IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2744-2014 (O&M)
Date of decision: May 03, 2023

Dakshin Haryana Bijli Vitran Nigam Limited and others
….Appellants

versus

Suresh Chand Sood
….Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Kartar Singh Malik, Advocate for the appellants.

Mr. Rohit Sud, Advocate for the respondent.

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ARUN MONGA, J. (ORAL)

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, appellant/defendants are in second appeal before this Court assailing learned trial Court judgment and decree dated 30.11.2012, as upheld by learned First Appellate Court vide its judgment and decree dated 03.02.2014, whereby suit of the plaintiff was decreed *inter alia* to the effect that action of defendants in raising enhanced demand of Rs.1,24,479/- from plaintiff in the electricity bills of the plaintiff on the basis of audit report are wrong, illegal, null and void and plaintiff is not bound by the same.

3. Briefly stated, facts, as noticed by learned Courts, are as below:

> "*2. The plaintiff has filed the present suit for declaration and consequential relief of permanent injunction with the averments that he is permanent resident of House No.696, Sector-29, Faridabad and he is in use and occupation of Electricity Connection bearing account no.F-12-FF-18-1572 in the aforesaid residential house which is in the name of Smt. Ved Rani The plaintiff purchased the said house from its previous owner vide registered sale deed dated 18.12.96 in his name and his wife's name and since then they are using the same as well as the electricity connection. In June2006, the defendants checked the premises of the plaintiff and issued checking report No.18/976 dated 24.6.06 relating to aforesaid electricity connection and they also demanded a sum of Rs. 60,000/-- from the plaintiff which was duly deposited against receipt. At that time the defendants alleged*

> *that there was theft of energy and the said amount was recovered from him as penalty. His old meter was taken away and he was asked to purchase a new electricity meter and the same was duly installed by the defendants after checking the same. However, after removing the electric meter of the plaintiff it was not sent to any Laboratory for testing. The plaintiff regularly deposited his electricity bills and was not having any arrears due and even after change of electricity meter, the billing pattern remained same. Now, the defendants issued a bill of Rs.1,24,479/- on 13.2.07 by calculating wrong amount relating to his electricity connection and plaintiff approached them to withdraw the same but they did not accept his request. The defendants threatened the plaintiff that they will register a criminal case against him and so plaintiff deposited a sum of Rs. 15,000/- three times and despite that the defendants have threatened to disconnect electricity connection forcing the plaintiff to file the present suit as prayed for..*"

4. Upon notice, defendants appeared and filed written statements raising preliminary objections regarding maintainability ofthe suit; for not approaching the court with clean hands; jurisdiction of the court; locus-standi; etc.

4.1. On merits, it was admitted that electricity connection No.F12-FF18-1572 is in the name of Smt. Ved Rani but it was denied that plaintiff and his wife were owners of the house. It was admitted that on 24.6.2006 checking team of defendants checked the electricity connection of the plaintiff and found M&T Seals and Rivets of Meter Tampered. The said checking was done in presence of the plaintiff's representative who also put a signature on the same and tampered with electricity meter was uninstalled as per rules and electricity supply of the consumer was disconnected. The consumer was asked to pay compounding fees of Rs.60,000/- otherwise face criminal proceedings and so compounding fees was paid.

4.2. It was submitted that there was no necessity for sending meter to Laboratory as seal of meter were found tampered with and thus, meter was not sent Laboratory as it was a case of theft of electricity. Further it was stated that after compounding of the case, assessing officer inadvertently could not assess and impose Civil Penalty and later on an audit team of the defendants inspected accounts of the office and noticed aforesaid loss of revenue and so a sum of Rs.1,24,479/- was found due and payable by the consumer and so this amount was rightly added in the bill of the consumer as per the provisions of the Electricity Act. Therefore, plaintiff was not entitled to any relief sought by him in the plaint. At the end, prayer for dismissal of the suit was made.

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

> "*1. Whether the impugned bills for the period 12/2007 for Rs.1,49,382/- and impugned Bill for Rs.60,000/- issued in the month of June,2008 (which was deposited under pressure by the plaintiff on 26.6.2007) regarding electricity connection, as prayed for? OPP.*
> *2. Whether the plaintiff is entitled for a decree of permanent injunction restraining the defendants from recovering the impugned amount of Rs.1,49,382/-and Rs.60,000/-? OPP.*
> *3. Whether the plaintiff is entitled for decree of mandatory injunction directing the defendants to return the amount ofRs.1,05, 000/-? OPP.*
> *4. Whether the plaintiff has no affixed the advalorem court fees on the plaint? OPD.*
> *5. Whether the civil court has no jurisdiction to entertain and try the suit? OPD.*
> *6. Relief.*"

6. The parties adduced their oral as well as documentary evidence.

7. On appraisal of evidence vis-à-vis pleadings, learned trial Court decided issuesNo.1 to 3and 5 in favour of plaintiff. Issue No.4 was decided against defendant. Consequently, suit filed by plaintiff was decreed *inter alia* to the effect that action of defendants in raising enhanced demand of Rs.1,24,479/- from plaintiff in the electricity bills of the plaintiff on the basis of audit report are wrong, illegal, null and void and plaintiff is not bound by the same. Further, since plaintiff deposited a sum of Rs.45,000/- in compliance of aforesaid enhanced demand raised by defendants, a mandatory injunction was issued against defendants directing them to adjust paid amount of Rs.45,000/- in future bills of the plaintiff.

