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Registered on:		
Decided on:		
Duration:		
Years	Months	Days

**IN THE COURT OF THE 5th ADDITIONAL DISTRICT JUDGE,
SURENDRANAGAR**

Regular Civil Suit No. 187/17
Exh. _____

PLAINTIFF:

Paschim Gujarat Vij Co. Ltd.,
Rajkot/Thangadh Sub-Division,
Thangadh, Tal. Thangadh,
Dist. Surendranagar.

Versus

DEFENDANT:

Kalubhai Devabhai Parmar
Aged about 41 years,
Hindu by religion,
Occu. Labour,
Resi. Ravrani road, Thangadh,
Tal. Thangadh,
Dist. Surendranagar.

Sub.: Suit for recovery of Rs.68,303.02/-

Appearance:

L.A. Mr. V.S. Jani for the Plaintiff
L.A. Mr. D.M. Shsh for the defendant

J U D G M E N T

1. The present suit is filed by electricity company for recovery of theft of electricity charges Rs.68,303.02/- along with interest as per rate of nationalized bank from the date of institution of suit till the realization of the actual amount.

2. **A-: Plaintiff's Case:**

The facts of the plaint in nutshell are that:

Gujarat Electricity Board was constituted under Section 5 of the Electricity Supply Act and as per Gujarat Electricity Industries (Re-organization and Regulation) Act-2003. The work of the electricity board is distributed as per the district and head office of the plaintiff-company situated at Surendranagar. The plaintiff company is supplying electricity power to its consumers in all over the District of Surendranagar. That the defendant is resident of Village Thangadh, Dist. Surendranagar and is owning the residential house. It is further say of the plaintiff-company that the defendant is not consumer of plaintiff company. On 08.07.2016 the officials of the plaintiff-company had done electricity connection checking at village Thangadh, Dist. Surendranagar, whereby in residential house one cable wire approximately 15 mtrs. was connected to Low Pressure Line, from which the plaintiff has taken illegal connection by joining wire in the Low Pressure Line for personal use in his house and by this illegal electricity connection he was getting electricity to his residential house and thereby committing theft of electricity. During the checking the officials of plaintiff company have recovered this illegal connected cable wire and they have prepared checking sheet as well as Rojkam . At the time of checking defendant was not present but one lady was present. Thus the defendant was doing theft of electricity by such illegal connection and hence the officials of the plaintiff company have instituted criminal complaint against the defendant under Section 135 of

the Electricity Act, 2003 at Bhavnagar Police Station vide Crime Register No.II-6526/2016. The plaintiff- company further averred that the bill of consumption of electricity was issued to defendant under Section 135 of the Electricity Act, 2003 of Rs.62663.32/-. On 13.01.2017 the notice through RPAD was issued to the defendant, which was served to the defendant but defendant has not paid the amount of bill of electricity charges. Therefore, the plaintiff is constrained to file the present suit for recovery of amount of bill for theft of electricity of Rs.62663.32/and the delay payment charges of Rs.5791.22 total amount of Rs.54051.41 against the defendant.

3. Defendants Reply:

The defendant was duly served with the notice of the suit and he appeared before the court and file the written statement at Exh.25, whereby, he denied the facts of the plaint in toto and further submitted that the plaintiff company has filed wrong suit against the defendant. That the defendant has not made any theft of electricity as per say of the plaintiff company. The defendant further submitted that when the checking was made by the officers of the plaintiff company, the defendant was not present at that time and he did not know anything about such checking in the premises where the theft of electricity was made. The defendant further submitted that he is not owning any residential house at the address shown by plaintiff-company . That the plaintiff company has issued illegal bill to the defendant and the defendant is not liable to pay any charges to the plaintiff company as he has not made any theft and therefore the defendant submitted that the plaintiff company is not entitled to recover any amount from the defendant. Hence, the defendant prayed to reject the suit of the plaintiff.

4. To prove the facts of the plaint, the plaintiff has adduced following evidences in support of his suit claim:

Sr. No.	Exh./Mark	Description of documents
1	11	PW-1 Deposition of Shri Pareshbhai Viththalbhai Panchal (D.E., PGVCL, Thangadh Sub-Division).
2.	13	Checking sheet
3.	14	Rojkam
4.	15	Forwarding letter of bill under Section 135
5.	16	Bill issued under Section 135
6.	17	Letter of complaint about the theft of electricity
7.	18	FIR against the defendant about the theft of electricity
8.	19	D.P.C. Calculation sheet
9.	20	Performa No.12 of Site verification
10.	21	Letter of Muddama recover.
11.	22	Legal Notice
12.	23	Acknowledgment slip of RPAD of legal notice

