

(2017) 02 P&H CK 0141
In the Punjab And Haryana At Chandigarh
Case No : RSA No. 4703 of 2014 (O&M)

Dakshin Haryana Bijli Vitran Nigam

APPELLANT

Vs

Mohd. Qayum Khan

RESPONDENT

Date of Decision : 07-02-2017

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Electricity Act, 2003 — Section 126, Section 145

Citation : (2017) 1 LawHerald 720

Hon'ble Judges : Mr. Rameshwar Singh Malik, J.

Bench : Single Bench

Advocate : Mr. K.S. Malik, Advocate, for the Appellants; Mr. Rahul Gautam, Advocate, for the Respondent No. 1; None, for the Respondent No. 2

Final Decision : Dismissed

Judgement

Mr. Rameshwar Singh Malik, J.(Oral)—Feeling aggrieved against the impugned judgments and decrees passed by learned courts below, thereby partly decreeing the suit of the plaintiff-respondent No. 1, defendants have approached this Court by way of present regular second appeal, for setting aside the impugned judgments and decrees.

2. Brief facts of the case, as noticed by learned first appellate court in para 2 of its impugned judgment, are that plaintiff was the owner of a Farm House situated in V. Sanchauli at Sohna, District Gurgaon, wherein electricity connection bearing account No. BMS-2 had been installed in the medium supply categories of connection and the sanctioned load was 40 K.W. It being a medium supply connection, monthly reading of the meter of the plaintiff used to be taken by a Junior Engineer of the office of SDO and he never found anything incriminating and prejudicial against the interest of the Nigam. The plaintiff was permanent resident of Delhi and used to visit the Farm House with family rarely due to business and family constraints.

3. Since the power supply at Sohna, being a rural area, was always erratic and

hardly available for a few hours, plaintiff installed two diesel Generating Sets in the Farm House of the capacity of 70 KVA and 30 KVA. For the aforesaid reasons, plaintiff applied to defendant No. 3 to disconnect the connection temporarily as the consumption was very low and the plaintiff had to make the payment of monthly minimum charges of Rs. 8000/- and above. The SDO Sohna disconnected the connection on 3.1.2004 and for that he must have issued the TDCO/PDCO in the month of 1/2004. The meter was, however, not removed as the SDO explained that it could be removed only when the M&P Division, Gurgaon would depute his A.E. for the same.

4. The SDO, M&P Gurgaon, did not turn up despite repeated requests by the SDO Operation, Sohna. Plaintiff had alleged that later on, it was understood that a party from Gurgaon of the DHBVNL had come to the Farm House of the plaintiff at V. Sanchauli with ill motive of causing harassment to the plaintiff and fabricated a wrong, arbitrary, illegal and unlawful case of theft of energy, stating that the sanctioned load was found installed and the theft was being resorted to from the transformer. It was unimaginable to observe that the plaintiff, who did not require the connection and had got it disconnected about a year ago, would resort to abstraction of electric energy from the transformer in broad day light seen by the villagers and staff of the electricity department and also when no family member of plaintiff had visited the farm house. No checking report was supplied to the plaintiff by the defendants.

5. It was also not clear whether the checking official was an authorised inspecting official and the checking report form LL-1 was issued to him by the Executive Engineer as required under the instructions of the Nigam. The checking conducted at the back of the plaintiff was not binding on the plaintiff. The checking report too was never supplied to the plaintiff or his authorised representation either by the checking official or by the SDO Operation, Sohna. When the plaintiff visited the office of the SDO Operation, Sohna, he was directed to make the payment of a penalty amounting to Rs.4,30,000/- but no details of the amount as to how it was worked out and reasons as to why the penalty had been imposed, had been explained by the SDO, Sohna. He threatened that in case the penalty amount was not deposited, a criminal case would also be foisted. The plaintiff aggrieved by the actions of the electricity department informed the power Secretary, Haryana Government, about the high handedness of the electricity officials of Gurgaon/Sohna, who immediately issued instructions to the Managing Director of the DHBVNL to look into the matter and redress the grievance of the plaintiff.

6. In compliance with these instructions, defendant No. 4 was directed to conduct an independent inquiry into the matter but the plaintiff was not aware of the report submitted by him. It was further alleged that plaintiff had requested the SDO to reconnect the connection and allow him the 18 KW load. The existing meter of the plaintiff meant for 40 KW load had been removed by the SDO. The request of plaintiff had not so far been accepted by the SDO and the connection

had not been restored on 15 KW load. The defendants neither withdrawn the impugned penalty amount as per bill dated 23.7.2010 nor restored the electricity connection and installed meter of 18 KW load capacity not refunded the extra amount of security received by them of 40 KW load.

