

GJGS010007152025



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**IN THE COURT OF HON'BLE PRINCIPAL DISTRICT
 JUDGE, GIR-SOMNATH AT VERAVAL.**

Regular Civil Appeal No. 85 / 2025

Exhibit : __

APPELLANT :-
(Original Plaintiff)

Paschim Gujarat Vij Company Ltd.,
 Successor Company of the Gujarat Electricity Board,
 Through : Dy. Engineer,
 Ankolvadi, Tal. Talala.

V E R S U S

RESPONDENT :-
(Original Defendant)

Harunbhai Mahmadbhai Sama
 Age : 41, Occ. : Labourer,
 R/o. Bhimdeval, Taluka : Talala, Dist. Gir-Somnath.

Appearance :-

Ld. Advocate Mr. K.P. Rathod for the appellant.

Respondent – Not appeared.

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

1. The appellant herein is the original plaintiff whereas the respondent herein is the original defendant, and hence, for the sake of convenience they shall be referred to hereinafter as the plaintiff and defendant as in their

original position in the suit.

2. The plaintiff has brought this appeal against the judgment passed on **27.02.2025** by the **Principal Civil Judge, Talala** in **Regular Civil Suit No. 116/2024**, wherein the Learned Trial Judge, while exercising powers under Order – 7, Rule – 11(a)(d) of C.P.C. has been pleased to reject (dismiss) the suit of the plaintiff filed against the defendant.
3. On admission of the appeal the necessary process came to be issued to the respondent. However, the respondent himself nor his advocate appeared to contest the Appeal.
4. The brief facts of the case of the plaintiff before the Learned Trial Court is that the plaintiff company has been established under the provisions of the Gujarat Electricity (re-organization and regulation) Act, 2003 and Gujarat Electricity re-organization and comprehensive transfer scheme, 2003. It is further contended that the plaintiff company has been authorized to generate, transmit, distribute and to do all required legal acts to provide electricity against the issuance of the bills and receiving the consideration, etc. which again has been divided into different zones. It is further contended that the said division falls within the territorial jurisdiction of the plaintiff company and the affairs of the plaintiff company are being looked after by the Deputy Engineer. Hence, being conversant with the facts of the case that, *suit has been filed for recovering the amount towards the supplementary bill to*

the tune of Rs.5,165.32 Ps. issued against the theft of electric energy by the defendant who is a non-consumer and in failure on part of the defendant – non-consumer to pay the same, the plaintiff company has been constrained to file the suit vide Regular Civil Suit No. 116/2024. Hence, suit has been filed for recovering the amount towards the supplementary bill to the tune of Rs.5,165.32 Ps. plus delay payment charges, hence, in total dues of Rs.5,837.96 Ps. However, the Learned Trial Court, while exercising powers, under Order – 7, Rule – 11 of C.P.C. has been pleased to reject (dismiss the suit of the plaintiff filed against the defendant) and hence, being aggrieved and dissatisfied with the said judgment the original plaintiff has preferred the present appeal.

5. The Learned Advocate for the appellant - original plaintiff has submitted that, the Learned Trial Court has not taken into consideration the Notification bearing No. ADM/JUDI/29/2019 of the Learned District Court, Gir-Somnath at Veraval passed on dated 23.07.2019. That, the Learned Trial Court has not interpreted the provisions of the Electricity Act, 2003 in its true spirit and passed an erroneous order and therefore, the same is required to be quashed and set aside. He has further submitted that, the Ld. Trial Court has rejected the plaint, under Order 7, Rule 11 (a) and (d) of C.P.C. It is pertinent to note that, Ld. Trial Court has believed that, no cause of action has been disclosed by the plaintiff and suit is barred by law. Here in the present case, plaintiff in R.C.S. No. 116/2024

has specifically pleaded that, defendant was caught for theft of electricity and notice was issued to the defendant. Thus, the cause of action has been arisen and it is within the period of limitation. Therefore, there is no question that, there is no cause of action has been arisen. Further, it is submitted by that, Ld. Trial Court has erroneously believed that, civil court has no jurisdiction to entrain the suit and therefore, as decided that the suit is barred by provision of law and therefore has rejected the R.C.S. No. 116/2024 under Order 7, Rule 11(a) and (d) of C.P.C. Relying on the above, he has prayed to allow the present appeal.

6. Having heard the Learned Advocate appearing for the appellant – original plaintiff and also perusing the impugned judgment passed by the Ld. Trial Court, the following issues arise for consideration before this court are as under:-

-: Issues :-

- i) Whether the Ld. Trial Court had the jurisdiction to try the suit ?
- ii) Whether the Ld. Trial Court had erred in dismissing the suit under the provision of C.P.C., Order 7, Rule 11(a) & (b), if yes, whether the judgment and decree requires interference ?
- iii) What Order ?

