

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

RSA-4022-2019 (O&M)
Date of Decision : 30.01.2023

Punjab State Power Corporation Limited

...Appellant(s)

Versus

Avtar Singh and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Tarun Vir Singh Lehal, Advocate,
for the appellant.

MAHABIR SINGH SINDHU, J.

CM-10986-C-2019

Application has been filed for condonation of 14 days' delay in refiling the appeal.

For the reasons stated in the application, same is allowed as prayed for subject to all just exceptions. As a result thereof, delay of 14 days in re-filing the appeal is condoned.

CM-10987-C-2019

Application has been filed for condonation of 55 days' delay in filing the appeal.

For the reasons stated in the application, same is allowed as prayed for subject to all just exceptions. As a result thereof, delay of 55 days in filing the appeal is condoned.

Main case

Present Regular Second Appeal has been preferred by Punjab State Power Corporation Ltd. (for short 'Corporation') against the impugned judgment & decree dated 15.12.2018, whereby learned Additional District Judge, Amritsar, accepted first appeal of respondents and set-aside the judgment & decree dated 27.07.2016 passed by learned Civil Judge (Junior Division), Amritsar, *vide* which their suit was dismissed.

Brief facts:

2. Respondents filed a suit for permanent injunction restraining the Corporation from disconnecting their electricity connections and details of which are as under:-

(1) GT07/304.

(2) GT07/328

3. Respondents are claiming themselves to be owners in possession of the building situated near Jallianwala Bagh, Amritsar, where above mentioned electricity connections have been continuing since long. Electricity connection mentioned at serial No.1 is running in the name of respondent No.1 and supplying electricity to ground & first floors of the building; whereas, connection shown at serial No. 2 is in the name of respondent No.2 for supplying electricity to the second and third floors thereof.

4. There is no dispute that both the respondents are paying their bills regularly and nothing is due against them.

5. It is averred that above premises was checked by the Enforcement Staff of the Corporation on 14.07.2012 and thereafter, a Memo. dated 14.07.2012 was issued to the respondents for clubbing of both the connections.

6. Aggrieved against the aforesaid communication, respondents filed a written response, but no favourable action was taken by the quarter concerned; hence that led to filing of the civil suit.

7. Upon notice, Corporation filed written statement raising various pleas, including maintainability of the civil suit by way of preliminary objections.

It was averred on merits that electricity connection mentioned at serial No.1 is running with sanctioned load of 19.880 KW in the name of respondent No.1 whereas, second connection under same category with similar sanctioned load has been installed in the name of respondent No.2. According to the Corporation, checking was carried out on 14.08.2012 and not on 14.07.2012 by the then A.E.E Sh. Nirmal Singh along with other staff members. It was noticed by the team that connection at serial No.1 was not blinking on putting load; nor display was showing any digit; rather found to be burnt. Thus, it was recommended to remove the meter by issuing MCO and to deposit the burnt meter in M.E. Lab.

So far as second connection is concerned, it was averred that checking was carried out, *vide* ECR No.29/2017 and after noticing that wiring of both the connections is joint, it was recommended to disconnect this connection and load of the same be clubbed with

connection at serial No.1. It was also recommended to remove the second connection and to send meter to M.E. Lab for internal examination. Both the checking reports were signed on the spot in the presence of one Parminder Singh, who admitted the contents of the same as correct. On the basis of checking report, Memo. No.1056 dated 31.08.2012, was issued to the respondents for clubbing of connections. It is admitted that representation on behalf of respondents was received on 04.09.2012 by the Corporation and a committee was constituted by the Superintending Engineer to look into the matter. The committee, *vide* its report dated 30.01.2014, recommended for clubbing of both the connections as the premises is having a common entry gate, apart from single generator set for running a hotel.

