

RSA-3549 of 2019 (O&M)

2023:PHHC:141794

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

RSA-3549 of 2019 (O&M)
Date of decision: 07.11.2023

Daljit Singh

.....Appellant

Versus

Punjab State Power Corporation Limited and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Rakshit Gupta, Advocate,
for Mr. Rakesh Gupta, Advocate,
for the appellant.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 04.10.2018 passed by the Court of learned Civil Judge (Junior Division), Rupnagar, whereby suit of the appellant-plaintiff for declaration and permanent injunction was dismissed as well as against the judgment and decree dated 06.03.2019 passed by the Court of learned Additional District Judge, Rupnagar, vide which the appeal filed by the appellant-plaintiff against the judgment and decree of the trial Court, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. Briefly stated, plaintiff had filed the suit for declaration to the effect that the memo no. 541 dated 22.3.2016 issued by defendant no.2 against the plaintiff vide which the defendants directed the plaintiff to pay Rs.2,49,549/- + Rs.108051/- total Rs.

3,57,600/-+ Rs. 156600/- as interest for the period 7/2012 to 10/2015 alleged to be compounding fee is wrong, illegal, null and void, arbitrary and the same cannot be recovered from the plaintiff and suit for permanent injunction restraining the defendants from effecting recovery of the said amount against the plaintiff wrongly, illegally and forcibly. The plaintiff averred that an electric meter for Flour Mill (Atta Chaki) vide connection A/C No. SP 75/149 has been fixed outside the premises at the distant place from the flour mill of the plaintiff for which the said connection had been obtained from the officials of the defendant department and the officials were responsible for the safety of the meter which was installed outside and when fixing the meter, the authenticity of the said meter was not disclosed and plaintiff was not aware whether the meter was reflecting proper consumption or whether it was tempered with before fixation. It has further been averred that in the year 1998, an electricity connection was released for the flour mill of the plaintiff and at that time, two meters were installed by the defendants i.e. one for the consumption for milling by the flour mill and other small meter was installed for the consumption of the light and fans for the premises of flour mill and the bill for the consumption of both meters was being sent by the defendants/department by adding consumption of both meters i.e. in one bill up to 18.5.2001. It has been averred that before bill dated 16.6.2001 small meter which was meant for light and fans was removed by the officials of the defendant without consent of the plaintiff and consumption of light and fans was wrongly transferred on one meter which was meant for consumption of flour

mill. It has been averred that up to bill dated 18.10.2002, meter no. 160716 remained installed in the Flour Mill premises. In the bill dated 16.11.2002, Meter No. 611704 has been mentioned by the defendants but previously said meter was changed and removed by the officials of the defendant department without consent and in the absence of the plaintiff and without any reason. Upto bill dated 17.4.2004, meter no. 611704 remained in operation. In bill dated 16.5.2004, meter no. 433943 was mentioned by the defendant and this meter was also replaced at the back of the plaintiff and without his consent and this meter was also removed by the defendant on 26.6.2012 in his absence. It has been averred that thereafter, the plaintiff was called in the office of defendants and he was told that seals of the meter were broken and Jr. Engineer Shri Nagpal asked the plaintiff to sign on blank papers on 26.6.2012. It has further been averred that while the meter in question was checked by the officials of the defendants, and alleged observation of breaking of M.E seal missing of two seals, meter accuracy was allegedly found slow, alleged both covers were also found, internal circle was found tampered etc. as has been alleged in the aforesaid provisional assessment order of the defendants were not in the knowledge of the plaintiff and he never indulged himself in any manner in said wrong and illegal act. On receipt of the alleged demand notice dated 30.08.2012, plaintiff submitted his objection to the concerned officials of the defendant's department but the defendants wrongly and illegally did not consider the objections filed by the plaintiff. It has been averred that 15 days time was given by the defendants to the

plaintiff to file objection but the defendants had issued final order no. 912 dated 11.9.2012 before filing of objection of the plaintiff. Plaintiff filed a complaint before Permanent Lok Adalat PUS Rupnagar on 1.10.2012 but the same was dismissed on the ground of jurisdiction alone. Thereafter, he filed CWP No. 16868 of 2013 before this Court and the same was dismissed as withdrawn to seek remedy of statutory appeal and then he filed review petition before the convener Designated Authority-cum-Dy. Chief Engineer/Op. PSPCL, Ropar who dismissed the same vide order dated 27.11.2013. It has been averred that no opportunity of personal hearing was given to him by the defendants before passing order.

