(2014) 05 P&H CK 0046

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 4350 of 2012 (O&M)

Vinod Kumar APPELLANT

Vs

Dakshin Haryana Bijli Vitran Nigam Ltd. RESPONDENT

Date of Decision : 23-05-2014

Acts Referred:
Electricity Act, 2003 — Section 126, 126(3), 135, 152

Citation : (2014) 176 PLR 462

Hon'ble Judges : Rakesh Garg, J

Bench : Single Bench

Advocate : Y.D. Kaushik, Advocates for the Appellant

Judgement

Rakesh Garg, J.—This is plaintiffs second appeal challenging the judgments and decrees of the Courts below whereby his suit for declaration with consequential relief of permanent injunction was dismissed by the Courts below. The appellant filed a suit for declaration to the effect that the defendant-respondent had issued an illegal demand notice for recovering a sum of Rs. 2,13,814/- on the basis of a false report alleged to be prepared on the basis of a raid conducted in his house on 5.6.2008 in his absence.

2. The suit was contested by the defendant-respondent raising various preliminary objections. It was contended that on 5.6.2008, a raid was conducted and it was found that electricity was being tapped from LT sub-line of DHBVNL with the help of 10 mm PVC wire (black colour) with one end connected to sub line and other end connected in main board. The checking report was duly handed over to the appellant. However, he refused to sign the same. Thereafter, as per the provisions of Section 135 of the Electricity Act, 2003, an assessment notice was issued, whereby penalty of Rs. 1,65,874/- was imposed upon the appellant with an option to compound the criminal offence under Section 152 of the Electricity Act on payment of Rs. 48,000/-. It was further claimed that the Civil Court had no jurisdiction to adjudicate upon the dispute and therefore, the suit deserves to be dismissed.

3. On the basis of pleadings of the parties, following issues were framed:--

"1. Whether the plaintiff is entitled to a decree of declaration, as prayed for? OPP

2. Whether the plaintiff is entitled to a decree of permanent injunction, as prayed for? OPP

3. Whether this Court does not have any jurisdiction to try the present suit? OPD

4. Whether the plaintiff does not have any cause of action to file the present suit against the defendant? OPD

5. Relief."

4. In order to prove its case, the plaintiff-appellant himself appeared in the witness box as. P.W. 1. He also examined Bhaga Singh as PW2, in support of his case. On the other hand, the defendant-respondent examined Shri J.S. Dhull as D.W. -1 to reiterate the case on behalf of the defendant-respondent and controvert the case of the plaintiff-appellant.

5. After appreciation of the evidence and arguments advanced before the trial Court, the suit of the plaintiff-appellant was dismissed vide judgment and decree dated 2.12.2011.

6. Aggrieved from the aforesaid judgment and decree of the trial Court, the plaintiff preferred an appeal before the first Appellate Court which was also dismissed vide judgment and decree dated 30.5.2012. While dismissing the appeal, the lower Appellate Court found that the checking report (Ex. P1) had been prepared with a specific endorsement that the consumer had refused to sign on the same and PW-2 Bhagat Singh, who was a neighbour of the appellant, had admitted categorically that electricity employees had come to the spot on 5.6.2008, which falsifies the claim of the appellant and in fact, the appellant has failed to rebut the checking report by leading cogent evidence, thus, simply because no theft case was registered against the appellant, it cannot be presumed that no theft of electricity was committed.

7. Still not satisfied, the plaintiff has filed the instant appeal submitting that following substantial questions of law arise in this appeal for consideration of this Court:--

"i. Whether the respondent is duty bound to issue an advance notice before preparing a checking report?

ii. Whether respondent is duty bound to join a family member at the time of raid?

iii. Whether appellant should be given an opportunity of being heard under section 126(3) of the Electricity Act, 2003?"

8. Counsel for the appellant has vehemently argued that the findings of the Courts below are erroneous, as the checking report was false and the respondents have issued the demand notice without hearing the appellant and

therefore, looking from any angle, the impugned judgments and decrees of the Courts below are liable to be set aside.

9. The argument, as raised, is liable to be rejected outrightly. The checking report by the raiding staff, Ex. P1, has been produced and proved on record of the case. A perusal of the same would show that the appellant has refused to sign the same and the same has been signed by the representative of the appellant. The said report has been duly tendered by SDO on record of the case, who prepared the same and was a member of the raiding team. The aforesaid report clearly shows that the appellant was found stealing electricity with the help of artificial means and the electricity was being used directly without any meter and thus, it was a case of theft of electricity. The appellant was issued a notice (Ex. P2) under Section 135 of the Electricity Act, which deals with the theft of electricity. Thus, the appellant cannot claim a notice for provisional assessment and opportunity of hearing, as assessment was not made under Section 126 of the Electricity Act. Recently, Hon''ble the Apex Court in the case of Western Electricity Supply Co. of Orissa Ltd. and Others Vs. Baba Baijanath Roller and Flour Mill P. Ltd., has held that the procedure as adopted in a case of defective meter cannot be applied in a case of theft. In view of the aforesaid, this Court finds no merit in this case.

Thus, no substantial question of law arises in this appeal.

Dismissed.