7. Having been put to notice, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. On completion of pleadings of parties, learned trial court framed the following issues.

1) Whether the impugned bill dated 23.7.2010 and checking report are illegal, unlawful, wrong, fabricated, unjust and arbitrary against the principle of natural justice and not binding on the plaintiff and are liable to be set aside/quashed, as alleged?OPP

2) Whether the plaintiff is entitled to a decree for mandatory injunction on the grounds as alleged?OPP

3) If issue No. 1 and 2 are proved, whether the plaintiff is entitled to a decree for permanent injunction as alleged? OPP

4) Whether suit is not maintainable?OPD

5) Whether the plaintiff has no locus standi or cause of action to file the present suit?OPD

6) Whether the plaintiff is estopped by his own acts and conduct?OPD

7) Whether the plaintiff has suppressed and concealed true and material facts from the court?OPD

8) Relief.

8. In order to prove their respective pleaded cases, both the parties produced documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court partly decreed the suit of the plaintiff, vide its judgment and decree dated 16.9.2013. Both the parties felt aggrieved. Plaintiff filed appeal for decreeing his suit in toto, whereas the defendants filed their first appeal, seeking dismissal of the suit. Learned first appellate court dismissed the appeal of defendants, whereas the appeal by the plaintiff was partly allowed. Hence this regular second appeal at the hands of the defendants.

9. Notice of motion was issued. On 27.1.2015, following order was passed by this Court:-

"As per the report of Registry, notices issued to the respondents have been received back in the following manner:

Respondent No. 1 - served through father; and,

Respondent No. 2 - duly served.

None has put in appearance on behalf of these respondents. Service is sufficient. They are, thus, proceeded against ex-parte.

When called upon to satisfy this Court about substantial questions of law needing determination in terms of Section 100 CPC, counsel for the appellant has drawn attention towards para 10 of the Grounds of Appeal and has read all these questions out of which only question at serial No. (i) is "substantial questions of law" on which arguments would be addressed by the appellants.

10. The substantial question of law sought to be raised on behalf of the appellants in para 10 (i) of their ground of appeal, available at page 7 of the paper book, reads as under:-

"I) Whether the civil court has jurisdiction to try and entertain the present suit under section 154 (5) of the Electricity Act. 2003?"

Heard learned counsel for the parties.

11. In view of the above said order dated 27.1.2015 passed by this Court, learned counsel for the appellants fairly restricted his arguments to the issue of jurisdiction of learned civil court. Learned counsel for the appellants vehemently contended that it was a case of theft which would fall under Section 135, Part XIV of the Electricity Act, 2003 ("the Act" for short). He further submits that FIR was not lodged against the plaintiff-respondent, because he got the offence compounded under Section 152 by paying requisite amount. Under these circumstances, learned counsel for the appellants, while placing reliance on Section 145 of the Act, strongly argued that civil court was not having jurisdiction in the present case. Since learned courts below failed to appreciate this material aspect of the matter, which goes to the root of the cause, the impugned judgments and decrees have resulted in miscarriage of justice. He prays for setting aside impugned judgments and decrees, by allowing the present appeal.

12. On the other hand, learned counsel for respondent No. 1, while placing reliance on the judgment of this Court in *Uttar Haryana Bijli Vitran Nigam v. Harjit Singh*, 2014 (1) RCR (Civil) 100, submits that in the circumstances of the present case, civil court jurisdiction would not be barred. He concluded by submitting that if the defendants-appellants did not perform their duties properly, in accordance with law, while invoking the provisions of Section 126 of the Act, plaintiff-respondent No. 1 cannot be made to suffer for none of his fault. He prays for dismissal of the appeal with costs.

13. Having heard learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that the impugned judgment and decree passed by learned first appellate court deserve to be upheld, as the same have been found supported by sound reasons. Appeal is without any merit which is liable to be dismissed, for the following more than one

reasons.