3. Upon notice, the defendants filed written statement and took preliminary objections of maintainability and jurisdiction. On merits it has been averred that a SP connection bearing no. 75/145 was released in the name of plaintiff. A meter which was in order was installed in his premises. He made a request for the permanent disconnection of khata no. 75/149 SP and thereafter, a PDCO was issued and the meter was removed from the spot in his presence and sealed in the box. He also signed the seal box on 26.06.2012. Thereafter, the meter was checked by enforcement staff headed by Senior Executive Engineer (E) Mohali in the presence of plaintiff and during checking, one ME seal was found broken and other was missing. The accuracy of the meter was checked and was found 32.4% slow. The meter body was also found tampered and counter lock was also found broken. Videography was done at the spot and it was found to be

a case of theft of energy. Thereafter, notice under Section 135 of Electricity Act, 2003 was served upon the plaintiff on 11.09.2012. Thereafter, he challenged the notice before Permanent Lok Adalat and also filed Civil Writ Petition but the same were dismissed. Denying other averments a prayer for dismissal of the suit of the appellant/plaintiff was made.

4. Replication was filed by plaintiff reiterating the contents of the plaint and controverting the written statement . On the basis of the pleadings, following issues were framed:-

- “1. Whether the plaintiff is entitled to decree for Declaration as prayed for ? OPP
 2. Whether the plaintiff is entitled to decree for Permanent Injunction as prayed for ? OPP
 3. Whether the suit is not maintainable ? OPD
 4. Whether the jurisdiction of Civil Court is barred u/s 145 of Electricity Act. 2003 ? OPD
 5. Whether the plaintiff has filed a CWP before the Hon’ble High Court, same was dismissed and then the plaintiff filed a review petition before the Designated Authority operation PSPCL ? OPD
 6. Relief”
5. Parties led oral as well as documentary evidence in support of their respective contentions.
6. After hearing arguments and after appreciating evidence on record, trial Court dismissed the suit of plaintiff vide judgment and decree dated 04.10.2018.

7. Aggrieved against the judgment and decree of the trial Court, plaintiff preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 06.03.2019.

8. Learned counsel for the appellant contended that both the Courts below have failed to appreciate that appellant has been acquitted in criminal case file against him under Section 135 of the Electricity Act, therefore, the demand raised regarding compounding fee was illegal and the same could not have been recovered from the appellant. He further contended that findings recorded by both the Courts below is the result of misreading of oral and documentary evidence on record. He further contended that judgments of the Courts below being perverse are liable to be reversed.

9. I have heard learned counsel for the appellant and perused the record.

10. Perusal of the record shows that appellant has challenged memo No. 541 dated 22.3.2016 vide which the appellant has been allegedly directed to deposit compounding fee but he could not prove the same on record. Respondent-defendants produced on record memo dated 30.8.2012 (Ex.D.8) requiring the appellant-plaintiff to pay amount assessed as liability/penalty as well as compounding fee but same has not been impugned by the appellant-plaintiff. In his affidavit Ex. PW.1/A tendered by way of examination-in-chief, appellant-plaintiff PW1 has not deposed anything about the said memo Ex.D.8. Memo Ex.D8 is dated 30.8.2012 whereas suit was instituted on 22.04.2016. Therefore, the lower appellate Court has rightly held that

even otherwise suit filed by the appellant was barred under the Limitation Act. Once FIR was lodged against the appellant, respondent-defendants were very well empowered to offer the appellant for compounding of offence under Section 152 of the Electricity Act. Therefore, offer of the respondents for compounding of offence cannot be termed as illegal.

11. Concurrent findings have been recorded by both the Courts below and learned counsel for the appellant has failed to show that the same are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

12. No question of law, muchless substantial question of law has been raised or arises for consideration in the present appeal. No other point has been urged.

13. In view of the above, present appeal is dismissed.

14. Pending application(s), if any, stand disposed of accordingly.

07.11.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No