

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

2025.PHHC.002089



105

RSA-1572-2018 (O&M)

Date of decision: 09.01.2025

Jagat Narain

...Appellant.

Versus

Punjab State Power Corporation

...Respondent.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Mahesh Kumar Gupta, Advocate for the appellant.

Sukhvinder Kaur, J.

The instant Regular Second Appeal has been filed by appellant/ plaintiff against the concurrent findings recorded by both the Courts below vide which the suit of the plaintiff for declaration and mandatory injunction was dismissed.

2. Brief facts of the case as per plaint are that electric connection bearing A/c No.A33MW310 098Y is installed under DS category in the name of plaintiff having sanctioned load of 11.53 KW and all the bills raised by defendant Board for the consumption of electricity has been regularly paid without committing any default. It was alleged that the plaintiff received bill dated 24.05.2011 from the defendant while raising demand of Rs.1,18,212/- in the column of sundry charges without any reason and after receiving the said bill, plaintiff approached the defendant to withdraw the bill in question and to receive the amount as per actual consumption, but despite the assurance given to plaintiff, instead of correcting the bill, the defendants issued another bill dated 22.07.2011 raising illegal demand of Rs.1,87,980/- and even tariff of plaintiff was again

changed from DS to CS. Plaintiff made request to correct the bill in question and to change the tariff from CS to DS, but defendants started threatening the plaintiff that in case he would not deposit the amount in question, his electricity connection would be disconnected. Defendants have already disconnected the connection in question without any right and have refused to restore the same. Plaintiff is ready to pay the actual consumption charges to defendants. No show cause notice was issued to the plaintiff before raising the demand in question, hence the present suit was filed.

3. Upon notice, defendants contested the suit and filed written statement by taking preliminary objections of maintainability; cause of action; jurisdiction; estoppel and plaintiff not approaching the Court with clean hands. On merits, it was submitted that on 02.04.2011, the electric DS connection of the plaintiff vide A/c No.W 31/0097 having sanctioned load 11.53 KWs was checked and it was found that the consumer used the load for commercial purpose from the domestic electric connection to make the Kulfies in the Karkhana and no person was residing there. Consumer also used the excess load i.e. 17.23 KWs against sanctioned load of 11.53 KWs. Notice dated 08.04.2011 was also served upon the plaintiff and thereafter the consumer neither filed any objections in the said notice nor deposited the amount raised from the consumer as penalty. An amount of Rs.3,46,832/- is due towards the consumer including the due charges.

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

(i) Whether the plaintiff is entitled to declaration as prayed for?

OPP

(ii) Whether the plaintiff is entitled to mandatory injunction as

prayed for? OPD

(iii) Whether the suit is not legally maintainable? OPD

(iv) Whether the plaintiff is estopped by his own act and conduct from filing the suit? OPD

(v) Relief.

5. Thereafter, both the parties led their respective evidence. In order to prove his case, plaintiff Jagat Narain himself stepped into witness box as PW1 and tendered his duly sworn affidavit as Ex.PW1/A along with documents Mark A to Mark D and thereafter closed his evidence.

6. To rebut the evidence of the plaintiff, defendants examined Er. Neeraj Sharma as DW1, who tendered into evidence his duly sworn affidavit Ex.DW1/A along with document Ex.DW1/1 and also examined Er. Gurbax Singh as DW2, who tendered into evidence his duly sworn affidavit Ex.DW2/A along with document Ex.DW2/1 and thereafter closed its evidence.

7. The suit of plaintiff was dismissed by the trial Court, vide judgment and decree dated 14.09.2016. The appeal preferred by the appellant/ plaintiff before the First Appellate Court was also dismissed, vide judgment and decree dated 04.09.2017. Aggrieved by the aforesaid judgments, the present Regular Second Appeal has been filed by the appellant/ plaintiff, before this Court.

8. Learned counsel for the appellant/ plaintiff has contended that both the Courts below have not appreciated the evidence on record in the right perspective. No record of the checking report has been produced by the defendants. Neither any photographs were clicked at the spot nor any videography was conducted at the spot. No material has been produced by the defendants to prove that on the date of checking, plaintiff was using the

domestic connection for commercial activities. There is nothing on record to prove that memo dated 08.04.2011 was ever issued or sent to plaintiff/ appellant, but all the aforesaid facts have been ignored by the Courts below. Learned counsel has prayed that the present appeal may be allowed and suit of the plaintiff/ appellant be decreed.

9. I have heard learned counsel for the appellant and have gone through the record thoroughly.

10. Perusal of Ex.DW1/1 shows that provisional order of assessment for unauthorized use of electricity under Section 126 of Electricity Act, 2003 (for short, the Act) was issued in which amount of Rs.1,10,171/- was claimed as the charges and opportunity was also given to the plaintiff to file the objections before Assessing Officer A.E.E. (West) and it was also mentioned in said memo that final order of assessment would be passed after personal hearing by the Assessing Officer. Learned Courts below have rightly pointed out that as per the scheme of the Act, the only remedy available to the plaintiff against notice under Section 126 of the Act was to file the objections after receipt of notice and further a scheme of filing an appeal before the appellate authority has been provided in the Act itself. As per Section 145 of the Act, jurisdiction of civil Court is barred.

11. Admittedly, once the provisional assessment was made, the plaintiff failed to avail the efficacious remedy available to him by way of filing objections under Section 126(3) of the Act. While appearing as PW1, plaintiff has admitted in his cross-examination that he had never filed any representation against the demand of Rs.1,18,121/- to the department.

12. It has also been alleged by appellant/ plaintiff that category of his connection from DS to CS category was done without his permission

and department had not complied with the guidelines laid down in the Electricity Act itself with regard to issuance of notice. Regarding grievance of the plaintiff, the appropriate remedy available under the Electricity Act is to file objections as per Section 126(3) of the Act. As observed earlier, instead of filing the said objections, plaintiff filed this suit which is not maintainable, as no final order of assessment has been passed in this matter and once the provisional assessment order has not become final, plaintiff has no other remedy except to file the objections before the assessing authority as per provisions of Section 126(3) of the Act. The Courts below have rightly held that the scheme of Electricity Act is complete in itself and thereby the jurisdiction of the Civil Court to take cognizance of the cases under the Act, by necessary implication, stood barred. Consumer cannot approach Civil Court without exhausting alternative remedies provided under Electricity Act. Civil Court has no jurisdiction by necessary implication to entertain suit for declaration and injunction against specially constituted forum in view of the specific provisions provided in the Electricity Act.

13. For the reasons recorded above, the present Regular Second Appeal fails and is dismissed as it does not raise any question of law much less substantial question of law.

14. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

09.01.2025

<i>komal</i>	Whether speaking/ reasoned	:	Yes/ No
	Whether Reportable	:	Yes/ No