

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-1688-2019 (O&M)
Date of decision : 15.01.2024

Pawan Aggarwal ... Appellant(s)

Versus

Dakshini Haryana Bijli Vitran Nigam Ltd. & Anr. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vikas Kumar, Advocate for the appellant.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the plaintiff-appellant against the judgments and decrees dated 30.01.2016 and 27.09.2018 passed by the Trial Court and the First Appellate Court.
2. The brief facts relevant to the present *lis* are that the plaintiff-appellant approached the Court by filing the present civil suit wherein it was averred that an electric connection bearing A/c No.F-25PN41-002 was installed in the name of his father - Rajender Aggarwal (since deceased) - and he was regularly paying the actual consumption charges as per meter reading. Some portion of the premises No.5CP/5, NH 5 NIT, Faridabad ad measuring '28x28' and one office '8x12' was let out by the father of the plaintiff-appellant to his partner M/s K.B. Jain son of Sh. S.S. Jain and mother of the plaintiff-appellant. The said firm was using the electricity

power of 19.5 KVA as tenant under the father of the plaintiff-appellant in accordance with law. The defendant-respondents checked the premises and prepared a false memo No.971 dated 27.07.2005 mentioning therein that the plaintiff-appellant was using the supply unauthorizedly and allegedly reselling the power to M/s D.S. Plastic Industries. As per circular No.D-14, for resale of power a penalty had been calculated as Rs.1,70,554/- for the period from September 2004 to February 2005 and March 2005 to July 2005. The said memo was challenged as being illegal, null and void. It is also come on the record that the father of the plaintiff-appellant herein preferred a complaint before the District Consumer Disputes Redressal Forum, Faridabad on 27.09.2005 and the said complaint was decided in his favour vide order dated 24.06.2009 and 17.07.2009. An appeal was preferred by the defendant-respondents before the State Consumer Disputes Redressal Commission, Panchkula which was allowed vide order dated 01.08.2011. It was further the case that at the time of allowing the appeal, liberty was granted to the plaintiff to approach the civil Court. Meanwhile, defendant-respondent No.2 issued another notice bearing No.847 dated 31.10.2011 increasing the penalty from Rs.1,70,554/- to Rs.5,15,387/-. Hence the suit. Written statement was filed by the defendant-respondents wherein it was averred that on 01.03.2005 Junior Engineer J.P. Sharma alongwith his subordinate staff checked the aforesaid electricity connection of the plaintiff-appellant in the presence of the father of the plaintiff-appellant and during his checking found that the electricity supply was extended to M/s D.S.

Plastic Limited which was a separate unit running in different premises than that of the plaintiff-appellant. Checking report bearing Sr.No.22 dated 01.03.2005 was prepared by the checking team mentioning the particulars of the electricity, consumer, connected load of consumer's premises, connected load of M/s D.S. Plastic Limited etc. It was eventually opined that there was a resale of power to M/s D.S. Plastic Limited. On the basis of the pleadings, the following issues were framed :

1. Whether the plaintiff is entitled for a decree of declaration, as prayed for?OPP
2. Whether the plaintiff is entitled for a decree of permanent injunction as consequential relief in favour of the plaintiff, as prayed for?OPP
3. Whether the plaintiff is entitled to a decree of mandatory injunction, as prayed for?OPP
4. Whether the present suit is not maintainable in the present form?OPD
5. Whether the present suit is not maintainable as the mandatory notice under section 80 of CPC has not been served upon the DHBVN/defendant?OPD
6. Whether the suit of the plaintiff is barred by provisions of Limitation or not?OPD
7. Whether the plaintiff has not paid the appropriate ad-valorem court fee?OPD
8. Whether the plaintiff has no cause of action to file the present suit?OPD
9. Whether the plaintiff has not come with clean hands and has concealed the material facts from the court?OPD
10. Whether the plaintiff is estopped by his own act and

conduct by filing the present suit?OPD

11. Relief.

3. The Trial Court dismissed the suit vide judgment and decree dated 30.01.2016. Aggrieved by the said judgment and decree an appeal was preferred which was also dismissed vide judgment and decree dated 27.09.2018. Hence, the present regular second appeal.

4. Learned counsel for the plaintiff-appellant would contend that the mother of the plaintiff-appellant herein was a partner in M/s D.S. Plastic Limited and the unit was running in the same building and hence it could not be treated as a separate unit and it could not be held that there was a resale of electricity supply.

5. I have heard the learned counsel for the plaintiff-appellant.

6. In the present case there is not an iota of evidence on the record that any permission was sought by the father of the plaintiff-appellant herein for extending the electricity connection to M/s D.S. Plastic Limited. Admittedly, the sanctioned load which was sanctioned to the father of the plaintiff-appellant was 33.788 KW and the connected load at the time of checking was found to be 55.843 KW. It was concurrently found by both the Courts below that the father of the plaintiff-appellant - Rajender Aggarwal - was supplying the electricity to a separate unit i.e. M/s D.S. Plastic Limited. Infact, it was admitted by the plaintiff-appellant in his cross-examination that in the year 2003 M/s D.S. Plastic Limited was also consuming the electricity through their electricity connection. It was also found that no

document was placed on the record that M/s D.S. Plastic Limited was a tenant of Rajender Aggarwal (since deceased). It was also found that Rajender Aggarwal was not a partner in M/s D.S. Plastic Limited.

7. In view of the concurrent findings of both the Courts below and in view of the pleadings and evidence on the record, I do not find any merit in the present appeal. No question of law, much less any substantial question of law, arises for determination in the present case. The present regular second appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

15.01.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO