

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No. 1223 of 2001

Date	Order with signature of Judge
Plaintiff	: Messrs Shekhani Industries Through Mr. Shahenshah Hussain, advocate.
Defendant No.1	: Karachi Electric Company (K-Electric)
Defendant No.2	: Chief Controller of Billing Industrial & Maintenance Through Mr. Muhammad Abdullah, advocate.
Date of hearing	: 27.02.2018
Decided on	: 12.03.2018

JUDGEMENT

Nazar Akbar.J,- Brief facts of the case are that the plaintiff, a registered partnership firm situated in S.I.T.E, is engaged in the business of textile processing. The plaintiff was regularly paying electric charges based on reading of meter No.BH-655 and Account No.77241663 and there has never been any complaint regarding working of meter installed at the premises of the plaintiff. In March 1999, KESC inspection team under the supervision of Major Abid visited the premises of the plaintiff. After checking the sub-station and the meter, the inspection team gave a clear inspection report and the team did not make any adverse observation regarding the working of the meter. Subsequently the defendants decided to change old electric meter by an electronic meter throughout Karachi. This change was not due to any fault in the meters already in operation. On **23.11.1999** old meter at the premises of plaintiff was replaced by an electronic meter. The defendants started billing the plaintiff according to the new meter and the plaintiff has been paying the electric charges as per new meter. The plaintiff was served with a notice dated **15.12.1999** from the defendant alleging that the old meter of the plaintiff was found working slow by 33% and was called

upon to explain the reason. The plaintiff responded the said notice on **20.12.1999**. Later on the defendant demanded from the plaintiff gas bill, plaintiff complied with this demand and sent the required information by letter dated **20.1.2000**. The issue of slowness of old meter was settled in the correspondence as no further communication on the subject was made by the defendants. However, after one year the plaintiff was again served with a notice dated **17.1.2001** which was similar to the one dated **15.12.999** and it was also duly replied by the plaintiff. The same allegation of slowness of old meter was repeated. The plaintiff thereafter received a supplementary bill dated **6.7.2001** from the defendants demanding a sum of **Rs.61,73,420.00** as arrears of electric charges from January 1998 to November, 1999. On **3.12.1999**, a meeting was held with the then Minister for State for Water & Power, Government of Pakistan. The meeting was attended by the then Managing Director of Defendant No.1 and other relevant persons and it was decided that faulty meter would be tested in presence of representatives of associations. It was also decided that in the event of meter being slow, the consumer will be charged equal to 3-6 months bills, therefore the plaintiff filed the instant suit.

2. Defendants filed written statements and raised preliminary objection, that the plaintiff has no cause of action against the defendants and relief for declaration claimed by the plaintiff is not of legal character within the meaning of Section 42 of the Specific Relief Act, 1877 similarly, the relief for injunction claimed by the plaintiff is barred under section 56 of the Specific Relief Act, 1877 and the controversy raised in the above suit falls within the jurisdiction of Electric Inspector under the Electricity Act, 1910 and lastly suit has not been signed, verified and filed by a person duly authorized under law. It is averred in the written statement that the team of defendants Engineer headed by Army Officers carried out the survey of the said factory in March, 1999 and

during the survey unauthorized extension of load was noticed over 100 KW Load and extra load was regularized in August 1999, the MDI and consumption trend was already on higher side prior to regularization of load. However, due to induced fault in the meter, the MDI as well as consumption could not be reflected in consumption record and the meter was faulty and was slow by 33%. It was averred that defendants were not duly informed by the plaintiff regarding installation of another new machine in June 2000. It was noted that the meter was not recording consumption properly and slowness was induced since long and in order to compensate the loss suffered by the defendants the supplementary bill was issued for 33% slowness, w.e.f January 1998 to November 1999 for Rs.61.73,419,67. It is submitted by the defendants that slowness of 33% was determined when the meter was checked through sophisticated electronic equipment.

3. On **30.8.2004** out of the pleadings of the parties followings issues were framed by the Court.

- i. Whether the Meter installed at the factory premises of the plaintiff was working slow?
- ii. Whether the supplementary bill dated 6.7.2001 issued by the defendant was legal and valid?
- iii. What should the decree be?

