2026:PHHC:021176

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

RSA-985-2018 (O&M)
Date of decision : 11.02.2026

M/S VISHNU RICE MILLS AND ANR ....Appellants

Versus

UTTAR HARYANA BIJLI VITRAN NIGAM LTD AND ANR ...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. A.K. Kansal, Advocate and
Mr. Gaurav Kansal, Advocate
for the appellants.

Mr. Anil Chawla, Advocate
for the respondents.

PANKAJ JAIN, J. (ORAL)

Plaintiffs are in second appeal aggrieved of the judgment and decree passed by the Lower Appellate Court whereby District Judge reversed the judgment and decree passed by the Trial Court, dismissing the suit filed by the plaintiffs.

2. For convenience, the parties hereinafter are referred to as by their original position before the Court of the First Instance, i.e., the appellants as plaintiffs and respondents as defendants.

3. Plaintiffs filed suit seeking decree of permanent injunction restraining defendants from recovering amounts pertaining to bills for the months of January, 2007 and February, 2007.

3.1. As per the case of the plaintiff, he is consumer under defendants having electricity connection No.KL-4. The energy is being consumed for running rice mill. The connection is seasonal in nature. On request by the plaintiff to the defendants, vide communication dated 29th of September, 2006 electricity seasonal supply was restored on 5th of October, 2006. The electricity meter installed remained under the lock and key of the defendants. Bill was raised on monthly basis. Plaintiff paid the same without any default. On 2nd of November, 2006, Connection Terminal (CT) got burnt. A new CT was purchased by the plaintiff. The same was tested by AEE, M&T Lab, UHBVNL, Rohtak on 3rd of November, 2006. It was installed on November 4, 2006. The defendants raised demand *qua* consumption for the months of November, 2006 and December, 2006 on actual basis. The same was paid by the plaintiff.

4. On 17th of January, 2007, M&P Staff, Rohtak checked the electricity meter. As per them, the meter was not recording consumption of all three phases. They accordingly, found that it was a case of unauthorized use of electricity. Consequently, a demand of Rs.1,16,826/- was raised in the bill for the month of January, 2007. Further demand of Rs.1,34,743/- was raised in the bill for the month of February, 2007. Penal amount was shown as sundry charges. Plaintiff deposited a sum of Rs.65,000/- on January 31, 2007. The defendants insisted upon depositing of the entire amount. After plaintiff failed to accede to their demand, the electricity supply was disconnected on 9th of March, 2007. Plaintiff filed a complaint No.87 of

2007 before District Consumer Disputes Redressal Forum, Jind. The same was dismissed vide order dated 27th of May, 2008.

5. The order was challenged by the plaintiff before State Commission. State Commission dismissed the complaint filed by the plaintiff, holding that since the connection being used for 'commercial purpose', the plaintiff does not fall within the ambit of 'consumer' as defined under Section 2(1)(d) of the Consumer Protection Act, 1986. After the complaint was dismissed by the State Commission vide order dated 8th of August, 2011, present suit was instituted on 20th of October, 2011.

6. Suit was contested by the defendants. On merits, the defendants justified their action claiming that it was a case of slow running of meter and thus claimed that it was theft of energy. Hence, the plaintiff was liable to pay arrears which have been demanded as sundry charges. Defendants further claimed that deposit of Rs.65,000/- by the plaintiff amounts to admission on his part of his liability and thus, he is estopped from raising issue w.r.t. merits of the case. Defendants further pleaded that jurisdiction of the Civil Court was barred under Section 145 of the Electricity Act, 2003 (hereinafter referred to as 'the 2003 Act').

7. Suit filed by the plaintiff was put to trial by Court of the First Instance, framing following issues:

> "1. Whether the plaintiff is entitled for decree of permanent injunction restraining defendants from recovery impugned amount of Rs.1,16,826/- and Rs.1,34,743/- for the bills of January 2007 and February, 2007? OPP

2. Whether the plaintiff is entitled for decree of declaration to the effect that plaintiff is entitled for adjustment of his bills on the basis of average and refund the amount paid in excess on the ground taken in the plaint? OPP
3. Whether the plaintiff has no locus standi to file the present suit? OPD
4. Whether the suit is not maintainable in the present form?
5. Whether the suit is time barred? OPD
6. Relief."

8. The Court of the First Instance after analysing the evidence, concluded that the case of slow running of meter does not fall within the ambit of Section 126 of the 2003 Act and defendants having admitted that there being no fault on the part of the consumer but it being a case of faulty connection, the defendants are not entitled to recover the amount in question except the actual consumption charges on the basis of average bills during the period w.e.f. 5th of October, 2006 to 31st of December, 2006. Trial Court accordingly, decreed the suit filed by the plaintiff.

