Exhibit	7
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IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, AT : JAMNAGAR.

Regular Civil Appeal No.	27 of 2026

Appellant /Original plaintiff :-

1. Paschim Gujarat Vij Company Limited,
   Through : Deputy Engineer,
   Hemant Maganlal Manek,
   Age about 54 years,
   Khambhliya Gate Sub-Division,
   Jamnagar.

V E R S U S

Respondent/ Original defendant :-

1. Nazir Bapubhai Jeja (Sipai),
   Age about 51 years,
   Resident of Ale Rasul Chowk,
   Shastrinagar, Shankar Tekri,
   Jamnagar.

Subject : - Appeal Under Section 96 read with Order XLI of the Code of Civil Procedure to set aside order passed below Exh.1 under Order 7 Rule 11(d) of the Code of Civil Procedure and decree passed in Regular Civil Suit No.629 of 2025 on 10/02/2026 passed by the Court of 7th Additional Senior Civil Judge, Jamnagar by which suit of the plaintiff was dismissed.

Appearance:-

Mr.B.C.Chotai, learned Advocate for Appellant.

Mr.A.M.Khafi, learned Advocate for Respondent.

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

1. Present Regular Civil Appeal has been preferred by original plaintiff under section 96 read with order XLI of Code of Civil Procedure, 1908 being aggrieved and dissatisfied by the order below Exh.1 and decree dated 10/02/2026 passed by the Court of 7th Additional Senior Civil Judge, Jamnagar in Regular Civil Suit No.629 of 2025, by which suit of plaintiff for recovery of Rs.55,595.41 PS was rejected under the provisions of Order 7 Rule 11(d) of the Code of Civil Procedure. For the sake of brevity and convenience, the parties are hereinafter referred by their original nomenclature. i.e. appellant shall be referred as "plaintiff" and respondent shall be referred as "defendant".

2. The brief facts of the matter are that, plaintiff had filed the suit before the learned trial Court for recovery of Rs.55,595.41PS from the defendant that though no electricity connection was given to the defendant and unauthorizedly and illegally using the 1.780 KW load as per inspection report. The electricity theft was discovered and as the defendant did not pay the amount of supplementary bill, electric connection was disconnected on 19/10/2023. AS per the checking officer, the defendant was not

having any electricity connection and he had interpolated 18 meter long yellow color service wire from LT electric pole was and unauthorizedly using electricity and accordingly Rojkam and Photography was performed. Thus, as per Section 135 of the Electricity Act, 2003, supplementary bill dated 19/10/2023, alongwith compounding charges, was issued to the defendant. Thus, cause of action arose for the plaintiff to recover the amount of Rs.55,595.41PS from defendant.

3. It may be pertinent to note that learned trial Court has suo moto initiated proceedings under Order VII Rule 11 of the Code of Civil Procedure and after hearing learned advocate for Plaintiff, passed order below Exh.1. Learned advocate for plaintiff had relied upon the case of North Delhi Power Ltd. V/s. Devinder Singh & Anr. –Civil Appeal No. 20842 of 2017 (Arising out of SLP © No. (s) 6883 of 2017). Learned trial Court has taken into consideration said authority, as well as other authorities, as (1) West Bengal State Electricity Distribution Company Ltd. & Ors. V/s. M/s. Orion Metal Pvt. Ltd. & Anr - Civil Appeal No.6547 of 2019 (Arising out of SLP (C) No. 22207 of 2018), (2) Bahuchar Stone Industries Prop. V/s. State of Gujarat, R/Special Civil Application No. 20000 of 2018 and (3) Kamlaben Manohar Bisnoi V/s. Dakshin Gujarat Vij Company Ltd. - R/Special Civil Application No. 13616 of 2021 and came to the conclusion that as per Section 153 and 154 of the Electricity Act, only Special Court is having power to adjudicate the issue for recovery and ordinary Civil Court has no any jurisdiction, hence, suit was rejected under Order VII Rule 11 of

the Code of Civil Procedure. Against that order, present appeal is filed.

