
(2010) 01 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3291 of 2007 (O and M)

Dakshin Haryana Bijli Vitran Nigam Ltd. and Another

APPELLANT

Vs

Amarjit Singh Chadha

RESPONDENT

Date of Decision : 21-01-2010

Acts Referred:

Electricity Act, 1910 — Section 24, 26(6)

Citation : (2010) 2 CivCC 429 : (2010) 2 RCR(Civil) 605

Hon'ble Judges : Rakesh Kumar Garg, J

Bench : Single Bench

Advocate : Jagdeep Singh, for the Appellant;

Judgement

Rakesh Kumar Garg, J.

CM No.9166-C of 2007

For the reasons mentioned in the application, delay of 121 days in refiling the present appeal is condoned.

CM stands disposed of.

R.S.A.No.3291 of 2007

1. This is defendants' second appeal challenging the judgment and decrees of the Courts below whereby suit of the plaintiff-respondent for declaration with consequential relief of permanent injunction has been decreed with a further direction that the amount already deposited by him shall be adjusted in the future bills.

2. The brief facts of the plaintiffs case are that he owns a house bearing Municipal No. 1271, situated at Sector, 15, Faridabad. In the aforesaid premises, the electric connection bearing No. 15-DS-252 exists on the ground floor whereas electric connection bearing No. 15-DS-1322 exists on the first floor. Both the electric connections are meant for domestic supply. The plaintiff has a

residential accommodation on the ground floor and being a practicing lawyer has maintained his office on the first floor of the said house. The plaintiff was receiving the electricity bills in respect of both the electric connections from time to time and was making the payment as per consumption up to date. It was further alleged that both the electric connections were subjected to periodic checks by the officials of the appellant-Department, inasmuch as the meter readers also used to make periodic visits and at no point of time, the officials of the appellant-Department ever pointed out any defect in the meter or meter equipments installed in both the portions of the house in question.

3. It was further averred that on 26.04.1998, officials of the appellants came to the house of the plaintiff-respondent for checking. The said checking team on inspection of the meter, fitted on the ground floor pointed out that the said meter was having one phase defective whereas two other phases were intact and the disc of the meter was found to be moving forward properly. It was further observed by the said checking team that the seals of the meter, installed on the ground floor, were found tampered. It was further alleged that while inspecting the first floor of the house, the electric connection bearing No. 15-DS-1322, the checking team found that the seals of the said meter were in fact intact and everything else was in order but one of the phase was not registering energy consumption in the meter. The plaintiff further alleged that on the basis of the checking report prepared by the checking team on 26.04.1998, the officials of the appellant came on the same day to disconnect the electric connection on the assumption that it was a case of theft of electric energy. It was further alleged that the demand raised did not contain any details as to how and what method and data had been adopted in arriving the amount in question and before assessing the quantum of damages, neither notice of hearing was given nor any opportunity of hearing was afforded to the plaintiff. He in order to show his bona fides submitted a bank draft dated 29.04.1998 for a sum of Rs.20,000/- which was accepted by the appellants on 30.04.1998. The aforesaid payment was made under protest and without prejudice to the plaintiffs right. Thus, the order passed by the appellants and the demand contained therein in the impugned order dated 27.04.1998 was illegal and was liable to be declared as bad in law. Hence, the present suit for declaration to the effect that the checking report prepared by the vigilance staff of the H.S.E.B. on 26.04.1998, pertaining to the meters of the plaintiff was illegal and the order and demand dated 27.04.1998 calling upon him to pay a sum of Rs.39,228/- towards compensation and energy charges were illegal and unjust. Further prayer was made restraining the appellants from recovering the amount and disconnecting the electric energy of the plaintiff-respondent.