9. Dissatisfied defendants, challenged the judgment and decree passed by the Trial Court.

10. The Lower Appellate Court while reversing the findings recorded by the Trial Court found that the dispute is only w.r.t. Rs.45,000/- which have been imposed as the meter was not giving correct reading and was running 67.19% slow as per report Ex.D-4. The checking having been made in presence of the plaintiff, the Trial Court erred in decreeing the suit filed by the plaintiff. The Lower Appellate Court while reversing the

findings recorded by the Trial Court, held that the defendants have right to recover the amount regarding actual consumption within six months as per their circular and the plaintiff has to be heard only if the penal amount is being imposed. The meter having been checked in the presence of the plaintiff and he having admitted his signatures on the report, there is no violation of the principles of natural justice.

11. Counsel for the appellants has assailed the findings recorded by the Lower Appellate Court. He submits that as per the defendants it is a case of unauthorized use of electricity as the meter was running slow. The defendants were thus liable to follow the procedure as contemplated under 2003 Act. At no point of time any notice or provisional assessment order was passed. No objections were ever invited from the plaintiff on the order of provisional assessment. Thus, defendants having acted in violation of the procedure and the provisions of the statue, the demand cannot be sustained.

12. Per contra, Mr. Chawla would submit that once the connection was checked in the presence of the plaintiff and he himself signed the checking report, it is too late in the day for him to cry foul. He further submits that the plaintiff having paid part of the amount demanded vide impugned notices, he cannot be allowed to turn back and challenge the same. Mr. Chawla further submits that even if the Court is of the opinion that the procedure has not been followed and thus the demand is bad, the matter needs to be remanded back from the stage of report. He submits that

it was merely a suit for permanent injunction without seeking declaration against the demand raised, the plaintiff cannot maintain suit for injunction.

13. I have heard counsel for the parties and have gone through records of the case.

14. Facts are not much in dispute.

15. The defendants on the basis of inspection report, dated 17.01.2007 found that the meter was running slow. Even though in the written statement, they claim that it was a case of theft of energy but admittedly, neither any FIR was ever lodged nor any complaint before the competent Court was filed. To make things worse, their counsel claims it to be a case of unauthorized use of electricity as contemplated under Section 126 of the 2003 Act. Thus, even today defendants are at sea as to whether it is a case of theft of energy or it is a case of unauthorized use of electricity.

16. Mr. Chawla, during the course of arguments, submits that the issue be dealt as unauthorized use of electricity and not theft of electricity.

17. Sections 126 and 127 of 2003 Act, read as under:

> **Section 126: (Assessment):** --- (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.
>
> (2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the

place or premises in such manner as may be prescribed.

1[(3) The person, on whom an order has been served under sub- section (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment of the electricity charges payable by such person.]

(4) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

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3[(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.]

(6) The assessment under this section shall be made at a rate equal to 1[twice] the tariff rates applicable for the relevant category of services specified in sub-section (5).

Explanation.- For the purposes of this section,-

(a) "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b) "unauthorised use of electricity" means the usage of electricity –

(i) by any artificial means; or

(ii) by a means not authorised by the concerned person or authority or licensee; or

(iii) through a tampered meter; or

2[(iv) for the purpose other than for which the usage of electricity was authorised; or

(v) for the premises or areas other than those for which the supply of electricity was authorized.”]

Section 127. (Appeal to Appellate Authority): --- (1) Any person aggrieved by the final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.

(2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to 3[half of the assessed amount] is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

(3) The appellate authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.

(4) The order of the appellate authority referred to in sub-section (1) passed under sub-section (3) shall be final.

(5) No appeal shall lie to the appellate authority referred to in sub-section (1) against the final order made with the consent of the parties.

(6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent, per annum compounded every six months.”

18. Notified under Section 50, Electricity Supply Code extensively deals with procedure to be followed in the case of unauthorized use of electricity and also prescribes proforma for serving notices and the provisional assessment orders. Exhibit D-2 relied upon by Mr. Chawla, as sufficient compliance of Section 126, does not help the cause of the

defendants. It does not specify whether it is a provisional assessment order, or it is an order of final assessment. Mr. Chawla admits that before passing of Ex.D-2 or thereafter no objections were invited from the plaintiff.

19. In view thereof, this Court finds that the Lower Appellate Court fell in error in reversing the findings recorded by the Trial Court, holding that merely for the reason that the inspection report bears signatures of the plaintiff, the mandate of the statute stands complied with.

20. In view of above, this Court finds that the findings recorded by the Lower Appellate Court, cannot be sustained. The same are hereby set aside.

21. The judgment and decree passed by the Trial Court is restored.

22. Defendants are at liberty to raise demand for the months of January, 2007 and February, 2007 from the plaintiff on the basis of average bills as directed by the Trial Court.

23. Needless to say, amount already deposited by the plaintiff, if any, shall be adjusted. Appeal is accordingly allowed.

24. Pending application, if any, shall also stands disposed off.

February 11, 2026 **(Pankaj Jain)**
Dpr **Judge**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No