

(2008) 12 P&H CK 0159
In the Punjab And Haryana At Chandigarh

Punjab State Electricity Board and Another	APPELLANT
Vs	
Firm New Era Printing Mills	RESPONDENT

Date of Decision : 01-12-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Electricity Act, 1910 — Section 26
Evidence Act, 1872 — Section 114

Citation : (2009) 2 CivCC 116 : (2009) 153 PLR 385 : (2009) 2 RCR(Civil) 801

Hon'ble Judges : Rakesh Kumar Garg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.

CM No. 11277-C of 2008

1. This is an application under Order 41 Rule 5 read with Section 151 CPC for staying the operation of the judgment and decree dated 12.11.2006 passed by the Civil Judge, (Jr. Division), Amritsar.

From the record, it is found that the appeal against the impugned decree is listed for hearing on 28.1.2009 and the preliminary hearing is yet to take place. No application for preponement has been made by the appellants. Learned Counsel for the appellants states that the respondent is pressing hard for implementation of the decree and in fact, the next date in the execution of the decree is fixed before the Executing Court on 30.11.2008.

2. In these circumstances, the learned Counsel has orally prayed that the main case be also heard today.

3. Request is accepted. Main case is taken on board. R.S.A. No. 2086 of 2008

4. This is defendant's second appeal challenging the judgment and decree of the Courts below whereby the suit filed by the plaintiff-respondent for permanent

injunction restraining the defendants from disconnecting the plaintiffs electricity connection on account of non-payment of bill dated 10.10.2001, has been decreed and the amount already deposited with the appellant-Board in this regard has been ordered to be adjusted in future bills.

5. Briefly stated, the plaintiff filed suit for permanent injunction restraining the defendants from disconnecting the plaintiffs electricity connection No. MS-102 installed in its premises. The appellant-Board raised demand of Rs. 1,89,262/- vide their letter dated 1.10.2001 and supplementary bills dated 10.10.2001. According to the plaintiff, the demand raised by the appellants was illegal and, therefore, he has filed the suit for permanent injunction restraining the defendants from disconnecting its connection.

6. Upon notice, the appellant-Board filed written statement and contested the claim of the plaintiff, inter alia, on the ground that during checking the meter of the plaintiff was found dead stop and on account of the audit objection and on the basis of Sales Manual Regulation, the said demand was raised. Both the parties led evidence in support of their case.

7. The Trial Court after perusing the evidence on record and hearing the parties, partly decreed the suit of the plaintiff-respondent for a decree for permanent injunction restraining the appellant-Board from disconnecting the plaintiff's Electricity connection No. MS-102 on account of non-payment of bill dated 10.10.2001. It was also ordered that the amount already deposited to the extent of 50% shall be adjusted in future bills by the Board. While decreeing the suit, the trial Court held as under::

After hearing the rival contentions of the counsel for the parties and after scrutinizing the evidence on record and after considering the precedents on record, this Court is of the considered view that there is no dispute that the plaintiff is the consumer of the defendant. The inspection of the meter by the officials of defendant board is also not disputable fact. The only disputable fact is whether the meter of plaintiff was defective and if it is defective then whether it was tested in the meter testing lab., if it was tested as to why the meter testing report has not been produced on file as a piece of evidence. The Board if knowing the fact that if the meter is defective then instead of referring the dispute to Electrical Inspector, why they preferred to decide it themselves, further it is also necessary to be seen whether board has issued the demand of amount perfectly according to provisions of sale regulations.

Instruction No. 115 of Punjab State Electricity Board Sales Manual provides for the procedure for adjustment of consumer's account if the meter is found defective by a Board employee Clause (b) thereof reads as under:

(i) Inaccurate Meters.- In the case of single phase meters where the accuracy of the meter is doubtful or the meter is found creeping forward, no adjustment in accounts may be carried out but the meter should be replaced.

(ii) In such cases where the inaccuracy of the single phase meter is pronounced or in case of three phase meters which may be suspected/found to be incorrect, the consumer should immediately be informed in writing that the meter already installed at this premises is incorrect (or has been tampered with by the consumer as the case may be) and a check meter for determining % of the accuracy is being installed in series with old meter and also that his accounts would be adjusted as per the test results in terms of clause 14 of the "Abridged Conditions of Supply" appended to the agreement executed by him. As far as possible the existing metering equipment should not be disturbed or tampered with so that it remains in the "as found" condition. The check meter as well as the old metering equipment in as found condition should be sealed and consumer's signatures in token of this fact obtained in Meter Sealing Record so that the consumer is unable to tamper with the arrangement.

