

(2014) 03 P&H CK 0269

High Court Of Punjab And Haryana At Chandigarh

Case No: RSA No. 1343 of 2014 (OandM)

Charanjit Kumar

APPELLANT

Vs

Punjab State Power Corporation
Ltd.

RESPONDENT

Date of Decision: March 10, 2014

Acts Referred:

- Electricity Act, 2003 - Section 126, 127

Citation: (2014) 176 PLR 655

Hon'ble Judges: Paramjit Singh Patwalia, J

Bench: Single Bench

Advocate: V.S. Rana, Advocate for the Appellant

Judgement

Paramjit Singh Patwalia, J.

This regular second appeal is directed against the judgment and decree dated 02.04.2012 passed by learned Civil Judge (Jr. Divn.), Ludhiana whereby suit for declaration, permanent injunction and mandatory injunction filed by appellant-plaintiff has been dismissed and against the judgment and decree dated 09.01.2014 passed by learned Additional District Judge, Ludhiana whereby appeal preferred by the appellant-plaintiff has also been dismissed. For convenience sake, reference to parties is being made as per their status in the suit.

2. The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. However, the brief facts, as pleaded in plaint are to the effect that plaintiff is consumer of electric connection No. SR-71/407 SP and defendants are supplier of electricity against consideration. The plaintiff is making payment of each and every consumption bill and nothing is due against him. It was further pleaded that during the period of 11.08.2008 to 23.08.2008, plaintiff was out of station. All of sudden, the defendants had raised demand of Rs. 2,91,948/- on the basis of concocted charges of theft of electricity vide memo No.

3517 of 19.08.2008 which was replied but the defendants had disconnected the connection on 01.09.2008. The demand is liable to be quashed and disconnection of electricity be declared as illegal, as plaintiff has been deprived of all rights provided under the law. Alleged action has been taken in the absence of plaintiff. On 24.08.2008, when the plaintiff reached his work place, he had been given provisional assessment along with copy of checking register dated 13.08.2008, ME Lab meter investigation report dated 22.08.2008 by Darshan Kumar, owner of adjoining factory. No intimation was given to plaintiff and action was taken in his absence in hurry. It was further pleaded that the plaintiff had not tampered with the seals affixed on the meter nor made any theft of electricity. The consumption data of the plaintiff clearly clarifies that there was no theft of electricity and seals affixed at the time of installation of meter were existing and the plaintiff had done nothing with the seals. The plaintiff had never been found committing theft of electricity and charges have been levelled on the basis of assumption. The defendant had calculated the recoverable amount on wrong footing and against the provisions of prevailing instructions. No notification regarding application of Electricity Act and rules framed thereunder has been issued but the defendants had raised the demand under Section 126 of the Electricity Act, 2003. It was further pleaded that disconnection of the electric connection of plaintiff without providing opportunity of being heard is illegal, mala fide, against the provisions of law, principles of natural justice, null and void and amount so charged on account of concocted allegations of theft of electricity is liable to be quashed. Hence, suit was filed.

3. Defendants resisted the suit and filed written statement taking various preliminary objections. It was submitted that electricity connection of plaintiff was checked by the officials of PSEB on 13.08.2008 in the presence of Darshan Kumar, who represented himself as present owner/consumer of the electricity connection. The checking officials found that meter was tampered with and it was removed in the presence of Darshan Kumar. It was got packed. Darshan Kumar had signed the report dated 13.08.2008 after admitting the same as correct. Thereafter, notice for unauthorized use of electricity under Section 126 of the Electricity Act was served upon the plaintiff on 23.08.2008 and in the provisional order of assessment, consumer was requested to deposit Rs. 2,91,948/- within seven days and was given liberty to submit objection, if any, within seven days on receipt of notice dated 19.08.2008. It was further pleaded that in fact amount of Rs. 4,68,619/- was recoverable from plaintiff, but due to inadvertence and wrong calculation the amount was charged as Rs. 2,91,948/- and on coming to know about this fact, fresh notice dated 11.09.2008 for Rs. 4,68,619/- was served upon the plaintiff, but the plaintiff had failed to deposit the amount within the PSEB. On checking, ME seals affixed on the meter body was found fake and the welding of the meter was also found to be tampered with and a paper seal affixed on the box on the counter of the meter was also found to be tampered/torn. The officials of PSEB had declared it a case of theft of electricity. No cause of action had arisen to the plaintiff to file the

suit. Other averments in plaint were denied.