7. Findings to the above Issues are as under :-

i) In the affirmative.

ii) In the affirmative.

iii) As per final order

:- REASONS :-

Issue No.1 :-

8. To meet with the aforesaid issue No.1, the *Section – 126 of the Electricity Act, 2003* is required to seen, for the sake of brevity and convenience is being reproduced here-in-under :-

Section – 126 : Assessment – (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

● *The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.*

[(3) The person, on whom an order has been served under sub – section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of th electricity charges payable by such person.]

(4) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the license within seven days of

service of such provisional assessment order upon him:

[(5) If the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection]

(6) the assessment under this section shall be made at a rate equal to [twice] the tariff applicable for the relevant category of services specified in sub – section (5).

9. In order to understand the aforesaid Section and its relation with section 135 of the Act, the relevant portion of the judgment of ***Dakshin Haryana Bijli Vitran Nigam Ltd. vs. Sirohi Medical Centre (P & H) reported in 2015 (5) Law Herald 3848*** is reproduced hereunder:-

“20. Apparently Sections 126 and 135 of the 2003 Act if read together would constitute a complete code in themselves covering all relevant consideration for passing of an order of assessment in cases which do not fall under Section 135 of the 2003 Act. There is mark distinction in the contents of Section 126 and Section 135 of 2003 Act. Both are distinct and different provision, which operate in different field having no common premise in law. Theft has been defined in Section 135 of the 2003 Act which falls under part XIV relating to offences and penalties. Title of section is 'theft of electricity'. The word 'dishonestly' appearing in the Section denotes abstract or consumption or use of electricity by dishonest means which is punishable under Section 135 of the 2003 Act. The mechanism for dealing under Section 135 of 2003 Act is based on dishonest abstraction and consumption of energy. Besides imposition of punishment as specified under these provisions or the proviso thereto, Section (1A) of Section 135 of the 2003 Act provides that without prejudice to the provisions of the 2003 Act, licensee or supplier through officer of rank as authorized may immediately disconnect the supply of

electricity and even take other measures enumerated under sub – Sections (2) to (4) of the said Section. The fine which may be imposed under Section 135 of the 2003 Act is directly proportional to the number of convictions and is also dependent on the extent of load abstracted.”

10. Thus, in view of the aforesaid and considering the provisions of *Section – 126 of the Electricity Act, 2003* the same cannot be equated with the theft of energy so as to attract any illicit actions or dishonesty or to abstract electricity *u/s. 135 of the Electricity Act, 2003*. Thus, when the consumer consumes the electricity in the maximum of the contracted load or otherwise would be governed by the provisions of *Section – 126 of the Electricity Act, 2003* and only and only if he is found to have abstracted or used the electricity dishonestly in terms of any illicit action as provided *u/s. 135 of the Electricity Act, 2003* the same would attract the *Section – 135 of the Electricity Act, 2003*. In short there is a vast difference between the provisions of *Section – 126 and 135 of the Electricity Act, 2003* which in short pertains to the excess of the maximum contracted load and theft of electricity respectively.
11. Reverting back to the facts of the case on hand the present suit seems to have been filed for the recovery of the amount of the supplementary bill issued to the defendant for using electric energy being a non – consumer of the plaintiff company and was found in theft of electric energy, and therefore, the plaintiff has been constrained to file the suit, however, the Learned Judge of the Trial Court seems to have misconstrued the same. So far as the

question with regard to the jurisdiction of the Civil Court is concerned the jurisdiction of the Civil Court is not expressly ousted which expressly fall and attract the provisions of Section – 9 of C.P.C.

12. It is pertinent to note here that the plaintiff seems to have raised the legitimate demand of an amount towards the alleged consumption of energy / electricity against the scheme of the Act. Thus, the bar of the Civil Court jurisdiction is only applicable where the dispute fall within the purview of Section – 126 of the Electricity Act, 2003. In short when the demand of the amount is based on the allegation of theft and / or successive consumption, the contemplating action does not fall within the purview of Section – 126 of the Electricity Act, 2003 and the Civil Court jurisdiction to entertain such dispute is maintainable in view of the ratio and proposition laid down in the case of *Dakshin Haryana* (Supra).
13. In view of the aforesaid as held by the Hon'ble Apex Court the jurisdiction of the Civil Court particularly equating the facts of the case on hand is not expressly ousted, and therefore, the conclusion arrived at by the Learned Judge of the Trial Court is nothing but based on miss-conception and miss-interpretation of the provisions of the Act which otherwise apply to the Special Court as enshrined here-in-above.
14. Since the Learned Judge of the Trial Court as discussed in the foregoing paragraphs has exercised the power under Order-7, Rule-11 of CPC without even extending an

