2026:PHHC:059698

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

S.No. 102

RSA-2291-1994 (O&M) with
CM-INCOMP-90-2026
Reserved on : 07.04.2026
Date of Pronouncement : 18.04.2026
Uploaded on : 22.04.2026

Punjab State Electricity Board .... Appellant

versus

Market Committee, Abohar …Respondent

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Argued by: Mr. Baltej Pal Singh Walia, Advocate,
Ms. Karishma Sharma, Advocate,
Mr. Harsh Suhalia, Advocate,
Mr. Tushar Kumar, Advocate,
for the appellant.

Mr. Inderpreet Singh, Advocate,
for the respondent.

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HARPREET KAUR JEEWAN, J.

1. The appellant-defendant has filed the present Regular Second Appeal being aggrieved of the concurrent findings of the trial Court and the First Appellate Court decreeing the suit of the respondent-plaintiff, whereby, the appellant-defendant has been restrained from acting on the basis of the demand notice.

2. As per brief facts, the respondent-plaintiff was issued a memo dated 28.12.1990 by the appellant-respondent for recovery of Rs.2,87,291/- with respect to electricity connection. The respondent-plaintiff challenged the said memo alleging that it is violative of the provisions of Section 26 of the Electricity Act. The appellant-defendant has not referred the matter to the sole arbitrator and directly raised demand from the respondent-plaintiff.

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3. The suit was contested by the appellant-defendant. It is the contention of the appellant-defendant that the checking of the premises of the respondent-plaintiff was made by the Flying Squad. The electricity meter was showing less consumption of the electricity to the extent of 69.97%. The inspection of the meter was carried out by the Flying Squad in the presence of the electrician of the respondent-plaintiff. It was contended that the appellant-defendant is ready to refer the dispute to the Chief Electrical Inspector.

4. The trial framed the following issues : -

> "1. Whether the demand raised by defendants No.1 dated 28.12.90 is null and void? OPP
> 2. Whether the plaintiff is entitled to the injunction prayed for? OPP
> 3. Whether the plaintiff is stopped to file the suit by his act and conduct? OPD
> 4. Whether the suit is not maintainable in the present form? OPD
> 5. Relief."

5. Parties led their evidence and the trial Court decreed the suit by setting aside the said demand notice.

6. The First Appellate Court dismissed the appeal filed by the appellant-defendant.

7. While dismissing the appeal, the First Appellate Court has observed that the appellant has failed to lead evidence to show as to how a conclusion was made that the meter in question was showing less consumption. The appellant should have found actual consumption of the electricity by installing a check meter or by using any other electrical

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instrument to check the actual consumption of the electricity but there is no such evidence on record. As such, it cannot be concluded that the electric meter was giving slow reading.

8. The appellant-defendant had filed the present Regular Second Appeal impugning the judgment and decree dated 06.04.1994, passed by the Additional District Judge, Ferozepur.

8.1. Along with the appeal, the appellant has also filed an application under Order 6 Rule 17 CPC seeking amendment of the written statement filed by the appellant-Board.

8.2. An application bearing Civil Miscellaneous No.3403-C-1994 was filed by the appellant-defendant under Order 41 Rule 27 read with Section 151 CPC for leading additional evidence by way of proving the check meter report dated 19.12.1990 (Annexure 'A').

8.3. The application for leading additional evidence as well as the application for amendment of the written statement are liable to be dismissed on the ground of delay and laches. The alleged inspection conducted by the Flying Squad took place on 18.12.1990. The check meter installation and subsequently, its report, is stated to be of the next day i.e. 19.12.1990. The suit was filed by the plaintiff in January 1991 and the same was decided by the trial Court on 02.12.1993.

9. Order 41 Rule 27 CPC reads as under:-

> *"27. Production of additional evidence in Appellate Court.—*
>
> *(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if -*

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> *(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or* [34]*[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]*
>
> *(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,*
>
> *the Appellate Court may allow such evidence or document to be produced, or witness to be examined.*
>
> *(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."*

10. Learned counsel for the appellant contends that the meter installed in the premises of the respondent-plaintiff was malfunctioning. It was checked by the Flying Squad. The application moved by the appellant to amend the written statement was dismissed by the learned trial Court and the report of checking dated 19.12.1990 could not be brought on record. It is contended that before order of rejection of the amendment sought by the appellants could have been challenged, the suit was decreed by the learned trial Court.

10.1. Learned counsel for the appellant further contends that the trial Court has declined the permission to amend the written statement, as such, the checking report could not have been brought on record and the findings regarding check meter could not be led. A prayer has also been made to allow the application filed under Order VI Rule 17 CPC by way of an

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application bearing No.CM-3402-C-1994, so that pleadings can be amended and fresh evidence could be led.

11. *Per contra*, learned counsel for the respondent-plaintiff contends that the appeal has been rightly dismissed by the First Appellate Court.

12. I have considered the aforesaid submissions and perused the paper book.

13. The appellant had made a demand of payment of Rs.2,87,291/- on the ground that the meter was working slowly, hence, tampered with. It is the case of the appellant-defendant that during the surprise checking made by the Flying Squad, it was found that the meter was not recording correct consumption due to wrong connection of C.Ts meter. The inspection was carried out on 18.12.1990. It is alleged that on the next day i.e. on 19.12.1990, the check meter was installed and it was found that the meter was showing 69.97% less consumption and only thereafter, the impugned bill was sent to the respondent-plaintiff for payment. However, the fact about installation of the check meter was not specifically pleaded in the written statement and even the application for amendment of the pleadings has been rejected by the trial Court. It is further alleged that the factum of installation of the check meter on the next day of the inspection was a matter of evidence.

14. The learned counsel for the appellant could not show that any evidence was led to prove that a check meter was installed on the next day of the alleged inspection having been conducted by the Flying Squad. It could also not be shown that the report of the Flying Squad had any reference

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about the check meter having been installed. There is no evidence even on the point that the report of the check meter was made the basis for calculation of the additional amount demanded from the respondent-plaintiff by way of issuing the impugned notice.

15. In the written statement, no plea was taken by the defendant-Board that any such check meter was installed in the premises of the respondent-plaintiff. Such belated application seeking amendment of pleading and permission to lead additional evidence cannot be accepted since the proposed additional evidence was within the notice of the appellant-Board at the time of filing of the written statement as well as at the time of leading evidence before the trial Court. There is no plausible explanation for the delay in filing the said applications. There is also no plausible explanation that the Board, despite taking due diligence, could not plead and produce the said evidence despite due diligence. The evidence sought to have been produced cannot be permitted within the parameters of the provisions of Order 41 Rule 27 CPC.

16. There is nothing on record that the appellant ever filed any application for leading additional evidence before the First Appellate Court.

17. In view of the aforesaid facts and circumstances, the application filed by the appellant for amendment of the pleadings as well as for leading additional evidence is declined.

18. In view of the detailed reasons recorded by the trial Court as well as by the First Appellate Court, no ground for interference in the findings recorded therein, is made out. As such, the present appeal, being devoid of merits, is accordingly **dismissed.**

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19. Pending miscellaneous applications, if any, along with CM-INCOMP-90-2026 stand disposed of.

(HARPREET KAUR JEEWAN)
JUDGE

April 18, 2026
Paritosh Kumar/Simran

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No

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