4. Upon notice, defendants-appellants appeared and filed written statement taking preliminary objections regarding jurisdiction; cause of action, locus standi and maintainability of the suit. It was further stated that the premises of the plaintiff with regard to electric connection bearing account No.15-DS-252 on ground floor and that another connection No.15-DS-1322 on the first floor were

checked by the vigilance checking party of the Board on 26.04.1998 in the plaintiff's premises, however, to be specific on issue at this stage pertaining to connection No. 15-DS-252 only on the ground floor, the plaintiff was found indulging in malpractice in using and enjoying of the electric energy, since a connected load of 14.311 KW was found at the site and further four Nos. M&T seals were found tampered with and out of 4 Nos. of seals, one seal was found opened, in addition to that, meter was dead stop on "Y" phase. Accordingly, a penalty to the tune of Rs.39,228/- was imposed upon the plaintiff in terms of Sales Circular No. 4/91 of the Board, for which a demand notice bearing Memo No.551 dated 27.04.1998 was raised. Since the plaintiff was found indulging in malpractice and theft of electric energy, an FIR No.454, dated 16.04.1998 was got lodged by the Board's officials with P.S. Central Faridabad and as such the demand notice bearing No.551 dated 27.04.1998 to the tune of Rs.39,228/- and pursuant to checking report dated 26.04.1998 was just, genuine and in terms of the Board's rules, regulations and Sale Circular thereto. Denying other averments the defendants had prayed for dismissal of the present suit with costs.

5. On the pleadings of the parties the following issues were framed:

"(1) Whether the report of the Vigilance Team of HSEB, dated 26.04.1998 pertaining to meter account No. 15-DS-252 is incorrect, illegal, arbitrary and not binding on the rights of the plaintiff? OPP

(2) Whether the demand-dated 27.04.1998 raised by the defendant No.2 pertaining to account No.15-DS-252 of the plaintiff is illegal, arbitrary, unjust and beyond the powers of defendant No.2 and is not binding on the rights of the plaintiff, if so, its effect? OPP

(3) Whether the demand dated 01.06.1998 raised by defendant No.2, pertaining to electricity account bearing No.DS-15-1322 is illegal and arbitrary, as alleged and is beyond the powers of defendant No.2, if so, its effect? OPP

(4) Whether the civil court has no jurisdiction to entertain and try the suit? OPD

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

(6) Whether the suit of the plaintiff is not maintainable in the present form? OPD

(7) Relief."

6. Both the parties led their evidence in support of their respective case. After hearing the plaintiff and learned counsel for the defendants, the trial Court decided all the issues in favour of the plaintiff and against the defendants and accordingly, decreed the suit of the plaintiff-respondent.

7. Feeling aggrieved, the defendants filed an appeal challenging the aforesaid judgment and decree of the trial Court which was dismissed by the Additional District Judge(I), Faridabad, vide impugned judgment and decree dated 30.08.2006. While affirming the findings of the trial Court on all the issues, the

Lower Appellate Court noticed that no argument was raised by the learned counsel for the appellant on issues No.4 to 6 at the time of arguments.

8. Still not satisfied, the defendants have filed the instant appeal challenging the judgment and decrees of the Courts below.

9. Learned counsel for the appellants on the basis of the amended Section 24 of the Indian Electricity Act, 1910 (as applicable to the State of Haryana) raised the argument that the civil suit filed by the plaintiff-respondent was barred. Learned counsel further argued that the plaintiff-respondent was caught committing unauthorized abstraction of electricity by tampering with M&T Seals and by making dead stop one of the phases and once it was found during checking raid in his presence that he was indulging in illegal abstraction of electrical energy by tampering with the metering equipment, there was no need to refer the matter for arbitration to the Electrical Inspector and there was sufficient material on record to support the case of the appellants and the Courts below decided issues No.1 to 3 in favour of the plaintiff-respondent without appreciating the evidence on record. It was further argued that the penalty was imposed on the plaintiff-respondent in terms of Circular of Board and therefore, no fault can be found in the demand order dated 27.04.1998. It was further submitted that the plaintiff-respondent had not preferred any appeal against the demand notice before the competent Authority and instead of going into an appeal, he filed civil suit for declaration and permanent injunction which was barred under amended Section 24 of the Indian Electricity Act 1910 as applicable to the State of Haryana which reads as under:

"No court shall take cognizance of any matter pertaining to the payment of charges due from any person unless he has exhausted all the remedies available to him under the terms and conditions governing the supply of energy and further he has deposited 40% of the amount outstanding against him."

