129

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 1548 of 2024 (O&M)
Date of Decision: 01.07.2024

Dakshin Haryana Bijli Vitran Nigam Ltd.
through its M.D. and others

.... Appellants

Versus

Chattar Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Anil Chawla, Advocate
for the appellants-defendants.

****

HARKESH MANUJA, J. (ORAL)

By way of present appeal, challenge has been laid to the judgment and decree dated 15.03.2024 passed by the Court of District Judge, Faridabad **(hereinafter to be referred as "First Appellate Court")**, whereby an appeal filed against the judgment and decree dated 11.09.2023 passed by the Court of Civil Judge (Junior Division), Faridabad **(hereinafter to be referred as "trial Court")**, decreeing the suit for declaration with consequential relief of permanent and mandatory injunction, filed at the instance of respondent-plaintiff / Chattar Singh, was affirmed.

[2] Briefly stating, the respondent-plaintiff (Chattar Singh)being owner in possession of the house in question situated in Lal Dora of Village Ajronda, Sector-15A, Faridabad, was enjoying electricity connection bearing Customer Account No. EA-11/293 & New Account No. 3999880000 under Domestic Supply Category, inherited by him, by way of Will bearing No. 1911 dated 12.06.1989 executed by deceased–Karan Singh (uncle of the plaintiff). It was further pleaded that on 07.05.2016, the aforementioned meter was removed from the premises of respondent-plaintiff to be replaced by digital electric meter and later, it was sent to M&T Lab. vide challan number 3/617 dated 07.05.2016. It was further pleaded that as per the records of defendants-appellants, on inspection, the seals of the removed electric meter were found to be tampered with and based thereon, a demand of Rs. 1,37,261/- was issued to the respondent-plaintiff vide electricity bill dated 22.05.2017. It is the aforesaid demand, which was challenged in the present suit for declaration and injunction.

[3] In response, appellants-defendants filed written statement justifying the removal and inspection of the meter in question by the M&T Lab. and also the demand raised in pursuance thereof on the basis of meter seals being found tampered with. It was also pleaded that despite being served with two notices dated 06.06.2016 & 24.01.2017, respondent-plaintiff never responded to the report given by the M&T Lab. and thus, the suit was liable to be dismissed.

[4] The trial Court vide its judgment and decree dated 11.09.2023 decreed the suit filed at the insance of respondent-plaintiff, while holding that the demand raised was unlawful, the same being based on report dated 07.05.2016 by the M&T Lab., which was made without affording any opportunity to the respondent-plaintiff.

[5] Aggrieved thereof, the appellants-defendants filed first appeal, however, the same came to be dismissed vide judgment and decree dated 15.03.2024 passed by the First Appellate Court, reiterating the reasoning recorded by the trial Court. Hence, the present appeal.

[6] Impugning the judgments and decrees (supra) passed by the Courts below, learned counsel for the appellants-defendants submits that the electric meter of the respondent-plaintiff was removed on 07.05.2016 as a part of routine exercise for its change to digital electric meter, and the same was later sent to M&T Lab. and upon finding tampering of seals therein, the respondent-plaintiff was served with two separate notices dated 06.06.2016 and 24.01.2017 for the purposes of raising objections, if any at his instance.

[6.1] Learned counsel for the appellants-defendants further submits that having failed to raise any objection in pursuance to the above said notices, the respondent-plaintiff was estopped by his own act and conduct to later dispute the report of tampering of seals submitted by the M&T Lab., besides even questioning the demand raised in pursuance to the bill dated 22.05.2017 and, thus, the impugned judgments are unsustainable in law and liable to be quashed.

[6.2] Learned counsel for the appellants-defendants also places reliance upon Notification dated 10.08.2017 (Annexure A-1) to contend that the suit for declaration and permanent injunction, filed at the instance of respondent-plaintiff was not maintainable, as proper remedy was to file an appeal before the notified "Appellate Authority" in terms of Section 127 of The Haryana Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2014 by assailing the demand raised vide bill dated 22.05.2017.

[7] I have heard learned counsel for the appellants and gone through the paper book. I am unable to find substance in the submissions made on behalf of the appellants.