14. Since the only question that falls for consideration of this Court is, as to whether the learned civil court, under Section 154 (5) of the Act, had the jurisdiction to try the present suit filed by the plaintiff-respondent, it is necessary to refer to Sections 145, 153 (1) and 154 (1) and (5) of the Act and the same read as under :-

Section 145. Civil courts not to have jurisdiction.-No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in section 126 or an appellate authority referred to in section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Section 153. Constitution of Special Courts.- (1) The State Government may, for the purposes of providing speedy trial of offences referred to in [sections 135 to 140 and section 150], by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas, as may be specified in the notification. xx xx xx xx

Section 154. Procedure and power of Special Court.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under [sections 135 to 140 and section 150] shall be triable only by the Special Court within whose jurisdiction such offence has been committed.

(2) xx xx xx

(3) xx xx xx

(4) xx xx xx

(5) The [Special Court shall] determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft if determined whichever is less and the amount of civil liability so determined shall be recovered as if it were a decree of civil court. xx xx xx xx"

15. Before dealing with the issue of jurisdiction of the civil court in terms of above said provisions of law, undisputed facts of the case deserve to be considered. As noticed above, although it was a case of theft of electricity under Section 135 of the Act, as rightly argued by learned counsel for the appellants, yet the authorities concerned of the appellant department did not invoke the provisions of Section 126 of the Act, even after compounding the offence of theft allegedly committed by the plaintiff, by receiving the requisite amount from the plaintiff under Section 152 of the Act. It has gone undisputed before this Court

that no FIR was registered and because of this reason, there was no occasion for the special court to deal with this matter, because the offence of theft already stood compounded.

16. A bare reading of the above said provisions of law contained in Sections 145, 153 (1), 154 (1) and (5) of the Act, will leave no room for doubt that jurisdiction of the special court would be initially invoked for the purpose of trial of the offence covered under Sections 135 to 140 and Section 150 of the Act. While deciding the criminal case, the learned Special court shall also determine the civil liability of the accused (consumer or person), in terms of money, for theft of energy. The simple and plain meaning of the provisions contained in Sections 153 and 154 of the Act, is that learned special court shall try the offence, while conducting criminal trial for offences under Sections 135 to 140 and 150 of the Act. Simultaneously, it shall also determine the civil liability against the consumer or person in terms of money for theft of energy, meaning thereby, the legislature never intended to grant the jurisdiction to the special court, for determining the civil liability alone, without first conducting criminal trial for offence referred to herein above.

17. For the purpose of assessing civil liability alone, one will have to fall back on Part XII of the Act, which contains Sections 126 to 130. It is also not in dispute that authorities of the appellant-Corporation never invoked their powers under Part XII of the Act. The moment they accepted the requisite amount from the plaintiff for compounding his offence of theft of energy under Section 135 read with Section 152 of the Act, they ought to have invoked their powers under Section 126 of the Act, for assessment of civil liability of the plaintiff. In that situation, complete procedure as prescribed under Part XII of the Act, was bound to be followed by the authorities of the appellant-corporation.

18. Had the plaintiff felt aggrieved against the assessment order passed by the competent authority under Section 126 of the Act, he would have a right to file an appeal before appellate authority under Section 127 of the Act and the said matter could have been easily taken to its logical end under Part XII of the Act. Since appellants did not invoke the provisions of Section 126 contained in Part XII of the Act, it can not be held, by any stretch of imagination, that under these circumstances, jurisdiction of the civil court would be barred. It is so said, because civil court jurisdiction would be barred only in respect of a matter, wherein assessing officers have passed the assessment order under Section 126 of the Act or the appellate authority has passed an assessment order under Section 127 of the Act.

19. Admittedly, there was no assessment order passed by the competent authority, against the plaintiff, under Section 126 of the Act, invoking any provisions of law contained in Part XII of the Act. Having said that, this Court feels no hesitation to conclude that learned first appellate court has rightly dismissed the appeal of the appellants and accepted first appeal of the plaintiff by passing the impugned judgment and decree which deserve to be upheld, for

this reason also.