opportunity to the plaintiff before passing any adverse order the scheme of the provisions of Order-7, Rule-11 of C.P.C. and the object behind it laid down time and again by our own Hon'ble High Court and also by the Hon'ble Apex Court is required to be considered wherein it has been held that, while considering the application for rejection of the plaint under Order – 7, Rule – 11 of C.P.C. the Court has to go through the entire plaint averments made in the plaint and cannot reject the plaint by reading only few lines or passages and ignore every relevant part of the plaint nor can look upon the defense irrespective of the same having been raised either by defendant or suo mottu. In light of the aforesaid, the Order – 7, Rule – 11 does not fall within the ambit which is to be adjudicated by the Special Court. More so, it is also not the case of either of the parties that there has been unauthorized use of electric energy and the case filed by the plaintiff is for recovery of the amount due from the defendant towards supplementary bill issued to him in capacity of a non-consumer towards usage of electric energy, however, the Learned Judge of the Trial Court on its own has by misinterpreting the facts of the case deemed it to be a case falling under the provisions of *Section – 126 of the Electricity Act, 2003* and finally concluded the case to be barred under the provisions of *Section – 145 of the Electricity Act, 2003*.

15. Further, the Principal District Judge, Gir-Somnath had passed a notification dated 23.07.2019 conferring jurisdiction of civil courts, which reads as under:-

“Consequent to the order passed by Hon'ble Supreme Court of India in Civil Appeal as read above in the preamble, the undersigned, in exercise of the powers vested in him under Section 24 of the Code of Civil Procedure, pleased to withdraw all pending Special Civil Suits and Execution Petitions, filed under the Electricity Act, 2003 which are at present under trial before the Courts of District Additional District & Sessions Judges of this District.

Accordingly the undersigned is pleased to order that, all such withdrawn cases be transferred to the concerned Civil Courts, having pecuniary and territorial jurisdiction over them under the Gujarat Civil Courts Act, for hearing and disposal in accordance with Law, from the stage they have been withdrawn at, with immediate effect.”

16. The judgment referred in the notification is passed by the Hon'ble Supreme Court in **Civil Appeal No(s). 20842 of 2017** in the case of **North Delhi Power Ltd. (Now known as Tata Power Delhi Distribution Ltd.) Vs. Devinder Singh & Anr.**, wherein the Hon'ble Supreme Court has held that,

“Part XV of the Act deals with the Constitution of Special Courts. Section 153 states that this is for the purpose of providing for speedy trial of offences referred to in Sections 135 to 140 and Section 150 of the Act. The procedure and power of the Special Court is laid down under Section 154 of the Act, including the power to levy a penalty which is referred as “civil liability” under Section 154 (5) and 154 (6) of the Act. Section 155 states that the Special Court is to have the powers of a Court of Sessions, and Section 157 of the Act vest the Special Court with a power of Review. Under Section 156 of the Act, appeals and revisions that are available against the Court of Sessions and that are provided under the Code of Criminal Procedure, 1973 can also be availed of.

It is clear from a perusal of the aforesaid sections that the Special Electricity Courts acts as a Court of Sessions and has been set up to try offence that are committed under the Act. By no stretch of imagination can it be stated that a civil suit would be within the jurisdiction of such Court. We are, therefore, of the view that the impugned judgment deserves to be set aside.”

In view of the above, I decide the issue No.1 in

affirmative and hold that the Ld. Trial Court has jurisdiction to try the suit.

Issue No.2 :-

17. As this Court has already decided issue No.1, that the Ld. Trial Court had the jurisdiction to try the said suit, committed under the statute as well as the judgment passed by the Hon'ble Supreme Court, this Court holds that, the Ld. Trial Court has erred in dismissing the suit of the original plaintiffs on the ground of the jurisdiction. Since the Ld. Trial Court was in error by dismissing the suit on the grounds of jurisdiction and also under the provision of C.P.C., Order 7, Rule 11, the judgment and the decree passed by the Ld. Trial Court requires interference and the same are required to be quash and set aside. In view of the aforesaid, I hold that the judgment passed by the Ld. Trial Court is erroneous and therefore is required to be quashed and set aside, therefore, I answer Issue No.2 in affirmative. In view of the aforesaid, I pass the following order qua issue No.3.

:: ORDER ::

1. The present Appeal stands allowed.
2. Consequently the impugned judgment and decree passed by the **Learned Principal Civil Judge, Talala in Regular Civil Suit No. 116/2024** stands quashed and set aside.

3. Accordingly, the matter is hereby remanded back to the Learned Principal Civil Judge, Talala for proceeding with the matter in accordance with law as per the observations made here-in-above.
4. Copy of the order to be sent to the Court of the Learned Principal Civil Judge, Talala for information and necessary compliance.

Pronounced in the open Court today this 25th day of **June, 2026**.

Date : 25.06.2026

Place: Veraval.

(Vikramsingh B. Gohil)
Principal District & Sessions Judge
Veraval.
Unique ID No.GJ01042