2024:PHHC: 018592

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

112 RSA-4420-2018 (O&M)
Date of decision: 09.02.2024

Suresh Kumar and brothers

...Appellant

Versus

Uttri Haryana Bijli Vitran Nigam Ltd., Panchkula and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Chamandeep Singh, Advocate for
Mr. I.S. Pabla, Advocate for the appellant.

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VIKAS SURI, J. (Oral)

CM-11723-C-2018 &
CM-11723-C-2018

Prayer in these applications is for condonation of delay of 393 days in re-filing and 91 days in filing the instant appeal.

For the reasons mentioned in the respective applications, supported by affidavits, delay of 393 days in re-filing and 91 days in filing the appeal is condoned.

CMs stand disposed of.

RSA-4420-2018

1. The plaintiff-appellant having lost before both the Courts below has approached this Court by way of regular second appeal assailing the judgment and decree dated 02.11.2015, passed by Civil Judge (Jr. Divn.), Kurukshetra and the judgment and decree dated

07.01.2016, passed by Addl. District Judge, Kurukshetra, dismissing the appeal preferred against the judgment and decree passed by the trial Court.

2. Briefly stated, the facts emanating from the record are that suit for mandatory as well as prohibitory injunction was filed by the plaintiff-appellant averring that he is the sole proprietor of the rice mill wherein electric connection bearing No.LHT-33 has been installed. The appellant had been paying consumption charges regularly and there was a dispute between the parties which was being agitated by way of complaint before the District Consumer Disputes Redressal Forum, Kurukshetra and another civil suit was also pending between the parties in the Court of Civil Judge at Kurukshetra. It is alleged by the appellant that the respondent-defendants had been illegally charging MDI charges, power factor charges and have also imposed penalty upon the appellant, which is illegal and the respondents were not entitled to do so. Apprehending threat from disconnection of electricity supply to the rice mill of the appellant, the present suit was instituted.

3. Upon notice, the suit was opposed by the respondent-defendants by filing a joint written statement, controverting the pleadings in the plaint. The respondent- defendants defended their action in issuing the bills for different periods of time, including power factor charges, MDI charges and penalty etc. and further submitted that the suit preferred by the plaintiff-appellant was based on falsehood and non-existent grounds. The bare intention of appellant was to block the recovery of legally recoverable charges and as such, he has not

approached the Court with clean hands and thus, not entitled for any equitable relief .

4. From the pleadings of the parties, the following issues were framed:-

> 1. Whether the plaintiff is entitled for relief of mandatory injunction as prayed for? OPP
> 2. Whether the plaintiff is entitled for the relief of permanent injunction? OPP
> 3. Whether the plaintiff has no locus standi to file the present suit? OPD
> 4. Whether the court has no jurisdiction to entertain and try the present suit? OPD
> 5. Whether the plaintiff has no cause of action to file the present suit? OPD
> 6. Whether the plaintiff is estopped, by his own act and conduct, from filing the present suit? OPD
> 7. Relief.

5. Both the parties led their respective evidence and on examining the same, learned trial Court dismissed the suit. On perusal of the bills proved on record as Ex.P1 to P17, it was found that the penalty charges mentioned in para 4 of the plaint were in fact fuel charges and the bills in question were prepared in terms of the sale circular Ex.D1.

6. Aggrieved by the aforesaid judgment and decree dated 02.11.2015, passed by the trial Court, the plaintiff-appellant preferred an appeal before the first appellate Court. The issues and contentions raised before the trial Court were reiterated. It was additionally urged before the first appellate Court that the action of the respondent- defendants was malafide and it was further contended that on 26.09.2012, a cheque in the sum of Rs.1,60,160/- was issued by the appellant in favour of the respondents but they refused to accept the same. It may be noticed that neither there was any pleading to that effect nor any evidence was led

and as such even the additional plea sought to be raised was held to be not sustainable.