8. Feeling aggrieved against the said judgment and decree dated 30.11.2012, appellants/defendants preferred first appeal.

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

10. I have heard learned counsel for parties and with their able assistance gone through the record of the case. Shorn of unnecessary details, the submissions in this Regular Second Appeal are that the findings returned by learned Courts below are against the facts of the case and are based on conjectures and surmises; and are contrary to law and evidence on record. Learned counsel for the respondent has argued that impugned judgments have been correctly passed.

11. In its judgment, learned First Appellate Court, *inter alia*, observed, as under:

> "*13. The paramount consideration in this appeal is as to whether appellants-defendants are entitled to claim the amount of Rs. 12,24,479/- by raising demand notice despite the fact that consumer has deposited the compounding amount of Rs.60,000/- as demanded by the appellants-defendants. There is dispute to the fact that after checking of the premises on 24.6.2006 by the officials of the appellants-defendants the old meter was removed from the premises and a checking report Ex.DWI was prepared and an amount ofRs.60.000/- was paid by respondent-plaintiff to the defendants as claimed. It is pleaded by appellants-defendants that after issuing the compound notice Ex.D1 subsequently a team of Audit had inspected the record of the appellants-defendants department and certain objections regarding compounding has been raised as penalty amount was not added in the compounding notice of Rs.60,000/- and subsequently a notice for depositing an amount of Rs.1,24,479/- was issued. It is a strange case where respondent-plaintiff has been asked again to deposit the amount as penalty despite the fact that compounding fee as demanded by appellants-defendants has already paid by him. After issuing the demand notice of acceptance same has been acted upon and now under the law no party can be allowed to wriggle out from it. Meaning thereby respondent-plaintiff cannot challenge the recovery of Rs.60,000/- as paid by him and in the same manner appellants-defendants cannot be allowed to impose this extravagant penalty of Rs. 1,24,479/-.*
>
> *14. After going through the contents of judgment and decree findings of learned trial court on issue Nos. 1 to 3 are as per law there is no perversity. I am of the considered view that had appellants-defendants asked the respondent-plaintiff to pay an amount ofRs.2,27,000/- as subsequently calculated as reflected in Ex.D3, then, respondent-plaintiff might not have compounded the offence by depositing the compounding fee. Under the law appellants-defendants cannot be allowed to unilaterally enhanced the amount fromRs.60,000/- to Rs. 1,24,479/- without affording any opportunity to respondent-plaintiff. One more aspect which requires deliberation is that old meter which was removed by the officials of appellants-defendants was never sent to the M&T laboratory for verification asto whether any tampering with the meter has been done or not. It isevery right of consumer to know as to what defect was there with the old meter. Appellants-defendants cannot be allowed to act in arbitrary manner because as it is the consumer who basically purchases the meters from authorized agents*

> *and hence he has every right to know what fouls lies with the meter. The comparative chart which has been produced by respondent-plaintiff also shows that no big difference was found in the consumption of electricity which cast serious doubts on the veracity of case of appellants-defendants.*
>
> *15. In view of the findings and reasoning in the foregoing paras, I do not find any illegality or irregularity in the judgment and decree dated 30.11.2012 passed by Shri Mahavir Singh, learned Civil Judge(Senior Division), Faridabad, and hence findings of learned lower court are affirmed and it is held that demand of Rs. 1,24,479/-from respondent-plaintiff is illegal and not according to law and the amount which has already been deposited by respondent-plaintiff of Rs.45,000/- in view of raised demand of Rs.1,24,479/- shall be adjusted in the future bills of respondent-plaintiff. Accordingly, appeal stands dismissed with costs. Decree sheet be drawn accordingly and the records of the trial court along with copy of this order be sent back. Appeal file be consigned to record room after due compliance.*"

12. Having perused the impugned judgments, my considered opinion is that the same submissions made before learned Courts below were duly considered and repelled and the concurrent findings of fact recorded by the two Courts below were correctly recorded by giving 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.

13. That apart, I am unable to persuade myself with the arguments canvassed by learned counsel for appellants that compounding fee is only meant for providing certain immunity to the consumer from criminal liability. The said argument did not find favour by the co-ordinate Bench of this Court presided over by Sudip Ahluwalia, J. (as he then was seized of the matter) when following order was passed on 29.04.2019:

> "*It is submitted, inter alia, by Ld. Counsel for the appellants that imposition of Compounding Fee is only for the purpose of providing protection to the consumer from any criminal liability, and payment of such Compounding Fee by the consumer/respondent does not preclude recovery of any actual loss which may be subsequently determined by the Audit Authorities.*
>
> *Let Ld. Counsel for the appellants place the relevant Rules/Case Law, if any available, in support of the above contention.*
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> *Adjourned to 25.09.2019.*"

13.1. In the course of hearing today, once again even this Court invited the learned counsel for appellants to furnish relevant circular/ rule or case law in support of his arguments aforesaid. He candidly states that there is no such circular/ rule and/ or case law to this effect.

14. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

15. 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. In this second appeal, no fresh ground worthy of interference is made out.

16. 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 100 of Civil Procedure Code.

17. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

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

19. No order as to costs.

(ARUN MONGA)
JUDGE

May 03, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No