



CR-7021-2019 (O&M)

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

CR-7021-2019 (O&M)

Date of Decision: 07.08.2024

Vinesh Shukla

... Petitioner

VS.

The Punjab State Power Corporation Ltd and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. R.S.Bajaj, Advocate
for the petitioner.

Ms. Monica Chhibber, Advocate
for the respondents.

RITU TAGORE, J.

1. This revision, is directed against the order dated 17.10.2019 (Annexure P-10), passed by learned Civil Judge (Jr. Division), Batala in CIS No. CS-08-2017 dated 04.01.2017 titled as 'Vinesh Shukla Vs. PSPCL and another' whereby an application (Annexure P-8) filed by the respondents/defendants under Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC') was allowed, granting permission to further cross-examine the plaintiffs and his witnesses i.e, PW-1 to PW-3.

2. Learned counsel submits that the petitioner/plaintiff, filed a civil suit against the respondents to declare the demand letter No. 881 dated 19.09.2016 and letter No. 1134 dated 22.12.2016 and

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bills of electricity as illegal, arbitrary and against the provisions of the Electricity Act, 2003 (for short 'the Act'), with further relief of mandatory injunction, directing the respondents to refund the amount charged from him, alongwith interest, based on the pleas raised in the plaint (Annexure P-1). It is stated by learned counsel for the petitioner that respondents/defendants, upon appearance, contested the claim of the petitioner by filing written statement (Annexure P-2). The petitioner filed the replication (Annexure P-3), and the learned trial Court framed the issues and directed the parties to present their respective evidences.

3. The learned counsel for the petitioner further contends that, the respondents/defendants, during course of their evidence, moved an application to amend the written statement, claiming that due to a typographical mistake in Para No.13 of the written statement, the capacity of electric meter was incorrectly referred to as 100/5 and CT ratio as 200/5, instead of 5/5 and 10/5 as mentioned in Ex. D1 i.e., LCR No. 20855/1092. The said application was contested by the petitioner but was allowed vide order dated 05.12.2018 (Annexure P-7).

5. Learned counsel argues that the learned trial Court allowed the application dated 22.04.2019 under Section 151 CPC (Annexure P-8) for re-examination of the plaintiff and his witnesses i.e, PW1 to PW3, at a highly belated stage, without appreciating the facts

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and against the settled provisions of law. It is stated that the application should not have been allowed to fill up the lacuna in the case of the respondents. Therefore, it is urged that the order is unsustainable in the eyes of law. A prayer is made to set aside the order.

6. Contra, learned counsel for the respondents, supporting the order dated 17.10.2019 (Annexure P-10), stated that after the amendment in the written statement the facts of CT ratio and meter ratio were incorporated in the pleadings of the respondents. However, the cross-examination of the petitioner's witnesses was conducted prior to the amendment. Therefore, material questions relating to the amendment of the written statement concerning the capacity and CT ratio of electric meter, were required to be put to the witnesses for the proper and complete adjudication of the case. The learned trial Court, after appreciating these new circumstances, appropriately allowed the application. It is stated that this was not a case of filling up a lacuna or deficiency in the case of the respondents, but to seek response and clarification regarding the amended facts from the witnesses. A prayer is made to dismiss the revision petition as it lacks merits.

7. I have heard learned counsel for the parties and have perused the paper book and other documents attached therein with their valuable assistance.

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8. It is admitted fact that an application for amendment of written statement was allowed vide order dated 05.12.2018 (Annexure P-7). This order was not challenged by the petitioner therefore, it attained finality. While allowing the respondents' application for cross-examination of the petitioner's witnesses (PW1 to PW-3), the learned trial Court, in Para No. 4 of the order (Annexure P-10) observed as under: -

“4 It is the claim of the applicant/defendants that by virtue of amended written statement filed by defendants, the applicant deserves to examine plaintiff's witnesses, to the extent of amendment already allowed by the court qua the capacity and meter ratio. On perusal of record and evidence of plaintiff's witnesses, the clerical error in the earlier written statement recording meter ratio and capacity has been wrongly put to plaintiff witnesses. The main dispute between the parties can be adjudicated on the basis of the plea taken by both the parties, which have to be put to witnesses. By virtue of amendment, allowed vide order dated 05.12.2018 passed by the Ld. Predecessor of this Court, this court is of the opinion that the defendants deserves the right to put his amended version to plaintiff's witnesses. The plaintiff can be compensated for the delay and hardship caused to plaintiff. It would not amount to fill up the lacuna of the case of the defendant as it is amply clear in order dated 05.12.2018 that as per LCR, which is Ex. D1, the ratio are mentioned as per amended version. The interest of justice, thus, warrants that exact case of defendant can be put to plaintiff's witnesses. As such, the present application stands allowed, subject to costs of ₹ 1000/- to each witness and defendants shall be granted only one effective opportunity to cross examine the above said witnesses to the extent of amendment of written statement allowed only. Now case is adjourned to 23.10.2019 for cross examination of PW-1 to PW-3. The witnesses be produced at own responsibility.”

9. Learned counsel for the petitioner could not refute that the learned trial Court permitted the cross-examination of the witnesses of the plaintiff to the extent of amendment already allowed in the written statement of the respondents regarding the capacity and CT ratio of the meter. As noticed above, the amendment in the written

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statement was allowed when the evidence of the petitioner had already been concluded. Therefore, the material facts which were incorporated in the pleadings of the respondents were essentially required to be brought on record for the comprehensive and complete adjudication of the controversy between the parties. Given the facts, it cannot be observed that the re-examination of the witnesses was to fill a lacuna in the case of the respondents, but rather occurred due to a subsequent amendment in the pleadings of the respondents.

10. As a sequel to the foregoing discussion, it is held that the learned trial Court has rightly exercise the jurisdiction that vested in it and the order does not suffer from any illegality, irregularity, infirmity or perversity so as to warrant any intervention by this Court.

10. Resultantly, the revision petition is dismissed.

11. Pending application(s), if any, shall also stands disposed of.

07.08.2024
smriti

(RITU TAGORE)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No