8. Plaintiffs filed replication reiterating the averments made in the plaint.

9. On the basis of pleadings of both sides, following issues were framed by learned trial Court:-

1. Whether the plaintiff is entitled to the relief of permanent injunction, as prayed for? OPP.
2. Whether the suit is not legally maintainable? OPD.
3. Whether the plaintiffs are estopped by their own act and conduct from filing the present suit? OPD.
4. Whether the plaintiff has not come to the Court with clean hands? OPD.
5. Relief.

10. In order to prove their case, respondents examined Parminder Singh as PW-1 and closed their evidence.

11. On the other hand, Corporation examined Ashok Kumar, AE (Comm.) as DW-1 and produced the following documentary evidence:-

- (i) ECR No.29/2017 dated 14.08.2012 (Ex.D-1)
- (ii) ECR No.30/2017 dated 14.08.2012 (Ex.D-2)
- (iii) ECR No.31/2017 dated 14.08.2012 (Ex.D-3)
- (iv) Memo. No. 1056 dated 31.08.2012 (Ex.D-4)
- (v) Office order No.251 dated 30.10.2013 (Ex.D-5)
- (vi) Committee's report dated 30.01.2014 (Ex.D-6)

12. Learned trial Court, after hearing the parties and taking into consideration the material available on record, decided issue No.1 in favour of the Corporation; whereas, issue No.2 regarding maintainability of suit was decided against them. So far as issue No.3 & 4 are concerned, the same were held to be rendered redundant being not pressed by the Corporation. Ultimately, while deciding issue No.5, learned trial Court dismissed the suit of respondents with costs, *vide* judgment & decree dated 27.07.2016.

13. Aggrieved against the aforesaid judgment & decree, respondents preferred an appeal, which was allowed by the learned Additional District Judge, Amritsar. Hence, present regular second appeal at the instance of Corporation.

14. Learned counsel for the Corporation made two-fold submissions:-

- (i) that the respondents are having two separate electricity connections in the same building, which is not

permissible in view of Clause 35.1 of the Electricity Manual and a pointed reference has been made to ground No.3(v) of the present appeal;

(ii) that learned first appellate Court while passing the impugned judgment & decree has virtually issued blanket injunction against the Corporation for all the times to come. Thus, even in case of breach of legal provisions contained under the Indian Electricity Act, 2003 (for short “the Act”) as well the regulations framed thereunder, the Corporation would be helpless in taking legal action against the respondents.

15. Heard learned counsel for the appellant and perused the paper-book.

16. Before proceeding further, it is necessary to reproduce concluding para (18) of the impugned judgment as well as the decree dated 15.12.2018 and which are as under:-

“18. In view of my above discussion, the present appeal is accepted and the impugned judgment and decree dated 22.07.2016 passed by the learned trial Court are set aside and the suit filed by the appellants-plaintiffs is decreed and the respondents/defendants are permanently restrained from disconnecting the electric connection having account No. GT07/304, installed in the name of the plaintiff No.1 in building situated near Jallianwala Bagh, Amritsar and another electric connection having account No. GT07/328 installed in the name of the plaintiff No.2 in the building situated near Jallianwala Bagh, Amritsar.”

Decree

“The above appellants have filed the above named appeal to the Court of Additional District Judge, Amritsar against the order passed by Court of Ms. Jagminder Kaur, Civil Judge (Junior Division), Amritsar in civil suit No. 212/2013 instituted on 15.10.2013; and decided on 27.07.2016, for the following reasons (as per grounds of appeal).

This appeal coming for hearing on 15th day of December, 2018 before me (Avtar Singh, Addl. District Judge, Amritsar) in the presence of Shri Raman Mehra, Advocate, counsel for the appellants and Shri N.S. Sandhu, Advocate, Counsel for respondents.

It is ordered that this appeal is accepted.”