10. On the basis of the aforesaid arguments, learned counsel for the appellants has submitted that the following substantial questions of law arises in this appeal:

"(i) Whether the checking report Ex.D1, which is duly proved and duly signed by the respondent, can be relied upon as an affirmative proof of dis-honest abstraction of electrical energy by the respondent?

(ii) Whether the courts below have traveled beyond the evidence available on record to decree the suit of the plaintiff-respondent?

(iii) Whether the impugned judgments and decrees of the both the courts below are patently illegal and ought to be reversed?

(iv) Whether the impugned judgments and decrees are sustainable in the eyes of law?"

11. On the other hand, learned counsel for the respondent who is appearing in person has vehemently argued that the substantial question of law as framed by

the appellants do not arise in this appeal as the Courts below on appreciation of evidence have recorded a finding of fact that the allegations to prove dishonest intention of the plaintiff-respondent to consume electricity by using artificial means as argued by the appellants has not been proved on record. It was further argued by him that even before raising the demand neither show cause notice nor any opportunity of hearing was granted to him. Learned counsel further referred to the report of Local Commissioner Ex.P65 to say that no artificial means were used to commit any electrical theft by the respondent and the defendants were not competent at their own to claim any extra amount for slow, defective or non-registering of energy on one phase without adopting the proper procedure prescribed under the Act. i.e to refer the matter to the Electrical Inspector u/s 26(6) of the Indian Electricity Act and thus, it was argued that the appeal is liable to be dismissed.

12.I have heard learned counsel for the appellants and the respondent in person and perused the record of this appeal.

13. The argument raised by the learned counsel for the appellants with regard to the jurisdiction of the civil Court is misplaced and does not arise from the impugned judgment and decree of the Lower Appellate Court. Despite the fact that the issue of jurisdiction was decided by the trial Court against the appellants yet no argument was raised by them before the Lower Appellate Court challenging the findings of the trial Court on the aforesaid issue. The Hon''ble Apex Court in Bachhaj Nahar Vs. Nilima Mandal and Another, has authoritatively laid down that any substantial question of law based upon the argument which was not raised before the Courts below cannot be raised in the regular second appeal.

14. In view of the authoritative pronouncement of the Hon''ble Supreme Court, the argument raised by the learned counsel for the appellants is without any merit. It may also be noticed here that the Courts below on appreciation of evidence, have recorded a finding of fact that no artificial means were used to commit the alleged electrical theft by the plaintiff-respondent. It was also found by the Courts below that in spite of fact that it is the case of the appellants that meter in question was not registering the consumption, the same was not got tested from the competent laboratory.

15. It is not in dispute that as per Section 26(6) of the Indian Electricity Act, if there is a dispute as to whether the meter is correct or faulty, in that eventuality it is only the Electrical Inspector who has the jurisdiction to quantify the penalty etc. after the matter is referred to him and the appellant-Board had no authority to impose the penalty. Admittedly before raising the demand, neither any show cause notice nor any opportunity of hearing was given to the plaintiff-respondent and as such the appellants were not competent at their own level to claim any extra amount for slow, defective meter or non-registering of energy on one phase. Thus, the finding of fact was recorded by the courts below that before raising the impugned demand, the proper procedure prescribed under the Act

was not adopted and therefore, the principles of natural justice were violated.

16. In view of the aforesaid findings, which are based upon proper appreciation of evidence by the Courts below, I find no merit in the arguments raised by the learned counsel for the appellants. Thus, no substantial question of law arises in this appeal.