imposition of any amount upon the plaintiff-company under the head peak load charges are not justified. Learned counsel for the appellants has failed to show that the findings recorded by Courts below are perverse or illegal or based on misreading, nonreading or mis-appreciation of the material evidence on record.

13. In view of above, no question of law, muchless substantial arises for consideration in the present appeal. No other point has been urged.

14. Dismissed.

15. All pending application(s), if any, shall stand disposed of.

November 08, 2023 **(NAMIT KUMAR)**
mkkoundal **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No