3. One Managing Partner of Plaintiff namely Muhammad Altaf examined himself as Ex.PW-1 and also produced relevant documents Ex.P-2 to Ex.P-20. The defendants' Deputy Chief Controller Billing filed affidavit-in-evidence and produced the same as Ex.D/1, and produced Authority letter of KESC and Photocopies of notice dated 17.1.2001 to the plaintiff D-3 and his reply dated 18.01.2001 as Ex.D-2 to Ex.D-4.

4. My findings on the issues with reasons are as follows:-

Issues No.1 & 2

5. Both the issues are interconnected. Learned counsel for the plaintiff has contended that there has never been any complaint of slow working of meter installed at the premises of the plaintiff. The impugned bill Ex.P/14 dated **06.7.2001** whereby an amount of **Rs.61,73,420/-** has been claimed for the period from January, 1998 to November, 1999 after change of the meter was unjustified as there has been no defect in working of meter. The learned counsel has referred to the inspection of the premises of the plaintiff by the defendants in March, 1998 whereafter a report (Ex.P/16) has been prepared by the department confirms that there was no complain of slow working of the meter installed in the premises of the plaintiff. Learned counsel for the plaintiff has referred to the following evidence of the defendant from his cross-examination.

“it is correct that the meter is within the control and lock & key of KESC. It is correct that in March 1999 the premises of the plaintiff was inspected by KESC team for the purpose of checking the connected load and the inspection report was prepared. I see Ex.P/16 which is inspection report regarding load and say that is correct voluntarily states that the meter was not checked at that time.”

Learned counsel has further contended that in case of any fault in the meter the defendants were supposed to issue notice prior to removal of the faulty meter from the premises. In the case of the plaintiff the defendants never issued any notice to the plaintiff. He further pointed out that after inspection in March, 1999 it was sometime in November, 1999 when the defendants themselves have decided to change HT meter with TOD meter in SITE area and following the scheme of change of old meter the defendant also changed meter at the plaintiff's premises and it was not changed on account of fault in the meter. He has again referred to the following cross-examination of defendant:-

“it is correct that prior to removal of defected meter notice is given to consumer but notice given to the plaintiff is not available in file today. It is incorrect to say that prior to removal of the meter no notice was

given to the plaintiff. It is correct that in my affidavit-in-evidence it is not stated that prior to removal of faulty meter any notice was given to the plaintiff.

Therefore, learned counsel for the plaintiff has contended that since there was no faulty meter and there is no proof of any slow working of meter at the premises of the plaintiff, the amount of supplement bill (Ex.P/14) prepared by hand was harassment and an illegal demand.

6. In rebuttal learned counsel for the defendant halfheartedly contended that the plaintiff was required to approach the Electric Inspector for the has any grievance against the defendant and the suit was not maintainable. He further contented that after replacement of old meter of the plaintiff with new machine on inspection the old meter was found faulty, therefore, defendant was within their right to send supplementary bill to recover electricity consumed by the plaintiff not reflected in the meter. Learned counsel for the defendant, in fact, has no evidence to justify unilateral decision of defendant to bill the plaintiff on the ground of slow working of previous meter.

7. The inspection of meter, if any, was without notice to the plaintiff and even report of concerned engineer / mechanic who examined and found the meter defective has not been placed on record. Even at the time of replacement of the meter of the plaintiff the defendant had not informed the plaintiff that they are changing the meter with intention to check whether it is perfectly functioning or there is any defect in the meter. The defendant has also not been able to find any defect in March, 1998 official of the defendants inspected the premises of the plaintiff for checking the load. It is also clear that the change of meter was not on account of any fault in the previous meter. There is no denial that it was policy of the defendant to change old HT meter with new TOD electronic meter. In view of the above the evidence, both the issues are decided in negative.

Issues No.3

The crux of the above discussion on issue No.1 & 2 is that the suit is decreed as prayed.

JUDGE