

RSA-1074-2021 (O&M)

Sr. No.262

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

**CM-4780 & 4782-C-2021 in/and
RSA-1074-2021 (O&M)
Date of Decision: 22.02.2023**

Uttri Haryana Bijli Vitran Nigam Limited

...Appellant

Vs.

Banta Singh (deceased) Through LRs

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Nikhil Chopra, Advocate
for appellant.

ARUN MONGA, J. (ORAL)

CM-4780 & 4782-C-2021 in/and

For the reasons stated, the applications are allowed subject to all just exceptions. Delay of 40 days in filing and 43 days in re-filing the appeal is condoned.

RSA-1074-2021 (O&M)

For convenience, parties herein are addressed as per the recitals before learned trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, plaintiff (appellant herein) is in second appeal before this Court assailing learned trial Court judgment and decree dated 04.05.2015, as upheld by learned First Appellate Court vide its judgment and decree dated 15.10.2019.

3. Briefly stated, facts as noticed by Courts below are that plaintiff filed a suit for recovery of Rs.87,972/- against defendant(s) on account of arrears of electricity bill of connection No.HH-11-1408 as per record of the department. In this regard, notice dated 04.02.2009 was issued to defendant, but he failed to pay the said

amount. Thereafter, the connection of defendant was declared PDCO vide order dated 18.03.2010. Later, again a notice dated 30.03.2010 was issued to defendant but he failed to make the payment of amount in question.

4. Upon notice, defendant appeared and filed written statement disputing the claim and alleging preliminary objections of maintainability, limitation and concealment of facts etc. It was further submitted that SDO had no locus standi and no authority to file instant suit.

5. Based on the rival pleadings, following issues were framed:

1. Whether the plaintiff is entitled to decree for recovery of Rs.87,972/- as prayed for on the grounds mentioned in the plaint? OPP.

2. Whether the suit of the plaintiff is not maintainable in the present form? OPD.

3. Relief.

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, issue No.1 was partly decided in favour of plaintiff to the extent that the said amount was outstanding against defendant and issue No.2 was decided in favour of defendant and against plaintiff by holding that the suit was time barred being not legally maintainable after the expiry of period of limitation of two years. Consequently, the suit of plaintiff was dismissed leaving the parties to bear their own costs.

8. Aggrieved, plaintiff-appellant preferred first appeal which was dismissed by learned First Appellate Court.

9. Learned First Appellate Court below dismissed the appeal, resulting in instant Regular Second Appeal before this Court.

10. Learned counsel for appellant/plaintiff, while relying upon Section 56(2) of the Electricity Act, 2003 (*hereinafter referred to as 'Act, 2003'*), strenuously

argues that the suit to recover electricity dues in those cases where the amount is recoverable as arrears of charges and has been shown continuously in the past as recoverable can be filed even after the lapse of 2 years. Section 56(2) of Act, 2003 is as under:-

“xxxx xxxx xxxx
(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

11. Perusal of the above provision would reflect that there is no quibble *qua* proposition, as canvassed by learned counsel for appellant but what perhaps is being lost sight of by learned counsel are the findings rendered by Ld. Trial Court based on cogent evidence that the amount recoverable was not shown as continuous arrears as there was a break in the same and therefore the department if had to make any recovery, it ought to do so within a period of 2 years. For ready reference, the finding of Ld. Trial Court *qua* the same is reproduced herein below:

“XXXX XXXX XXXX XXXX
Admittedly, the connection of the defendant was declared PDCO on 18.3.2010 and the connection of the defendant was also ordered to be disconnected permanently vide order dated 18.3.2010 Ex. P4. Thereafter, on 22.3.2010 an amount of Rs.87,972/- has been shown outstanding against the defendant in the statement of account Ex. P2 and no further electricity has been supplied to the defendant after 18.3.2010. So, the limitation to file the present suit shall be counted from 18.3.2010 when the connection of the defendant was declared PDCO and when this amount became due. Admittedly, the present suit has been filed on 7.5.2012 i.e. beyond the limitation period of two years. So the present suit is time barred.

16. The contention of learned counsel for plaintiff to the effect that the limitation to file the present suit is three years from the date when the above said amount became due has no force and is liable to be rejected because of the above said provision of section 56(2) of Electricity Act, 2003. Here reliance is also placed on case law authority **Sanjay Balvantral Desai Vs. Dakshin Gujarat Vij Company Ltd. 2013 (3) RCR (Civil) Gujarat (F.B.)- 181**, wherein para No. 18 it has been held as under:

"According to sub-section (2) of Section 52 of the Act, notwithstanding anything contained in any other law for the time

being in force, no sum due from any consumer, under Section 56 shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as a recoverable arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity. In other words, unless, in spite of default, the licensee has continued with supply of electricity and shows the default amount as arrear of charges continuously while supplying electricity, the defaulted amount is not recoverable after the period of two years from the date such sum becomes first due. Therefore, in a case, where for a default committed by a consumer, electricity has been disconnected and no suit is filed for recovery of the amount within two years when the amount first became due, the said amount shall not be even legally recoverable at the instance of the licensee. Such prohibition having been imposed by the provision of Section 56(2) of the Act, by taking aid of the delegated legislation, the Regulatory Commission cannot make an irrecoverable amount of money due to default as a recoverable one in favour of a licensee by way of prescribing such condition though the same is not even covered under the items mentioned in Section 50 of the Act."

17. Here the learned counsel for plaintiff has submitted that as per the Section 56(2) of Electricity Act, the limitation period of two years shall not start from the date when the connection of the defendant was made PDCO, rather this period shall start from the date when this amount was firstly demanded by the plaintiff and in this case the demand of this amount was made by the plaintiff vide legal notice dated 30.3.2010 Ex. P5. Although the limitation in this case is to be counted from 18.3.2010, when the connection of the defendant was disconnected. But if for the sake of arguments the limitation of two years is counted from the date of demand dated 30.3.2010 vide Ex.P5, although no ground is made out to calculate limitation from 30.3.2010, even then the suit is filed beyond two years from 30.3.2010 as the suit is filed on 7.5.2012.

18. So, keeping in view the abovesaid provisions and the case law authority the present suit is time barred and same is not legally maintainable after the expiry of period of limitation of two years. Accordingly issue No.2 is decided in favour of the defendant and against the plaintiff.

XXXX XXXX XXXX XXXX”

12. Having perused the judgment and decree passed by Ld. Trial Court, as rightly upheld by Ld. First Appellate Court, I see no reason to interfere.
13. Resultantly, no fault can be found with the findings rendered by learned trial Court, as affirmed by learned First Appellate Court since the same were based on cogent evidence adduced by parties.

14. Having perused the impugned judgments, my considered opinion is that the submissions made before the Courts below were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same. There seems no substance in the submissions that the impugned judgments are based on conjectures and surmises.
15. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.
16. In the premise, there seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings.
17. Furthermore, no question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.
18. As an upshot of my preceding discussion, this appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.
19. Pending application/s, if any, shall also stand disposed of.
20. No order as to costs.

(ARUN MONGA)
JUDGE

February 22, 2023
ashish

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