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Exh.		22A

In the Court of 4th Additional Senior Civil
Judge,
Bhuj- Kachchh

REGULAR CIVIL SUIT NO. 207/2024

PASCHIM GUJARAT VIJ COMPANY LTD.,

Head Office Rajkot Through
Deputy Engineer,
Kukma Sub-Division,
Ta.Bhuj-Kachchh.

::: PLAINTIFF

Versus

Jusabsha Husensha Savani,
through Legal heirs,
Umarsha Husensha Savani,
Aged :Adult, Occu. NIL
Resi. House No. 186,
Post. Kaniyabe,
Tal. Bhuj-Kachchh

::: DEFENDANT

A D V O C A T E S :

1. L.A., Shri P.V.Vania for the Plaintiff.

2. Ex-parte against Defendant.

Suit for recovery of theft electricity Bill of Rs.84536.04 Ps. along with interest and costs.

..... J U D G M E N T

1. That the plaintiff is a company is the constituted corporate body under the provisions of Indian Electricity Act 1948. That the plaintiff is the Deputy Engineer of Kukma sub-division has come into force and all the assets and records and proceedings as well as materials are transferred to plaintiff's company i.e. P.G.V.C.L. That, the plaint is signed and verified by one of the Principal Officers, who is authorized and empowered to sign and verify the pleadings.
2. The plaintiff company has filed the present suit for recovery of Rs. 84,536.04 ps. from the defendant along with interest at the rate of 18% and costs of the suit.
3. The concise statement of the fact of the case of the plaintiff is that the defendant had applied for getting electricity connection from the plaintiff company and the electric connection was provided to the defendant according to his requirement and the defendant is the consumer of plaintiff -Company bearing connection No.60522002811. It is the say of the plaintiff -Company that the consumption of electricity bill were regularly given to the defendant but thereafter Defendant had not paid the electricity bills and therefore in all the

outstanding electricity bill amount of Rs.84536.04 Ps. with D.P.C. is to be recovered from the defendant. That the plaintiff company has temporarily disconnected the electric supply even thereafter the defendant had not paid the outstanding electricity bill and therefore, the plaintiff company had permanently disconnected the electric supply. That the legal notice dated 25-07-2023 issued through plaintiff's advocate and the postal receipt and notice duly signed by the advocate is produced on record of the case. That the cause of action arisen on 25-07-2023. The plaintiff -Company has further averred in the plaint that the cause of action giving rise to the present suit is that the defendant has consumed the electricity power of the plaintiff -Company but the defendant has not paid such outstanding amount and thus the cause of action has arisen and still in existence. Therefore, the plaintiff company has prayed for grant of decree for recovery of Rs. 84536.04 Ps. along with interest @ 18% from the date of filing of the present suit from the defendant and has also prayed for passing an order for recovery of cost of this suit from the defendant.

4. The defendant has been duly served but the defendant has neither appeared through his advocate nor has filed his written statement and, therefore, by order the present suit was ordered to be proceeded ex parte against the defendant.
5. In order to prove the present suit, the following oral as

well as documentary evidence has been produced by the plaintiff company.

Oral Evidence :-

Exh.9	Affidavit of Bhupendrasinh Danubha Jadeja
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Documentary Evidence :-

Sr.Nos.	Exh,	Narration
1.	11	DPC Statement
2.	12	Notice
3.	13	RPAD slip
4.	14	Performa 12
5.	15	Sanctioned Letter to file suit
6.	16	Suit filling sanctioned letter
7.	17	Performa 15
8	18	Order for permanent disconnected electricity
9	19	Notice
10	20	Order for permanent disconnected electricity

6. The following issues are framed vide Exh. 8 for the determination of the suit :

(1)	Whether the plaintiff is entitled to claim Rs. Rs.84,536.04 from Defendant ?
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(2)	Whether the Plaintiff is entitled to get interest ? If yes at what rate ?
(3)	What order and decree ?

7. Following are my answers for the above issues are as under :

(1)	In affirmative.
(2)	Partly in affirmative.
(3)	As per final order.