17. There is no dispute that both the electricity connections were released in favour of the respondents, separately by the Corporation and which are running till date. It is not the case of the Corporation that there is any default in making the payment of electricity dues at the end of respondents. It is also not the case of the Corporation that respective electricity connections were obtained by the respondents on the basis of any misrepresentation or some forged document(s). Rather both the connections are running since long and this fact was very well within the knowledge of the Corporation from day one. What prompted the authorities to club both the connections, at this stage, is not discernible from record? Even no instructions or rule were brought on record before the Courts below to substantiate the reasons for clubbing both the connections which are running since long. Even learned first appellate Court in para 14 of the impugned judgment specifically observed that no instructions or rule of the Corporation were brought on the file under which both the meters should be clubbed

together and relevant observations in this regard are extracted here as under:-

“.....From the perusal of the report Ex.D6 it is clear that the Committee reported that both the meters be clubbed. From the entire evidence it is not the case of the theft of the electricity by the appellants. The respondents-defendants brought on file Ex.D6 which provides that both the electric connections should be clubbed but no instruction or rule of the Electricity Board are brought on the file under which both the meters should be clubbed.”

18. Perusal of the aforesaid extract clearly reveals that Corporation failed to produce any instruction or rule for clubbing of both the connections. Although, learned counsel for the Corporation tried to convince this Court while making reference to Clause 35.1 of the Electricity Manual, which is sought to be brought on record by way of an additional evidence, but the same would be of no relevance, for the following reasons:-

- (i) learned counsel for the Corporation was not able to substantiate as to how the provisions of this Manual can be made applicable to the existing connections of the respondents which are running since long?
- (ii) Despite sufficient opportunity, complete Electricity Manual was not shown to the Court; rather only four pages i.e. 6,7,47 & 48 thereof are sought to be brought on record by way of an additional evidence,

without any relevancy for adjudication of the matter in controversy.

- (iii) Moreover, under Clause 35.1 of the Electricity Manual, it is nowhere discernible that continuity of two already existing connections in the name of two different persons in one building is legally impermissible. Rather neither under the Act; nor as per the regulations framed thereunder, there is any bar for continuation of two electricity connections in one building in the name of two different persons.

19. Besides above, the Hon'ble Supreme Court while deciding ***Criminal Appeal No.810 of 2022 decided on May 13th, 2022 titled as "Dilip (Dead) Through LRs versus Satish and others"***, observed that electricity is a basic amenity and relevant part of the judgment reads as under:-

"It is now well settled proposition of law that electricity is a basic amenity of which a person cannot be deprived. Electricity cannot be declined to a tenant on the ground of failure/refusal of the landlord to issue no objection certificate. All that the electricity supply authority is required to examine is whether the applicant for electricity connection is in occupation of the premises in question."

20. Even the argument raised on behalf of the Corporation that they would be helpless in taking action against the respondents in case

of violation of the Act as well as regulations framed thereunder, is unacceptable for the reasons that it is always open for an authority to proceed in accordance with law and there can be no injunction *de-hors* the legal provisions of law.

21. In view of the discussion made here-in-above, this Court does not find any illegality or perversity in the impugned judgment & decree dated 15.12.2018 for interference while entertaining the present regular second appeal; nor learned counsel for the appellant is able to make out any question of law, much less a substantial question of law, for consideration in the appeal.

22. As a result thereof, there is no option except to dismiss the appeal.

23. Ordered accordingly.

24. However, it is clarified that dismissal of the present appeal shall not debar the Corporation from proceeding against the respondents in accordance with law, if the occasion so arises.

CM-700-C-2023

Present application has been filed under Order 41 Rule 27 of Code of Civil Procedure, for bringing on record four pages of Electricity Manual by way of additional evidence, as Annexure A-1.

Since applicant-appellants were very well aware about the existence of Electricity Manual, but they did not care to bring the same on record for the reasons best known to them; thus it is not a case that Corporation has shown any diligence in the matter much less to say due diligence; rather they were grossly negligent. Apart that, as already

discussed in para 18(iii), there is no such provision discernible from four pages of Electricity Manual sought to be brought on record by way of an additional evidence that continuation of two already existing electricity connections in one building in the name of two different persons would be legally impermissible.

As a result thereof, this Court does not deem it appropriate to accept the prayer of the Corporation for leading additional evidence and as such, the same is dismissed.

30.01.2023
SN

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No