5. The defendant has filed the affidavit of examination in chief at Exh.25.

6. Arguments of plaintiff:-

Heard the oral submissions made by Ld. Advocate Mr.V.S. Jani for the plaintiff. The Ld. Advocate mainly submitted that the present suit is filed by the PGVCL Company for recovery of electricity theft charges. On 08.07.2016 the officials of the plaintiff-company had done electricity connection checking at village Thangadh, Dist. Surendranagar and they have duly prepared the rojkam and checking sheet in which it has been clearly narrated that the house in which theft of electricity made, was possessed and owned by defendant and accordingly the witness of the plaintiff company at Exh.11 in oral evidence proved the contents of documentary evidence produced by plaintiff company at Exh.13 to 23. Thus, the plaintiff company has successfully proved on record that the defendant was doing the theft of electricity by joining cable wire in the Low Pressure Line. The disputed bill was issued regarding consumption of electricity and therefore plaintiff has successfully proved the fact that

the defendant has made theft of electricity and defendant is liable to pay the amount of Rs.68303.02/- and therefore plaintiff has prayed to allow the suit.

7. Defendant Arguments:-

Heard the Ld. Advocate for the defendant, the Ld. Advocate for the defendant mainly submitted that here the case of the plaintiff based on the fact that the residential house where illegal consumption of electricity made was possessed by defendant. The plaintiff company failed to prove this basic fact. The plaintiff has not proved on record that the residential house in which the theft of electricity made, was owned and possessed by defendant and therefore, the plaintiff has not succeeded to prove its case and therefore, the Ld. Advocate prayed to reject the suit of the plaintiff.

8. To decide the present suit following issues were framed at Exh.10 on 17.11.2017.

ISSUES

1.	Whether the plaintiff proves that the plaintiff is entitled to get the suit amount?
2.	Whether the plaintiff is entitle to get the interest? If yes, at what rate of interest?
3.	Whether the plaintiff is entitle to get the relief as prayed for?
4.	What order?

9. The reply of the above issues are given as under:

Issue No.1	In Negative.
Issue No.2	In Negative.
Issue No.3	In Negative.
Issue No.4	As per final order.

::::: R E A S O N S :::::

10. Issue No.1 to 4:-

It is undisputed fact that the plaintiff company is supplying the electricity in all over Gujarat and its Sub-Division Office situated in Dist. Surendranagar.

Now the plaintiff company came with the case that on 08.07.2016, their officials have made the checking at village Thangadh, Dist. Surendranagar whereby it was found that defendant was doing theft of electricity by joining cable wire in the Low Pressure Line which in his residential house and by such electricity supply he was getting electricity to his residential house and thus the defendant has committed theft of electricity and hence defendant is liable to pay the charges of electricity theft as per bill issued by the plaintiff company.

11. Now to prove this fact the plaintiff company has examined the PW-1 Deputy Engineer namely Shri Pareshbhai Viththalbhai Panchal at Exh.9, who deposed that the defendant was not consumer of electricity company. On 27.05.2016 the officials of the PGVCL company Shri B.U. Patel Bagul (Deputy Engineer) and Shri K.G. Makwana made electricity checking at Village Thangadh, Dist. Surendranagar, whereby in residential houses one cable wire was connected to Low Pressure Line, from which the plaintiff has taken illegal connection by joining wire in Low Pressure Line for personal use in his house. PW-1 further deposed that at the time of checking the defendant was not present but one lady was present, and she has denied to sign in the checking sheet and therefore The officials of the plaintiff company has prepared checking sheet as well as rojkam and completed the checking and submitted the documents to the PGVCL Company. On the basis of these documents the plaintiff company instituted the complaint at Bhavnagar Police Station Vide Crime Register No.II-6526/2016 under Section 135 of the Electricity Act. On the basis of the rojkam and checking sheet the bill for theft of electricity charges was issued to the defendant amounting to Rs.68303.02 on 27.05.2016. But the defendant has not paid the amount of bill and hence the notice was issued

to the defendant for the payment of bill of electricity theft. The defendant has knowingly evade the service of notice and thereby the defendant has not paid the amount of electricity theft bill and therefore the total amount of Rs.68303.02 was due to the defendant.

12. In cross examination PW-1 admitted that he is giving deposition on the basis of documentary evidence available in his office. PW-1 further admitted that he was not present at the time of checking and he does not have any personal knowledge regarding checking. That he does not produced any evidence to establish that the place of checking was owned or occupied by the defendant. However, he denied that the defendant has not made any theft of electricity.