7. On reappraisal of the evidence, the first appellate Court held that at the time of inspection on 07.10.2023, the power factor was just 0.23 and on 19.01.2014, it was 0.86. As per the definition contained in sale circular No.U-28/2010 of Uttar Haryana Bijli Vitran Nigam, the monthly average factor of the plant and apparatus installed by the consumer was not be less than 90% lagging and there was no material on record to show that the fuel charges and power factor charges were charged by the defendant-respondents in violation of the rules or prevailing circulars. It was further held that presumption of correctness was attached to those bills, which were issued on the basis of inspection note and the record and the said presumption has not been rebutted by the consumer plaintiff-appellant. The plaintiff has not adduced any cogent and convincing evidence qua the fact that the fuel charges, MDI charges, power factor charges and penalty charges sought by the defendant-respondents were illegal. Accordingly, the first appeal was dismissed with costs, affirming the findings on all the issues returned by the trial Court.

8. Aggrieved by the aforesaid concurrent findings, the plaintiff-appellant has preferred the instant regular second appeal.

9. Heard learned counsel for the appellant and with his able assistance perused the material on record.

10. Learned counsel for the appellant submits that the plaintiff-appellant had been regularly paying the electricity consumption charges

and the defendant-respondents are not entitled to recover the amount mentioned on the bills in question. Learned counsel for the appellant is not able to point out any material from the record to rebut the concurrent findings of fact returned by the Courts below. He is also not in a position to dispute that the fuel charges and power factor charges levied by the respondent-defendants were not in violation of any rules or prevailing circulars. No illegality or perversity has been pointed out in the impugned judgments and decree passed by the Courts below.

11. The first appellate Court noticed the provisions contained in circular No.U-28/2010 of Uttar Haryana Bijli Vitran Nigam, wherein power factor has been defined as thus:-

> "The monthly average power factor of the plant and appartus installed by the consumer shall not be less than 90% lagging. The monthly average power factor shall mean the ratio expressed, as percentage of total KWH to total KVAH supplied during the month. The ratio shall be rounded upto to figures. In case the monthly average power factor falls below 90% lagging, the consumer shall have to pay a surcharge of 1% of SOP charges for every 1% decrease in the power factor upto 80% and 2% of SOP charges for every 1% decrease in Power Factor below 80%. Rebate of 0.5% on SOP will be allowed for every 1% increase in Power Factor above 90%."

12. The aforesaid definition leaves no room for any doubt that penalty was chargeable if the monthly average taken factor was found to fall below 90% lagging. It is not disputed that as per the bill Ex.P18 at the time of inspection on 07.10.2013, the power factor was just 0.23 and on 19.01.2014, it was recorded as 0.86. No material has been referred to from the record on behalf of the appellant that the fuel charges and power factor charges have been levied in violation of the rules or

prevailing circulars. In view of the above, it can be safely concluded that as per the sale circulars, the respondent-Nigam was entitled to recover the charges levied.

13. It was also noticed by the Courts below that the burden of proof to prove that excessive charges have been claimed by the respondent-Nigam was upon the appellant-plaintiff and the bills issued by the Nigam were in ordinary course of business, to which presumption of correctness was attached. The appellant-plaintiff failed to discharge the burden that rested on it or to rebut the aforesaid presumption. The appellant-plaintiff having failed to adduce any cogent and convincing evidence qua the impugned levy of charges, the findings recorded by the trial Court was thus upheld by the first appellate Court.

14. In the present case, learned counsel for the appellant has not referred to any material from the record to counter the concurrent finding of fact returned by the Courts below.

15. No question of law, much less substantial question of law, arises for determination in the instant appeal. In view of the aforesaid, finding no merit in the instant second appeal, the same is accordingly dismissed.

(VIKAS SURI)
JUDGE

February 09, 2024
sumit.k

Whether speaking/reasoned : Yes / No
Whether Reportable : Yes / No