

RSA No.5327 of 2019

#1# 2024:PHHC:010370

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

RSA No.5327 of 2019

UHBVN Ltd

.....Appellant

Versus

Abhey Ram

.....Respondent

Date of Decision: 10.01.2024

CORAM: HON'BLE MR. JUSTICE SUDEEPTI SHARMA

Present: Mr. Vishal Garg, Advocate for the appellant.

SUDEEPTI SHARMA, J

Instant regular second appeal is filed against the judgment and decree dated 17.07.2019 passed by the learned District Judge, Kaithal whereby the appeal filed by the appellant-Uttar Haryana Bijli Vitran Nigam, Kaithal (hereinafter to be referred as “UHBVN”) against the judgment and decree dated 01.10.2018 passed by the learned Civil Judge (Sr. Division), Kaithal, decreeing the suit of the plaintiff-respondent has been dismissed.

The facts leading to the present case in brief are that the respondent-plaintiff/Abhey Ram who was a consumer of the domestic electric supply qua connection bearing account No.KZ-11/1680 (for short “electricity connection”), filed a suit for declaration and injunction to the effect that the impugned checking report/LL-1 report (for brevity “checking report”) along with it’s consequential notices/memo bearing No.125 and

No.126 dated 29.04.2016 (for short “impugned notice”) imputing/demanding Rs.28,077/- i.e (Rs.22,077/-) as penalty and (Rs.6,000/-) as compounding charges qua alleged theft of electricity is illegal, null, void and not binding being violative of the principles of natural justice and prescribed procedure with a consequential relief of injunction directing the appellants-defendants to restore the disconnected electricity supply.

Upon notice, appellants-UHBVN appeared and filed written statement wherein they denied imputations of the respondent-plaintiff. It has been stated in the written statement that the suit of the respondent-plaintiff was not maintainable and that the respondent-plaintiff had no locus standi and cause of action to file the suit and that the Civil Court had no jurisdiction to entertain and try the suit. It was further contended that the respondent-plaintiff suppressed the true and material facts from the Court and that the meter was checked on 17.03.2016 when it was found that reading counter was disturbed. The meter was removed and after packing in card board box sealed with Khakhi tape, it was sent to M&T Lab for internal checking and that the supply was restored with new meter. Such process was done in the presence of Amnish son of the respondent-plaintiff Abhey Ram.

Based on the report of M&T Lab, order of assessment of Rs.22,077/- and notice for compounding of offence to the tune of Rs.6,000/- were served upon the respondent-plaintiff but the amount was not deposited and thereafter, Sub-Divisional Officer, Sub-Division No.1, UHBVN, Kaithal addressed a letter to Station House Officer, Irrigation and Power Jind for lodging FIR against the respondent-plaintiff.

On the pleadings of parties, following issues were framed:

“1. Whether the plaintiff is entitled to decree for declaration and permanent injunction as prayed for?

OPP

2. Whether the suit of the plaintiff is not maintainable?OPD

3. Whether the plaintiff has no cause of action and locus standi to file the present suit?OPD

4. Whether Civil Court has no jurisdiction to try and entertain the present suit?OPD

5. Relief.”

In order to prove their respective case, both the parties led their evidence and tendered oral as well as documentary evidence.

Having heard learned counsel for the parties, learned trial Court vide judgment and decree dated 01.10.2018 decreed the suit of the plaintiff-respondent while setting aside the impugned notices/assessment/memo dated 29.04.2016 under Section 135/152 of the Electricity Act, 2003 qua theft of electricity with a direction to the appellants-defendants to restore the disconnected electricity supply and refund of impugned amount received by them in terms of the impugned demand notices with simple interest at the rate of 6% per annum from the date of the deposit till the date of refund/actual realization.

Feeling aggrieved, appellants-UHBVN filed an appeal, which has been dismissed by the learned Appellate Court vide the impugned judgment & decree dated 17.07.2019, hence the present second appeal.

Learned counsel for the appellants submits that the findings recorded by both the courts below in decreeing the suit are patently illegal and the same are liable to be set aside. The learned courts below have proceeded on wholly misconceived and perverse approach, while passing the impugned judgments. The authorized checking team of the Nigam duly,

validly and legally inspected the premises of the plaintiff-respondent whereupon the meter of the plaintiff was found indulged in unauthorized use/theft of electricity by disturbing the reading counter, re-affixing the seals and tampering with meter mechanism. The entire process was videographed and that the checking report/LL-1 dated 17.03.2016 was signed by son of the respondent-plaintiff. Subsequently in consonance with meter checking report and after due prior notice/authorization, the notices/memo dated 29.04.2016 imputing/demanding Rs.28,077/- as penalty and Rs.6000/- as compounding charges qua theft of electricity was duly issued.

It has come on record that the respondent-plaintiff being the consumer of the defendant-Nigam was regularly paying electricity charges and that no default is stated to have been committed by him in payment of electricity charges.

I have heard learned counsel for the appellants and after perusing the judgments of both the learned courts below, this Court concludes as under:

Both the learned courts below after considering the evidence and material on records including the said report have rightly recorded that if the department/officer/licencee is of the opinion that a consumer has committed theft as defined under the Electricity Act, 2003, proceedings for theft under Section 135 of the Act can be initiated and the assessing officer has no authority to pass any order regarding assessment of liability and penalty against a consumer and thus the impugned notices are illegal.

Counsel for the appellant has failed to advance any argument to make out a case that both the learned Courts below have failed to take into consideration evidence that has material bearing on adjudication of warring

claims of the parties to render the findings erroneous/perverse. That being so, there is no justification for interference in consistent factual findings.

No other relevant document has been placed on record enabling this Court to form a different opinion than the one adopted by the Appellate Court.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed.

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

January 10, 2024

(Sudeepti Sharma)

manoj

Judge

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No