Randhir Vs Dakshin Haryana Bijli Vitran Nigam Ltd. and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 18, 2013

Acts Referred: Constitution of India, 1950 â€" Article 227
Electricity Act, 2003 â€" Section 126, 135, 145

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Advocate: B.K. Bagri, for the Appellant;

Final Decision: Dismissed

Judgement

L.N. Mittal, J.
Plaintiff Randhir has approached this Court by way of instant revision petition filed under Article 227 of the Constitution of

India impugning order dated 14.08.2013 (Annexure P-9) passed by the trial court, thereby holding that Civil Court has no jurisdiction to try the

suit and consequently, ordering return of plaint (Annexure P-7) instituted by the plaintiff-petitioner for want of jurisdiction. Plaintiff in the suit has

challenged Notice (Annexure P-6) issued by defendants no. 1 to 5 (Electricity Supplier), thereby imposing penalty of Rs. 11,35,473/- on the

petitioner for alleged theft of electricity.

2. Plaintiff"s case is that he had let out vacant part of his land to defendant no. 6 -Tata Tele Services Ltd., and said defendant no. 6 obtained

separate electricity connection for its mobile telephone tower. However, defendants no. 1 to 5, on detecting alleged theft of electricity, have

imposed the penalty on the plaintiff instead of imposing the penalty on defendant no. 6. The plaintiff has challenged the said penalty Notice

(Annexure P-6) in the suit.

3. Learned trial court, vide impugned order (Annexure P-9), has held that jurisdiction of the Civil Court to try the suit is barred by Section 145 of

the Indian Electricity Act, 2003 (in short-the Act) and has consequently ordered return of plaint to the plaintiff, who has, therefore, filed this

revision petition to assail the said order.

4. I have heard counsel for the petitioner and perused the case file.

5. Counsel for the petitioner vehemently contended that Notice (Annexure P-6) has been issued u/s 135 of the Act, and therefore, jurisdiction of

Civil Court to try the suit is not barred u/s 145 of the Act. It was also argued that according to the lease agreement (Annexure P-1), defendant no.

6 -tenant had to obtain separate electricity connection and had actually obtained separate electricity connection, and therefore, if alleged theft of

electricity was being committed by defendant no. 6, plaintiff is not liable to pay penalty for the same.

6. I have carefully considered the aforesaid contentions, which can not be accepted.

7. Perusal of Notice (Annexure P-6) reveals that the defendants, by this Notice, informed the plaintiff about assessment of penalty amount payable

by the plaintiff for theft of electricity, as per Section 126 of the Act and also informed the plaintiff that a written complaint for offence of theft of

electricity (punishable u/s 135 of the Act) has been filed. Thus, it cannot be said that Notice (Annexure P-6) relates to Section 135 of the Act only.

On the contrary, the Notice specifically informed the plaintiff about imposition of penalty of Rs. 11,35,473/- for alleged theft of electricity (under

Section 126 of the Act). However, jurisdiction of Civil Court to try the suit to challenge penalty amount assessed u/s 126 of the Act is barred by

Section 145 of the Act. Finding of the trial court to this effect is, therefore, perfectly justified and does not suffer from any perversity, illegality or

jurisdictional error.

8. Contention that defendant no. 6 -tenant had obtained separate electricity connection, and therefore, defendant no. 6 is liable to pay the penalty

amount for alleged theft of electricity, also cannot be entertained because it has been observed in impugned order Annexure P-9 that at the relevant

time, there was no electricity connection for the alleged rented premises, as conceded by counsel for the plaintiff during arguments on stay

application. The alleged theft of electricity by taking direct supply was being committed in the premises of the plaintiff, and therefore, it cannot be

said that jurisdiction of Civil Court to try the suit is not barred by Section 145 of the Act.

9. In addition to the aforesaid, by document Annexure P-1, the demised property was in fact not let out to defendant no. 6. On the contrary,

defendant no. 6 was inducted only as licensee under the plaintiff. Consequently, the plaintiff continued to be in control and possession of the

premises in question, where the alleged theft of electricity was allegedly being committed. For this added reason also, the aforesaid contention

raised by counsel for the plaintiff-petitioner cannot be accepted. Resultantly, I find no merit in this revision petition, which is accordingly dismissed

in limine.