IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 188 OF 2011
[Arising out of SLP(C) No.8210/2010]

DR.S.C. JINDAL … APPELLANT

VERSUS

UHBVNL THRO.EXECUTIVE ENGINEER & ANR. … RESPONDENTS

O R D E R

The respondents, though served, has remained unrepresented. Leave granted. Heard learned counsel for the appellant.

2. The appellant runs a hospital at Kaithal and is a consumer of electricity. His premises was inspected by the SDOs attached to the office of Assistant Director (Vigilance) of UHBVNL on 4.7.2002. The checking report dated 4.7.2002 issued in regard to the said inspection recorded that all the M&T seals were found tampered, that is, lace wire was cut and reinserted into seal hole and pressed. The meter was removed, packed in a cardboard box, sealed and delivered to Bhawani Prasad-AFM. In pursuance of it, a penalty/backbilling notice dated 5.7.2002 was issued claiming Rs.2,72,677/- as penalty being the electricity charges assessed for the period of preceding six months. The appellant was required to deposit the

entire amount to avoid disconnection/to secure restoration of supply. The appellant therefore deposited the said amount, under protest on 6.7.2002 and filed an appeal before the Superintending Engineer against the demand notice. No action was taken on the said appeal.

3. In this background, the appellant filed a suit on 19.9.2002 seeking a declaration that the demand notice dated 5.7.2002 was null and void and for refund of the sum of Rs.2,72,677/- deposited by him. The suit was contested by the respondents. The appellant had examined himself as PW.2 and had examined a clerk of UHBVNL (first defendant) as PW.1 and marked Ex.P.1 to P.25. The respondents examined the two inspecting officers as DW.1 and DW.2 and relied upon the checking report (Ex.D.1) and the demand notice (Ex.D.2). The suit was dismissed by judgment and decree dated 17.7.2006. The appeal filed by the appellant was allowed by the Additional District Judge, Kaithal by judgment and decree dated 11.4.2007. After considering the evidence in detail, the first appellate Court recorded the following findings of fact:

(a) That the appellant's premises and installation was checked by the officers of defendants on 19.2.2002 and all the M&T seals were found to be in tact and the meter was also found to be in working condition. Therefore the assumption that there

was theft of electricity for six months preceding the date of inspection (4.7.2002) was not correct.

(b) There was nothing to show that subsequent to 19.2.2002, the appellant had tampered with the meter or committed any theft of electrical energy.

(c) On 4.7.2002, there was an inspection and M&T seals were found to have been tampered. The meter was dismantled and removed, but was not tested in any laboratory to show its functioning was tempered.

(d) DW.1 admitted that he was not in a position to say whether the meter was slow when it was checked on 4.7.2002. The finding that M&T seals were tampered was not proof of tampering of functioning of the meter. There was no averment or proof that the functioning of the meter was tampered. The earlier checking on 19.2.2002 was carried out on a complaint dated 18.2.2002 by appellant, about the wrong recording of consumption by the Meter Reader resulting in Rs.6616/- being found to be refundable. As a consequence, the Meter Reader was transferred. The Meter Reader developed a grudge against the appellant and the employees of the respondents were inimical towards the appellant; and that in order to settle scores, the M&T seals were tampered and thereafter the matter reported to the Vigilance so that there can be inspection and harassment to

the appellant. The entire episode was intended to teach a lesson to appellant, because he dared to give a complaint against Meter Reader.

(e) Both the defence witnesses admitted that before issuing the demand notice, the consumption for the previous months was not checked and there was no calculation sheet showing how Rs.2,72,677/- was arrived at.

On these and other findings, the appellate Court held that the demand for Rs.2,72,677/- was not legal or justified and set aside the imposition.

4. Feeling aggrieved, the respondent filed a second appeal and a learned single Judge of the High Court, by the impugned judgment dated 4.11.2009, reversed the decision of the first appellate Court and restored the dismissal of the suit by the trial Court. The said judgment is challenged in this appeal by special leave.

5. The High Court noticed in its judgment, that the decision of the first appellate court was based on findings of fact recorded in favour of the appellant and that the case did not involve any question of law. The High Court also noticed that in a second appeal, findings of fact are not to be interfered, unless the findings of fact by the first appellate

court were perverse or were recorded in the absence of any evidence. The High Court was of the view that there was no material to show that DW.1 Manoj Kumar Garg and DW.2 Rajpal had made any false statements about the checking of the electrical connection on 4.7.2002 and about the tampering of M&T seals; and as they were responsible officers, their evidence ought not to have been disbelieved by the first appellate Court.

6. But High Court failed to notice that the evidence of DW.1 and DW.2 about the inspection on 4.7.2002 and finding of tampering of M&T seals were not denied or disputed by the appellant nor disbelieved by the first appellate court. The first appellate on consideration of evidence had concluded that appellant had not tampered with the M&T seals or the meter, that someone else in the defendants' department, to teach a lesson to appellant, as he dared to complain against the Meter Reader, had deliberately tampered with only the M&T seals and then given a complaint to the Vigilance so that the tampering could inspect the installation and attribute the tampering to the appellant. The first appellate court, which is the final court of fact had analysed the evidence in detail and thereafter recorded the aforesaid findings of fact on the basis of which it decreed the suit. It is therefore not a case where the first appellate Court had ignored any evidence or misconstrued any document or acted perversely. It had only held that the tampering was not done by the appellant, but in all

probability done by the meter reader or someone from the defendants' department to settle scores with the appellant.

7. We are of the view that having regard to the evidence and findings of fact recorded by the appellate court, there was no justification for the High Court to interfere with the findings of fact recorded by the first appellate Court, in exercise of jurisdiction under Section 100 of Code of Civil Procedure. We, accordingly, allow this appeal, set aside the order of the High Court and restore the judgment and decree of the first appellate Court decreeing the Suit.

.....J.
(R.V. RAVEENDRAN)

New Delhi; **.....J.**
January 07, 2011. **(A.K. PATNAIK)**