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Dakshin Haryana Bijli Vitran Nigam v. Sudesh Rani, (Punjab And Haryana) : **Law Finder Doc Id # 781583**

2016(2) Law Herald 1607

PUNJAB AND HARYANA HIGH COURT

Before:- Mr. Augustine George Masih, J.

C.M. Nos. 11162-63-C of 2015 & RSA No. 4610 of 2015 (O&M). D/d. 29.2.2016.

Dakshin Haryana Bijli Vitran Nigam - Appellant

Versus

Sudesh Rani - Respondent

For the Appellant :- Mr. P.K. Longia, Advocate.

Electricity Act, 2003 Section 135 Theft of electricity - Permanent injunction restraining defendant from recovering amount and to restore disconnection of electricity supply decreed in favour of respondent by Civil Judge - Appeal against decreed order dismissed by Additional District Judge - Instant Regular Second Appeal - Admittedly, no notice proved to be served upon respondent as to date on which meter was being checked in said laboratory - In absence of there being any proof that respondent had opportunity to present herself in lab at time of testing of meter, principles of natural justice are rightly held to be violated - Even in Rules, as have been framed in Circular issued by appellant, mandate is intimation with regard to checking of meter and meter equipments for testing in M and T Lab - As opportunity of hearing, provided for in Rules itself not proved by appellant to be given, then principles of natural justice have been violated - Report, which has been taken at back of respondent cannot be made basis for asserting that there was theft of electricity - Therefore, findings recorded by Courts below cannot be faulted with and Civil Court did have jurisdiction to entertain suit - Hence, regular second appeal dismissed.

[Para [5](#)]

Cases Referred :-

[Harbajan Singh v. State of Punjab, 2002 \(4\) RCR \(Civil\) 133.](#)

[Kamaljeet Singh v. The Bihar State Electricity Board, 2011 \(1\) RCR \(Civil\) 745.](#)

Punjab State Electricity Board v. Firm New Era Printing Mills Batala Road Amritsar, 2009 (3) LJR 618.

JUDGMENT

Augustine George Masih, J. (Oral) - C.M. 11162-C of 2015

Prayer in this application is for condonation of delay of 60 days in filing the appeal.

For the reasons mentioned in the application, which is duly supported by the affidavit of S.D.O. (Op.) Sub Division, DHBVNL, Uklana District Hisar, the same is allowed. Delay of 60 days in filing the appeal stands condoned.

RSA No. 4610 of 2015

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division) Hisar dated 22.05.2014, whereby the suit for declaration to the effect that the checking report No. 24/1823 dated 06.12.2012 prepared by the staff of the appellant-defendant and the subsequent Memo Nos. 336 and 337 both dated 24.01.2013 issued by the appellant relating to the account for deposit of Rs. 86,312/- on account of theft of

electricity and Rs. 28,000/- as compounding fee respectively are illegal, without show cause notice and without affording an opportunity of hearing and against the mandatory provisions of Electricity Act, 2003 with a permanent injunction restraining the defendant from recovering the impugned amount with a further mandatory injunction directing the appellant-defendant to restore the electricity supply of the respondent-plaintiff, stands decreed, appeal against which preferred by the appellant-defendant dismissed by the Additional District Judge, Hisar on 10.04.2015.

2. It is the contention of the learned counsel for the appellant that the Courts below have not appreciated the fact that the suit was not maintainable as it was a case of theft and the jurisdiction of the Civil Court is barred under Section 135 of the Electricity Act, 2003. That apart, he contends that at the time of checking of the meter in the premises of the respondent-plaintiff, the seal of the meter was found tampered with and, therefore, it was a clear case of theft, which report was prepared in the presence of the son of the respondent-plaintiff who had duly signed the said report. He asserts that the finding, as recorded by the Courts below that the notice has not been given to the respondent-plaintiff which has resulted in violation of the principles of natural justice, thus, cannot sustain. He prays for setting aside the impugned judgments and dismissing the suit of the respondent-plaintiff.

3. I have considered the submissions made by the learned counsel for the appellant and with his assistance, have gone through the impugned judgments.

4. The bar, as contained in Section 135 of the Electricity Act, 2003, as per the assertion of the counsel for the appellant, would be to a case where there is a theft of electricity. The report L1 only mentions that there is tampering of the seal of the meter, which cannot constitute a theft in the light of the judgment of this Court in **Harbhajan Singh and others v. State of Punjab and another, 2002 (4) RCR (Civil) 133** as also the judgment in **Kamaljeet Singh v. The Bihar State Electricity Board, 2011 (1) RCR (Civil) 745**, where it has been held that merely because seals were found tampered, there is no legal or factual presumption of meter tampering and power theft. In the **Punjab State Electricity Board and another v. Firm New Era Printing Mills, Batala Road Amritsar, 2009 (3) LJR 618**, it has been observed by this Court that "to prove the theft of electricity, the basic requirement is that the meter must have been checked from concerned laboratory."

5. In the light of the above principles, the real report, which would determine whether there was a theft of electricity or not, would be the report of the M & T Laboratory. Admittedly, no notice is proved to have been served upon the respondent-plaintiff as to the date on which the meter was being checked in the said laboratory. In the absence of there being any proof that the respondent had an opportunity to present herself in the lab at the time of testing of the meter, the principles of natural justice are rightly held to have been violated. Even in the Rules, as have been framed in the Circular issued by the appellant, the mandate is intimation with regard to the checking of the meter and the meter equipments for testing in M & T Lab. As the opportunity of hearing, as has been provided for in the Rules itself, is not proved by the appellant-defendant to have been given, then the principles of natural justice have been violated. The said report, which has been taken at the back of the respondent-plaintiff, cannot be made the basis for asserting that there was theft of electricity. The findings, thus, recorded by the Courts below cannot be faulted with. The Civil Court did have jurisdiction to entertain the present suit. The findings of the Courts below are based upon proper appreciation of the pleadings and the evidence brought on record.

6. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below.

7. No other point has been raised or argued by the counsel for the appellant-plaintiff.

8. There is no substantial question of law in the present appeal, which requires consideration of this Court.

9. In view of the above, finding no merit in the appeal, the same stands dismissed.

C.M. 11163-C of 2015

In view of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

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