13. Per contra defendant examined himself at Exh-27 deposed that he has not made any theft of electricity as per say of the plaintiff company. The defendant further submitted that when the checking was made by the officers of the plaintiff company, the defendant was not present at that time and he did not know anything about such checking in the premises where the theft of electricity was made. The defendant further submitted that he is not owning any residential house in village Thangadh. That the plaintiff company has issued illegal bill to the defendant and the defendant is not liable to pay any charges to the plaintiff company as he has not made any theft and therefore the defendant submitted that the plaintiff company is not entitled to recover any amount from the defendant.

14. Now here the plaintiff alleged that the defendant has committed theft of electricity under Section 135 of the Electricity Act, 2003. Section 135 states that

Theft of Electricity: whoever, dishonestly-

(a) taps, makes or cause to be made any connection with overhead, underground or under water lines or cables, or service wires, or service

facilities of a licensee or supplier, as the case may be; or

(b) tampers a meter, installs or uses a tampered meter, current reversing transformers, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus equipment or wire or causes or allows any of them to be so damages or destroyed as to interfere with the proper or accurate metering or electricity; or

(d) uses electricity through a tampered meter; or

(e) uses electricity for the purpose other than for which the usage of electricity was authorized.

Thus, to prove that the defendant has committed theft of electricity, the plaintiff has to prove that the defendant has made illegal connection by joining the wire in the Low Pressure line to his residential house. On perusal of the deposition of PW-1, he stated that their officers have made checking at Village Thangadh, Dist. Surendranagar on 08.07.2016 and at the time of checking the defendant was not present. Now on perusal of Exh.13, which is Checking sheet report. At Exh. 14 rojkam is produced. At Exh.18, plaintiff has produced FIR instituted against the defendant and at Exh.16 the plaintiff has produced bill of theft and at Exh.22 the notice and at Exh.19 the calculation sheet is produced.

In cross examination the PW-1 admitted that he does not know any facts about checking and he was not present at the time of checking. That he does not know about the documentary evidence produced in the suit.

It is pertinent to note that Section 101 of the Indian Evidence Act defines burden of proof which clearly laid down that “whoever desires any court to give judgment as to any legal right or liability depend on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that

the burden of proof lies on that person.” Therefore, it clearly laid down that the burden lies upon person who asserts, until such burden is discharged, the other parties is not required to be called upon to prove his case. The Court has to examine as to whether the person upon whom burden lies has been able to discharge his burden, until such conclusion is not arrived, the court cannot proceed on the basis of weakness of other parties. Thus, considering this legal position here the burden lied on the plaintiff to prove that the defendants is owning residential house and by making illegal connection the defendant was getting electricity to his residential house.

Here the plaintiff has cross examined the defendant for the fact about the checking and the place where the checking was done, was owned by him and the defendant has denied most of the fact stated by the plaintiff company. While the plaintiff witness clearly admitted that he was not present at the time of checking and he does not have personal knowledge about the documentary evidence produced in the suit. Thus the plaintiff witness himself not supported the facts of documentary evidence. On perusal of whole evidence of plaintiff side, the plaintiff has not produced any evidence to established the fact that the defendant was resident of village Thangadh or that he was owning any house in village Thangadh. The plaintiff has produced the site verification report at Exh-20 but the plaintiff has not examined any witness who made this report. Thus the same can also be not relied upon. Thus the plaintiff has not produced any evidence to prove that the residential house on which illegal electric connection was made was belongs to defendant and that the defendant has made such illegal connection and by such connection he has consumed electricity as stated in Exh.13 and 14. It is say of the plaintiff-company that their officials have made verification of owner of the residential house at the time of checking then the plaintiff- company ought to have take statement of nearby people as well as gram-panchayat

record to verify the owner of the residential house where the illegal electricity connection made. But no such evidence has been produced on record to establish that the residential house on which illegal connection was made belongs to defendant. Thus the plaintiff is not succeed in proving the theft of electricity against the defendant and therefore defendant is not liable to pay any amount of theft bill and thus the plaintiff is not entitled to recover any amount as prayed for . Therefore, **Issue no.1 to 3 held in "Negative" and following final order is passed regarding issue no.4 in the interest of justice:-**

:-O R D E R:-

- The suit of the plaintiff is dismissed
- Parties shall bear their own cost.
- Decree be drawn accordingly.
- File be consigned to record room after due compliance.

Pronounced & signed in the open Court on **23rd April, 2018.**

Date : 23/04/2018
Place: Surendranagar

[Ms. Hetal M. Pavar]
5th (Ad-hoc) Addl.Dist. Judge,
Surendranagar
UID-GJ00673.