

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.M. Nos. 8141-42-C of 2006 and
R.S.A. No. 3321 of 2006

Date of Decision: 31.8.2006

Haryana State Electricity Board (now known as Dakshin Haryana Bijli Vitran
Nigam Limited) through its Secretary

...Appellant.

Versus

Sunil Kumar

...Respondent.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.

PRESENT: Mr. Bijender Dhankhar, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

C.M.Nos.8141-42-C of 2006

For the reasons mentioned in the applications which are supported by affidavits, the delay of 60 days in refiling and 4 days in filing the appeal is condoned.

Applications stand disposed of.

RSA No. 3321 of 2006

This regular second appeal filed by the defendants arises from a suit for permanent injunction restraining the defendants from recovering the amount in question on the basis of the letter dated 10.3.1997 and from disconnecting the power connection of the plaintiff in respect of meter account No. UMSP 161 installed in the premises of the plaintiff.

The facts of the case as pleaded in the plaint are that the plaintiff is a consumer of electricity connection having account No. UMSP

161 and in 1997, defendant No.2 along with other employees came to the plaintiff and informed that as per the latest policy of the Board, old meters were to be replaced by new meters for which the consumers had to pay Rs.500/- per KW. It was pleaded that agreeing with the said proposal, the plaintiff deposited a sum of Rs.10,000/- vide receipt dated 20.2.1997 and the plaintiff was told that the said amount shall remain as advance security deposit and was refundable at the time of permanent disconnection and the old meter was accordingly changed with new one. It was further pleaded that vide memo dated 10.3.1997, defendant No.2 raised a demand of Rs.93,507/- from the plaintiff on the allegation that the seals of the old meter when checked in the laboratory were found to be fake. It was further pleaded that no opportunity of hearing was afforded to the plaintiff before raising the demand.

Upon notice, the defendants filed written statement by raising various preliminary objections. It was pleaded that finding the consumption of the plaintiff quite low when compared with the sanctioned load, it was decided to replace the old meter. It was further pleaded that the plaintiff was asked to deposit a sum of Rs.500/- per KW provisionally to be adjusted against security and meter cost. On sending the meter in laboratory, it was found that the plaintiff had tampered with meter body and seals. It was further pleaded that the demand notice was issued as per rules and regulations.

On the pleadings of the parties, the following issues were framed by the trial court:-

- “1. Whether the order dated 10.3.1997 for recovery of Rs.93,507/- is illegal, wrong, arbitrary not binding on the rights of the plaintiff and is liable to be set aside, as alleged? OPP

2. If issue No.1 is proved whether the plaintiff is entitled to the relief of injunction as prayed for? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiff is estopped from filing the suit due to its own act and conduct, as alleged? OPD
5. Whether the plaintiff has no cause of action and no locus standi to file the present suit? OPD
6. Whether the plaintiff has suppressed the material fact from the court as alleged if so its effect? OPD
7. Whether the plaintiff has not exhausted the departmental remedies as alleged? OPD
8. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD
9. Relief.

The trial court took issues No.1 and 2 together and after appreciating the evidence led by the parties came to the conclusion that the demand raised by the defendants was illegal being arbitrary and, therefore, the defendants cannot recover the said amount from the plaintiff. The trial court in para 12 of its judgment noticed as under:-

“12. Ex.PW1/3 is the report prepared by SDO Operation City Ballabgarh. He compared the consumption data of six months prior to the replacement of meter with the date of six months after replacement of meter and concluded that the consumer was not indulging in theft or malpractice. He further reported that consumption pattern of the consumer after replacement of old meter was almost the same. Therefore, the demand raised on

connected load basis did not appear to be correct. Therefore, it is evident that even the authorities of the defendants were pretty sure that it was not a case of malpractice or theft. During the period of six months preceding removal of old meter the plaintiff had consumed 3723 units while during that much period after replacement of meter, he consumed 4267 units. The difference is not as much as to infer malpractice or theft. This further supports the case of the plaintiffs that had he been given opportunity of hearing before the demand was raised, he could have convinced the authorities that he had not indulged in malpractice.”

Accordingly, the suit of the plaintiff was decreed and the defendants were restrained from disconnecting the connection of the plaintiff in order to effect the recovery of the impugned amount vide judgment and decree dated 24.9.2002. On appeal, the lower appellate court affirmed the findings recorded by the trial court and dismissed the appeal vide judgment and decree dated 23.1.2006.

Learned counsel for the appellant could not show that the concurrent findings recorded by the courts below suffer from any misreading or misappreciation of evidence. No illegality or infirmity could be found in the judgments and decrees passed by the courts below warranting interference by this court in the regular second appeal. No question of law, much less a substantial question of law arises in this appeal.

In view of the above, finding no merit in this appeal, the same is hereby dismissed.

August 31, 2006
gbs

(AJAY KUMAR MITTAL)
JUDGE