[8] In the present case, undisputedly the electric meter of the respondent-plaintiff was removed from the premises on 07.05.2016 and on the same date, it was sent to M&T Lab. Upon inspection, the seals of the meter were found to be tampered by the appellants-defendants and thereafter, a demand of Rs.1,26,441/- was raised vide Bill dated 22.05.2017 as Sundry Charges / penalty amount followed by two notices dated 06.06.2016 and 24.01.2017 served upon the respondent-plaintiff calling upon him to raise objection, if any, to the report submitted by the M&T Lab.

[9] Cumulative analysis of facts stated hereinabove shows that admittedly, no prior notice was ever served upon the respondent-plaintiff before opening or examining the electricity meter by M&T Lab. on 07.05.2016 whereas based thereupon, a demand towards Sundry Charges was raised vide Bill dated 22.05.2017. In such circumstances, the notices dated 06.06.2016 and 24.01.2017 calling upon the respondent/plaintiff to respond to the report submitted by the M&T Lab. was infact a farce and futile exercise as meter already having been opened up by M&T Lab, the respondent-plaintiff could never have been in a position to reverse the situation and raise objections about the report dated 07.05.2016.

[10] Moreover, the demand been already raised on account of Sundry Charges vide Bill dated 22.05.2017 in pursuance to the report dated 07.05.2016, the notices dated 06.06.2016 and 24.01.2017 served upon the respondent-plaintiff were purely an afterthought, just to ensure the procedural formalities relating to compliance of natural justice at the hands of appellants/defendants. In such circumstances, thus, no illegality or perversity can thus be seen with the findings recorded by the Courts below, wherein the demand raised by the appellants/defendants were found to be wholly unjustified there being no notices served upon the respondent/plaintiff before carrying out the inspection of his electricity meter in the M&T Lab. on 07.05.2017, so as secure his presence at the relevant point in time. Reliance in this regard is essential to the decision dated 04.07.2018, rendered by this Court in ***CWP No. 7662 of 2016***, titled ***"Satish Sandhu and another Versus Uttar Haryana Bijli Vitran Nigam Ltd. and another"***. Relevant portion thereof is extracted hereunder:-

> *" I have heard learned counsel for the parties and perused the record with their able assistance. The question arises in this case for adjudication is as to whether in a case of suspected theft, where the meter is removed from the premises of the consumer and is sent to the M&T Lab for its verification or inspection, the consumer is required to be served a notice intimating him the date on which the meter has to be tested ?*
>
> *The answer to this question is provided under Clause 12 (B) (d) of the Circular itself which has been issued by the respondents that in case of deciding the matter in regard to*

> *the suspected theft the Officer shall send a letter to the consumer at least one week in advance informing him about the date of meter testing and request him to attend the same.*
>
> *That being so, it was the obligation on the part of the respondents to have played the game fairly inasmuch as by informing the consumers/petitioners about the date on which the meter was required to be tested in M&T Lab in order to ensure that the meter removed from their premises is not touched in their absence and was taken out of the seal cover in their presence. "*

[11] Furthermore, no merit can be found with the submissions made on behalf of the appellants/defendants as regards the maintainability of suit filed at the instance of respondent/plaintiff there being an alternative remedy of appeal available with him for the purpose of assailing the assessment order in terms of Notification dated 10.08.2017 (A-1). Firstly, it may be pointed out that specific issue No.4 as regards maintainability of suit was framed by the trial Court, however, the same was never pressed by the appellants/defendants either before the trial Court or even before the First Appellate Court; still further, perusal of Notification dated 10.08.2017 (A-1) shows that the remedy of appeal was available against the assessment order, however, in the present case perusal of the entire record shows that no assessment order was ever served upon the respondent-plaintiff. It may also be pointed out that neither any such assessment order was ever produced by the appellants/defendants before the trial Court nor even upon a pointed query to learned counsel representing them, any such order was produced before this Court except for pointing out towards the electricity Bill dated

22.05.2017.

[12] In such circumstances and in terms of the detailed discussion made hereinabove, there being no misreading of pleadings or any evidence available on record on the part of either of the Courts below, neither any material evidence having been lost sight off, the present appeal being devoid of merits is hereby **dismissed**, thereby upholding the judgments and decrees passed by both the Courts below.

[13] Pending miscellaneous application(s), if any, shall also stand disposed off.

July 01, 2024 **(HARKESH MANUJA)**
'dk karma / Atik' **JUDGE**

Whether Speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*