20. Before recording its cogent findings, learned first appellate court discussed each and every relevant aspect of the matter in minute details. Relevant findings recorded in first half of para 16 have been found well justified. Relevant observations made by learned first appellate court in first half of para 16, followed by observations made in para 19 of the impugned judgment, which deserve to be noticed here, read as under:-

Apart from the above, it was obligatory on the part of the defendants-respondents board to follow the procedures of Section 126 of the Electricity Act. In the present case, no notice was issued to the appellant-plaintiff in accordance with the provisions of Section 126 of the Electricity Act. No documentary evidence has been produced by respondent-defendants under what provision the demand was raised by the electricity Board. Admittedly, it is nowhere pleaded or proved by respondents-defendants that demand was made under section 126 of the Electricity Act. When the demand was not raised under section 126 of the Electricity Act, the jurisdiction of Civil Court is not barred. The appellant-plaintiff has a right to challenge the impugned demand by filing a civil suit because before raising the impugned demand, the settled provisions of the Electricity Act and the provisions of aforesaid circular as well were not followed. In the case law titled *Uttar Haryana Bijli Vitran Nigam v. Harjit Singh* (Supra) our Hon'ble High Court has held that:

"Impugned action has been taken admittedly by the Board under section 56 of the Act. There was no scope, whatsoever, of barring the jurisdiction of the civil Court. Jurisdiction of the Civil Court restricted only qua the matters arising out of the actions taken by the authorities under section 126 of the Act or any orders passed by an Appellate Authority under section 127 of the Act and connected matters covered thereunder.

XX XX XX XX

In view of my above discussion and observations, I am of the considered opinion that the appellant-plaintiff has succeeded in proving his case. The impugned judgment and decree passed by the learned lower court is against the law and not sustainable and it requires interference of this court. With these observations, the appeal filed by the appellant-plaintiff titled *Mohd. Qayum v. DHBVN* is hereby allowed and the appeal filed by respondents-defendants titled *DHBVN v. Mohd. Qayum* is hereby dismissed. The suit filed by the plaintiff is hereby decreed and a decree for declaration is hereby passed in favour of the plaintiff and against the defendants to the effect that the demand of Rs.447948/- is wrong, illegal, null and void and not binding on the rights of the plaintiff and same is hereby set aside. As the appellant-plaintiff had deposited an amount of Rs.2,15,000/- to get the electricity connection restored by the order of the court, therefore, the appellant-plaintiff is entitled to recover the same from the respondents-defendants. The respondents-defendants are hereby directed to

refund the aforesaid amount to the appellant-plaintiff after adjusting the actual electricity bills within a period of three months from today failing which the respondents-defendants shall be liable to refund the same along with interest @ 9% per annum from the date of deposit till the date of refund. Remaining relief claimed by the appellant-plaintiff is hereby declined. No order as to costs. Decree sheet be prepared accordingly.

21. During the course of hearing, learned counsel for the appellants could not substantiate any of his arguments, despite making his best efforts. In fact, learned counsel for the appellants rightly felt handicapped on the issue of jurisdiction of the civil court, because the authorities concerned of the appellant-Corporation failed to exercise their powers under Sections 126 and 127 of the Act and that too, for no good reasons. Learned counsel for the appellants was not at fault for not improving the case of the appellants. In fact, the fault lies with the concerned officers of the appellant-Corporation, while not assessing the civil liability of the plaintiff by following mandatory procedure contained in Section 126 of the Act, for the reasons best known to them. In this view of the matter, it can be safely concluded that learned first appellate court committed no error of law, while passing the impugned judgment and decree and the same deserve to be upheld, for this reason as well.

22. In view of the discussion in the foregoing paragraphs, answer to the question posed at the outset is and has to be against the appellants and in favour of the plaintiff-respondent. Answered accordingly. Under the peculiar facts and circumstances of the case in hand, it is held that jurisdiction of learned civil court was not barred and the suit was rightly entertained by learned civil court.

23. The above said view taken by this Court also finds support from a judgment of the Hon'ble Supreme Court in Municipal Committee, Hoshiarpur v. Punjab State Electricity Board and others, 2011 (1) CCC 001 and three judgments of this Court in Uttar Haryana Bijli Vitran Nigam v. Harjit Singh, 2014 (1) RCR (civil) 101; Dakshin Haryana Bijli Vitran Nigam v. Sulekha, 2014 (1) RCR (civil) 151 and Dakshin Haryana Bijli Vitran Nigam v. Poonam Vashisth, 2009 (2) PLR 677.

24. Learned counsel for the appellants could not point out any patent illegality or perversity in the impugned judgment and decree passed by learned first appellate court. He also could not point out any question of law much less substantial question of law in the present appeal, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in Naryanan Rajendran and another v. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286 and Santosh Hazari v. Purshottam Tiwari, 2001 (3) SCC 179.

25. No other argument was raised.

26. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view

that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

27. Resultantly, with the above said observations made, instant regular second appeal stands dismissed, however, with no order as to costs.