4. Replication was filed reiterating the averments made in plaint and controverting the averments made in written statement. On the basis of pleadings of parties, the Court of first instance framed following issues:

"1. Whether the demand raised by the defendants against the connection in dispute is null, void, illegal and liable to be quashed? OPP

2. Whether the plaintiff is entitled for the relief of declaration as prayed for? OPP

3. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP

4. Whether the plaintiff is entitled for mandatory injunction as prayed for? OPP

5. Whether the suit of the plaintiff is not maintainable in the present form? OPD

6. Whether the plaintiff has got no cause of action and locus standi to file the present suit? OPD

7. Whether jurisdiction of this Court is barred to entertain and try the present suit? OPD

8. Whether the plaintiff is estopped by his act and conduct from filing the present suit? OPD

9. Relief."

5. After appreciating the evidence, the Court of first instance dismissed the suit. Feeling aggrieved, the plaintiff preferred an appeal which has been dismissed by the lower Appellate Court. Hence, this regular second appeal.

6. I have heard learned counsel for the appellant and perused the record.

7. Learned counsel for the appellant has referred to following substantial questions of law suggested in the grounds of appeal for consideration by this Court:

"(i) Whether on the account of paper seals being broken, demand can be raised on the ground of theft against the appellant?

(ii) Whether before imposing penalty show cause notice or opportunity of hearing is must or not?

(iii) Whether demand can be raised even before checking in ME Lab and in the absence of finding in ME Lab?

(iv) Whether the courts below are bound to consider Ex. P-3, the objections filed by the plaintiff appellant?

(v) Whether in the absence of final order passed by the respondents, appeal can be filed under the Act or not?

(vi) Whether demand can be raised in piece meal manner as in the present case the demand has been raised twice?

(vii) Whether the provisions of the Act are mandatory for its compliance or not?"

8. Learned counsel for the appellant has contended that both the courts below have misread the evidence and findings of both the courts below are based on surmises and conjectures. Learned counsel has further contended that theft has not been proved nor any final order was passed under Section 126 of the Electricity Act. Learned counsel has further contended that the defendants are not empowered to raise demand twice as per the Electricity Act. The defendants had also failed to give details as to how amount was calculated and under which provision the liability was fastened upon the plaintiff. Learned counsel has further contended that demand, as raised by the defendants, is against the provisions of the Electricity Act.

9. I have considered the contentions of learned counsel for the appellant.

10. Both the courts below have recorded the concurrent finding that electric meter of the plaintiff was checked in the presence of Darshan Kumar, who represented himself as owner of the premises and electric connection. It has also been proved that said Darshan Kumar was also present in M.E. Lab, when meter was checked. At the time of checking, seals of the meter were found to be fake and body of meter was found to be tampered with. It has also rightly held that on the basis of checking report Ex. D-4, demand raised by the defendants vide memo No. 3787 dated 11.09.2008 (Ex. D-7) for Rs. 4,68,619/- is as per rules. It has also been rightly held that checking report and ME Lab report have been duly signed by Darshan Kumar on behalf of the appellant and it cannot be claimed by the plaintiff that the reports were prepared in his absence. It has also been rightly held that vide checking report (Ex. D- 4), seals affixed on the meter body were found to be fake and welding of the meter was also found to be tampered with and a paper seal affixed on the counter of the meter was also found to be tampered with and officials of the defendants had declared it a case of theft of electricity. It has also been rightly held that when meter found to be tampered with, consumer is not entitled for hearing before disconnection. It has also been rightly held that the provisional order dated 19.08.2008 was served to the plaintiff which was received by him on 23.08.2008 and he was required to deposit an amount of Rs. 2,91,948/- within seven days of the service of the notice and he was also given liberty to submit objections, if any, within said period which was later on rectified vide revised notice/memo No. 3787 dated 11.09.2008 that amount of Rs. 4,68,619/- was recoverable from the plaintiff instead of Rs. 2,91,948/-, but the plaintiff had failed to deposit the same and rather filed the suit before passing the final order. The appellant had a remedy to file an appeal under Section 127 of the Electricity Act before the appellate authority, but he had failed to do so.

11. In fact the jurisdiction of the Civil Court is barred when assessment is made under Section 126 of the Electricity Act. Reference may be made to the judgment of the Honb"le Supreme Court in UP Power Corporation Ltd. And others v. Anis Ahmad 2013 (3) RCR (C) 946 and judgment of this Court in M/s. Ujjal Rice Shelter v. Punjab State Power Corporation Ltd. & Others, 2011 (2) Law Herald (P&H) 965. Learned counsel for the appellant could not show that the said findings are perverse or illegal or based on misreading, non-reading or misappreciation of the material evidence on record. Consequently, concurrent findings of fact recorded by both the courts below do not warrant interference in regular second appeal. No question of law, muchless substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed in limine.