(iii) Reading of the old and the check meters should be got initiated from the "consumer both at the time of commencement and expiry of the test period (which may last upto 7 days) so that he may not be able to contest it at a later stage. In case the original meter is found to be incorrect as compared to the check meter the accounts of the consumer should be adjusted as provided in clause 14(f) of the Abridged conditions of supply.

(iv) If, however, the consumer is unwilling to pay the charges as determined above he has the option to refer the matter to the Electrical Inspector (as provided in the said conditions) whose decision would be binding on both the parties. In such an eventuality the disputed inaccurate meter should not be removed. As a matter of fact both the old as well as the check meter should remain in position until the Electrical Inspector has made the requisite investigation. The consumer should be billed on the basis of the check meter in the intervening period. In case the consumer is neither prepared to refer the matter to the Electrical Inspector nor come forward to pay the amount worked out, he should be served with a disconnection notice of 7 days and premises disconnected on the expiry of the notice period." Further instruction No. 1 16 of Sales Manual provides as under:

Where any difference of dispute arises as to whether any meter is or is not correct the matter should be decided upon the application by either party to the Electricity Inspector u/s 26(6) of the Indian Electricity Act, 1910 as amended from time to time and if in his opinion, the meter is not correct, the Electrical Inspector shall estimate the amount of adjustment to be carried out in the consumer's account for a period not exceeding six months preceding the date of test.

Provided that before the Board or a consumer applies to Chief Electrical Inspector he shall give to the other party not less than 7 days" notice of his intention to do so.

None of the above said instructions were followed by the Board. therefore, the

plea so raised by the counsel for the defendant that meter cannot be disputed in civil court. Moreover, in the light of instructions of manual, the defendant has utterly failed to bring and produce any evidence on record by which defendant could have proved that proper instructions of the Sales Manual have been followed. The defendants have utterly failed to prove on record as to how the demand made by them is perfectly legal. The best evidence was available with them but they did not produce it then the adverse inference is necessary to be drawn in view of Section 114 of the Indian Evidence Act. Moreover, the remarks given in section report proved on the file as Ex.P-17 goes against the plea of the Board. If the dial/wheel of the meter was running/revolving in the correct side/direction then no presumption of the defectiveness of meter can be laid, especially in the absence of any evidence to that effect. The precedents so produced by the counsel for the plaintiff are supporting the case of the plaintiff completely. Hence, this Court is of the considered opinion that the demand so raised by the defendants is absolute unlawful and illegal, therefore, cannot be raised by the defendants, therefore, the defendants are restrained from raising demand of the amount and are further restrained from disconnecting the connection. Hence issue No. 1 to the effect of permanent injunction is decided in favour of the plaintiff. So far as the issue and relief of mandatory injunction is concerned, since the connection has been restored, the relief of mandatory injunction as claimed in the suit has come infructuous and the issue of mandatory injunction is decided against the plaintiff.

8. Feeling aggrieved against the aforesaid judgment and decree of the trial Court, the defendants filled an appeal which was also dismissed by the Additional District Judge, Amritsar vide impugned judgment and decree dated 7.12.2007. While dismissing the appeal, the Lower Appellate Court after relying upon the provisions of Sales Manual Instruction No. 116 and Section 26(6) of the Indian Electricity Act, 1910 as amended from time to time and placed reliance upon the judgments of this Court in Ranbaxy Laboratories Ltd. Vs. Punjab State Electricity Board, and PSEB Patiala and Anr. v. Kartar Colonizers Pvt. Ltd. Ludhiana (1985(1) C.L.J. 264.

9. Still not satisfied, the defendants have filed this appeal in this Court challenging the judgment and decrees of the Courts below.

10. Sh. P.S. Thiara, learned Counsel appearing for the appellant Board has vehemently argued that the meter of the plaintiff-respondent was found dead stop at the time of checking and therefore, the demand raised by the appellant-Board was justified under the regulations of the PSEB and thus, the Courts below have erred in law while decreeing the suit of the plaintiff-Board.

11. I have heard learned Counsel for the appellant.

12. I find no merit in the contention raised by the learned Counsel for the appellants. The question involved for disposal of the present appeal is whether the appellant-Board has followed the due procedure as mentioned in the Indian

Electricity Act, 1910 for raising alleged demand. Section 26 of the Indian Electricity Act provides that where any meter is found not correct, the said meter should be referred upon an application by either party to the Electrical Inspector. Sales Manual Regulations 115 and 116 are also to the same effect. Admittedly, due procedure had not been adopted by the appellant-Board before raising the demand. Even before making assessment of the demand against the respondent, no opportunity of hearing was granted to the plaintiff-respondent by the appellant-Board.

In view of this, I find no merit in this appeal. No substantial question of law arises.

Dismissed.