

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

RSA-1735-2022(O&M)

Date of decision:-17.1.2023

Rajpal

...Appellant

Versus

Sub Divisional Officer(Operation) Narnaul and others

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Rao Ajender Singh, Advocate
for the appellant.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Rajpal son of Parbhati Lal, resident of village Raghunathpura, Tehsil Narnaul, District Mohindergarh had brought a suit against defendants i.e. Sub Divisional Officer (Op.), Narnaul Sub Division, Dakshini Haryana Bijli Vitran Nigam Ltd. Mahendergarh Road, Narnaul, Executive Engineer (Op.) Dakshini Haryana Bijli Vitran Nigam Ltd. Singhana Road, Narnaul and Superintendent Engineer (Op.), Dakshin Haryana Bijli Vitran Nigam Ltd. Singhana Road, Narnaul seeking declaration that memo No.N11/2017/764 dated 26.09.2017 and notice of the even date issued by the defendants are against law and fact, liable to be set aside and defendants be restrained

from recovering Rs.7,60,084/- and Rs.1,00,000/- on the basis of those memos and from recovering compounding charges as well as disconnecting the electricity supply of the plaintiff.

2. As per the version of the plaintiff, he is a consumer of the electricity provided by the defendants paying the electricity bills regularly; he is having 10 KW connection; on 22.06.2017 the employees of defendant department raided upon the premises of the plaintiff and forcibly issued LL-1 report dated 22.06.2017 in order to harass the plaintiff; thereafter the impugned notices were issued; on 22.6.2017 the employees suddenly checked the electricity meter of the plaintiff, which was found to be defective; it was sent to Lab at Gurguram for checking after two months and as per the report, the meter was found defective on account of falling down or due to some chemical being poured on it. According to the plaintiff, no case of theft of electricity was made out. He had filed a case in that regard before Consumer Forum but that was dismissed, as such he approached the Civil Court.

3. On notice, the defendants appeared and filed written statement contending that on checking of premises of the plaintiff by the staff of defendants, LL-1 report was prepared in presence of son of the plaintiff namely Vikas; old meter was removed and sealed in a box, which was sent for checking; new meter was installed; LL-1 report dated 22.6.2017 bears signature of Vikas; a copy thereof was supplied to him. The meter of the plaintiff was got checked from M&P Lab and as per the report dated 31.8.2017 rusting and flash marks were found to be there, which shows that water/chemical etc. had been poured inside the meter

through MD rest push button to disturb its recording; the meter was found to be tampered with, therefore assessment was done as per consumed load and the impugned memos were rightly issued against the plaintiff. The answering defendant further contended that the suit is time barred.

4. Replication was not filed. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled for a decree of declaration with consequential relief of permanent injunction as prayed for ?OPP
2. Whether the suit filed by the plaintiff is not maintainable in its present form? OPD
3. Relief.

5. The parties were afforded adequate opportunities to lead their evidence.

6. After hearing arguments, the trial Court of Civil Judge(Sr.Divn.), Narnaul vide judgment and decree dated 21.3.2022 dismissed the suit with costs.

7. Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Narnaul, who vide judgment and decree dated 31.5.2022 dismissed the same upholding the judgment and decree passed by the trial Court.

8. Still feeling dissatisfied, the plaintiff has knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and his suit be decreed.

9. I have heard learned counsel for the appellant besides going through the record and I find that there is absolutely no merit in the appeal.

10. Both the Courts below in light of the pleadings of the parties and evidence available on the record have returned the finding that the meter of the plaintiff was found tampered with as its recording was disturbed by pouring chemical or solvent through MD rest push button resulting into manipulation of actual consumption of electricity, therefore the notice of penalty and compounding fee charges issued by the defendants, which was so done legally in accordance with rules and no fault can be found with such acts on the part of the defendants. The plaintiff was not found entitled to seek declaration or permanent injunction. Learned First Appellate Court has referred to various judgments that the suit is not maintainable.

11. Learned counsel for the appellant has referred to judgment **Dakshin Haryana Bijli Vitran Nigam Ltd. and others Versus Jaswant @ Jaibir, 2017(2) LAR 465**. However, I find that the same does not come to help of the appellant in any manner due to different facts and circumstances and the context in which such observations had been made.

12. The findings given by both the Courts below are based upon proper appreciation and correct interpretation of law. Both the Courts had rejected the claim of the plaintiff. I do not see any reason to disagree with the Courts below and take a different view and further to interfere with the impugned judgments and decrees.

13. No substantial question of law arises in this appeal.

14. Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments and decrees passed by the Courts below.

15. The appeal stands dismissed with costs accordingly.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

17.1.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No