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

RSA No. 2982 of 1994 (O&M)

Date of decision : 26.07.2023

Punjab State Electricity Board and another

...Appellants

Versus

Satish Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. M.L. Saini, Advocate
for the appellants-defendants.

None for the respondent-plaintiff.

HARKESH MANUJA, J.

CM No. 1377-C of 2023

Prayer in the present application moved on behalf of the applicants-appellants, is for placing on record decree dated 22.01.1993 passed in Civil Suit No. 699, dated 06.09.1989.

Application is allowed, as prayed for subject to all just exceptions. The aforesaid decree dated 22.01.1993 is taken on record.

Registry to do the needful.

MAIN APPEAL

By way of present appeal, challenge has been laid to the judgments & decrees dated 22.01.1993 & 20.10.1993 passed by learned trial Court and the Appellate Court, respectively, whereby suit filed by

the plaintiff-Satish Kumar (respondent herein) seeking mandatory and permanent injunctions was decreed, and the first appeal filed by defendants-appellants was dismissed.

[2] Briefly put the facts are that the respondent-plaintiff (Satish Kumar) being consumer of the appellant-Punjab State Electricity, Patiala (in short "PSEB) [now Punjab State Power Corporation Limited] obtained electric connection bearing No. SP-19 for running Atta Chakki; installed 25 horsepower motor for running the business; and had been regularly paying the bills issued by PSEB from time to time. An Inspection dated 31.07.1989 was carried out in the premises of plaintiff-respondent, wherein the M&T seals of the electric meter were found to be allegedly tampered. Based thereupon, a demand of Rs. 50,850/- was raised vide memo dated 03.08.1989.

[3] Aggrieved thereof, the plaintiff filed a suit for mandatory injunction as well as permanent injunction, claiming that the demand raised by the PSEB-defendants was illegal and arbitrary, besides making a prayer for restoration of the electricity supply to his premises. Upon notice, the defendants filed their written statement, contesting the suit, while submitting that the M&T seals of the electric meter in question were found to be tampered, and thus, the present case was of theft of energy besides, trying to justify the demand.

[4] Learned trial Court, vide judgment & decree dated 22.01.1993, decreed the suit filed by plaintiff, while holding that the demand was raised in violation of the principles of natural justice, as no prior opportunity of hearing was afforded to him, however, the

defendants-PSEB were granted liberty to hold a fresh enquiry and to make demand after following due course of law.

[5] Dissatisfied with the judgment & decree dated 22.01.1993 (*supra*) passed by the trial Court, the defendants-PSEB filed first appeal, however, the same was dismissed by the Court of Additional District Judge, Bathinda, vide order dated 20.10.1993, while holding that the case of tampering of M&T seals as well as the commission of theft of energy against plaintiff-respondent was never proved on record.

[6] Impugning the aforesaid judgments & decrees dated 22.01.1993 & 20.10.1993, learned counsel for the appellants-PSEB submits that the demand was raised against respondent-plaintiff on the basis of checking carried out on 31.07.1989, wherein the M&T seals of the meter in question were found to be tampered and accordingly, a recovery notice dated 03.08.1989 for a demand of Rs. 50,850/- was issued. It was further submitted that the respondent-plaintiff was present at the time of inspection and thus, all the principles of natural justice were duly followed.

[7] On the other hand, no one has chosen to appear on behalf of the respondent-plaintiff.

[8] I have heard learned counsel for the appellants and gone through the paper-book and unable to find substance in submissions made on behalf of the appellants.

[9] Though, the trial Court, vide its judgment & decree dated 22.01.1993 holding the demand raised by the appellants-defendants (PSEB) to be in violation of principles of natural justice, set aside the

same, while granting an opportunity to hold fresh inquiry and pass fresh orders; however, learned First Appellate Court, Bathinda while passing its judgment dated 20.10.1993, having gone through the entire evidence, recorded findings to the effect that even from the inspection report dated 31.07.1989, it could not be made out that the M&T seals of the meter in question was found to be tampered. Learned First Appellate Court, Bathinda, on appreciation of oral evidence of the appellants-defendants' (PSEB) witnesses, went on to record that the number of M&T seals was even the same and genuine. Learned Appellate Court even recorded that unless the M&T seals were broken, the meter cover could not be removed and the factum of tampering of seals was never even mentioned in the notice. The Appellate Court even found that as per DW-1 (Balwinder Singh Sidhu), the lash wire was correctly fixed. The relevant para-7 from the judgment dated 20.10.1993 passed by the learned First Appellate Court is re-produced hereunder:-

“ 7. In other words checking report Ex. D1 is not in unison with the notice Ex. P1. Secondly in the notice Ex. P1 there is no mention as to how the seals M & T were tampered by the respondent. Mere mentioning that M & T seals were tampered is not enough to connect the respondent with the commission of theft of energy. No doubt DW1 Balwinder Singh Sidhu deposed that he found all the four M & T seals of power meter tampered and counter of the meter has changed but as stated above the fact of counter of the meter found changed is missing in the contents of notice Ex.P1. It is admitted by DW1 that he had not mentioned

in his report how the seals were tampered. This witness has further admitted that unless the M & T seals are broken the meter cover cannot be removed and that he had not mentioned the details of the tampering of the seals. He admitted the suggestion that number of the seals are the same and they are genuine and that counter gear cannot be changed by a lay man. When the numbers of the seals are the same and those are genuine then appellants have no case that respondent was found committing the theft. It is further stated by DW1 that lash wire is correctly fixed and that is to say it was taken through the same place through which it was required to be taken. The said statement of DW1 indicates that counter gear cannot be changed by a lay man and that number of the seals were intact. From the chart of consumption Ex. D3 the responsibility of the respondent cannot be fixed that he committed the theft of energy as it was prepared later on. ”

[10] Having gone through the findings recorded by the learned First Appellate Court, there being no illegality or perversity, I do not find any reason to interfere with the same, particularly when no material has been pointed out from the records by the present appellants to show anything to the contrary or any misreading of evidence even. Resultantly, finding no merit in the present appeal, the same is hereby **dismissed.**

[11] It may be pointed out here that in the detailed discussion made by the learned First Appellate Court, while holding that no tampering of M&T seals of the power meter in question was established on record and even the lash wire was fixed properly, clearly

no case of theft was made out against the respondent-plaintiff, thereby no useful purpose would be served for granting another opportunity to the appellants-defendants (PSEB/PSPCL) to hold further enquiry for the purpose of making any fresh demand against the respondent and that too after a period of more than 34 years now which may cause serious prejudice to his rights even. It is made clear that the sum already deposited by the respondent-plaintiff at the time of restoration of electricity shall be treated as final payment towards any demand pending against him in terms of checking dated 31.07.1989.

Pending application(s), if any, shall also stand disposed off.

July 26, 2023
‘dk kamra’

(HARKESH MANUJA)
JUDGE

Whether Speaking / Reasoned :	Yes	No
Whether Reportable :	Yes	No