8. Before determination of this case, it is to be borne in the mind that the suit of the plaintiff -Company need not necessarily be decreed merely because the defendant has not filed or submitted his written statement or the matter has been proceeded ex-parte against the defendant. To clarify this proposition, it would be necessary to refer one of the decisions of the Hon'ble Apex Court, namely **Ramesh Chand Ardawaiya Vs. Anil Panjiwani**, reported in **AIR 2003 SC 2508** in which it has been held that even if the suit proceeded ex parte and in the absence of a written statement, unless the applicability of Order 8 rule 10 of the code of Civil Procedure is attracted and the court acts thereunder, the necessity of proof by the plaintiff of his case to the satisfaction of the court cannot be dispensed with. In the absence of denial of plaint averments the burden of

proof on the plaintiff is not very heavy. A prima facie proof of the relevant facts constituting the cause of action would suffice and the court would grant the plaintiff such relief as to which he may in law be found entitled. In a case which has proceeded ex parte, the court is not bound to frame issues under Order 14 of the Code of Civil Procedure and deliver the judgment on every issue as required by Order 20 Rule 5 of the Code of Civil Procedure. Yet the trial court would scrutinize the available pleadings and documents, consider the evidence adduced, and would do well to frame the “points for determination” and proceed to construct the ex parte judgment dealing with the points at issue one by one. Merely because the defendant is absent, the court shall not admit evidence and the admissibility whereof is excluded by law nor permit its decision. So as per this pronouncement of the Hon'ble Apex Court, the necessity of the plaintiff to prove his case is not lost even if the matter has been proceeded ex parte.

9. Since all the issues are inter related and inter connected with each other and, therefore, in order to avoid repetition of the reasons and facts, the same have been discussed conjointly and decide the same together.
10. The witness of the plaintiff -Company has stated more or less facts of the plaintiff in his affidavit of evidence at Exh.9, as I have narrated above in para 2 of this judgment and, therefore, the same facts are not reproduced here in order to avoid repetition. The above

oral evidence produced by the plaintiff -Company is supported by the documentary evidence adduced by it at Exhs. 11 to 20. The above oral evidence appears to be trustworthy and reliable and also there is no challenge by the defendant in form of the cross-examination. The defendant has not filed any reply or written statement and have not come forward for his defense.

11. The plaintiff -Company is a statutory body and the record maintained by them is in regular course of business and unless it is shown that the said record is false or prepared with malafide intention, the same cannot be doubted. Therefore, I have no reason to disbelieve the evidence adduced by the plaintiff - Company. It also transpires from the record that despite the said bill was issued to the defendant, the defendant has not paid the amount of bill to the plaintiff and subsequently, the legal notice was also issued to the defendant and inspite of that, the defendant has not paid the outstanding due amount to the plaintiff - Company and, therefore, the present suit is required to be granted as the defendant is liable to pay an amount of Rs.84,536.04 Ps. along with interest to the plaintiff - Company.
12. So far as the rate of interest is concerned, the plaintiff - Company has claimed the interest on the outstanding amount at a very high rate i.e. 18% p.a. After carefully perusing the provision of Section 34 of the Code of Civil

Procedure. It appears that the interest may conveniently be divided into three categories; first interest prior to institution of suit; second, interest from the date of institution of suit to the decision of the suit and third, interest from the date of the decree till its realization. So far as the first category is concerned, Section 34 does not apply to interest prior to the institution of the suit and it can be awarded only when there is an agreement between the parties or mercantile usage having force of law or statutory right to interest. The matter of granting interest before institution of suit is a matter of substantive law and Section 34 shall have no application to such interest. In the case on hand, the plaintiff - Company has calculated 18% interest on the amount outstanding to the defendant but there is no contract to pay 18% interest between the plaintiff -Company and the defendant so that the plaintiff company is not entitled to 18% interest as claimed. However, the plaintiff -Company is entitled to interest under Section 3 of the Interest Act, 1978 and the rate of interest would be current rate of interest (now a days 6% interest per annum on deposit in scheduled bank) and, therefore, looking to the present trend of interest, it would be just, proper and reasonable if 6% interest per annum from the date of institution of this suit to the date of payment thereof on the outstanding dues is ordered.

13. For the foregoing reasons and discussion, the plaintiff company is succeeded in proving its suit and, therefore,

I answer the **Issue No.1 in affirmative and Issue nos. 2 partly in affirmative** and in respect of Issue No.3, I hereby pass the following final order, in the interest of justice.

- : ORDER : -

1. The present suit is hereby partly allowed.
2. The defendant is hereby ordered to pay the outstanding dues amount Rs.84,536.04 Ps. (Rupees Eighty Four Thousand Five Hundred Thirty Six and Four Paise Only) along with simple yearly interest at the rate of 6% from the date of filing of this suit till its realization, failing which the plaintiff -Company will be entitled to recover the decretal amount from the defendant as well as from the properties of the defendant.
3. The defendant is directed to pay the entire cost of the suit to the plaintiff -Company and to bear his own costs.
4. Decree be drawn accordingly.

Pronounced and signed in open court today on 2nd April, 2025.

Date : 02/04/2025

Place : Bhuj-Kachchh

(Jyoti Veerat Buddha)

4th Additional Senior Civil Judge,
Bhuj-Kachchh.
(U. I. C. No. GJ-01179)

/vaghela/