4. Learned advocate Mr.Chotai has contended that learned trial Court has committed errors in initiating suo moto proceedings under Order VII Rule 11 of the Code of Civil Procedure and wrongly rejected the suit. It is submitted that learned trial Court could have return the plaint as per provision of Order VII Rule 10 of the Code of Civil Procedure, so that they can produce the same before appropriate Court, that is District Court. According to him, learned trial Court has not considered the Judgment of Hon'ble Apex Court in **North Delhi Power Ltd. (Supra)** in true perspective and wrongly decided the issue of jurisdiction against plaintiff and requested to allow this appeal.

5. It may be pertinent to note that before the trial Court, notice was not issued to defendant. But trial Court has suo moto initiated the provision of Order VII Rule 11 of the Code of Civil Procedure and after hearing the learned advocate for plaintiff decided the matter. However, in present appeal, notice has been issued to the original defendant and learned advocate Mr.Khafi appeared on behalf of original defendant.

6. Learned advocate for the respondent Mr.Khafi has argued that trial Court has not committed any illegality or error in rejecting plaint of plaintiff under Order 7 Rule 11 (d) of the Code of Civil Procedure and trial Court has suo moto power to decide the issue even without filing of any application under Order 7 Rule 11 (d) of the Code of Civil Procedure. And that learned trial Court has rightly came to the conclusion that suit is not maintainable before Civil Court

and that only Special Court is having jurisdiction. Hence, impugned order does not require any interference and requested to confirm the impugned order by dismissing present appeal.

7. Heard, both the learned advocate and perused the record. Following points are required to be determined for the consideration.

Sr.No.	POINTS
1	Whether appellant proves that trial Court has committed error in rejecting the plaint under Order VII Rule 11 of the Code of Civil Procedure ?
2	Whether appellant proves that trial Court has committed error in holding that as per Section 154 of the Electricity Act, Civil Court has no jurisdiction and only Special Court has jurisdiction ?
3	Whether the appellant proves that the impugned order below Order VII Rule 11 and decree passed in Regular Civil Suit No.629 of 2025 by the Court of 7th Additional Senior Civil Judge, Jamnagar dated 10/02/2026 is bad in law and against the provisions of law and requires to be quashed & set aside ?
4	What order ?

8. My findings on the above points are as under for the following reasons:-

Sr.No.	POINTS
1	In the Affirmative.
2	In the Affirmative.
3	In the Affirmative.
4	As per final order.

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

POINT NOS.1 TO 4 :-

9. It may be pertinent to note that learned trial Court has discussed the provision of Sections 126,127,135,145, and 154 of the Electricity Act, 2003. For the sake of convenience, relevant provisions of said Sections are re-produce herein below ;

*“ **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 unauthorised 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.*

(2) 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 a notice has been served under sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who may, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment of the 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 licensee within seven days of service of such provisional assessment order upon him:

PROVIDED that in case the case deposits the assessed amount, he shall not be subjected to any further liability or any action by any authority whatsoever.

(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, it shall be presumed that such unauthorised use of electricity was continuing for a period of three months immediately preceding the date of inspection in case of domestic and agricultural services and for a period of six months immediately preceding the date of inspection for all other categories of services, unless the onus is rebutted by the person, occupier or possessor of such premises or place.

(6) The assessment under this section shall be made at a rate equal to one-and-half times the tariff applicable for the relevant category of services specified in sub-section (5).

Explanation : For the purposes of this section,--

(a) "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b) "unauthorised use of electricity" means the usage of electricity--

(i) by any artificial means; or

(ii) by a means not authorised by the concerned person or authority or licensee; or

(iii) through a tampered meter; or

(iv) for the purpose other than for which the usage of electricity was authorised.

127. Appeal to appellate authority :- *(1) Any person aggrieved by a final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.*

(2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to one-third of the assessed amount is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

(3) The appellate authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.

(4) The order of the appellate authority referred to in sub-section (1) passed under sub-section (3) shall be final.

(5) No appeal shall lie to the appellate authority referred to in sub-section (1) against the final order made with the consent of the parties.

135. Theft of electricity :- *(1) Whoever, dishonestly,--*

(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee; or

(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, 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 damaged or destroyed as to interfere with the proper or accurate metering of electricity, so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

PROVIDED that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use--

(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or

subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity; (ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

PROVIDED FURTHER that if it is proved that any artificial means or means not authorised by the Board or licensee exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(2) Any officer authorised in this behalf by the State Government may-- (a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity has been or is being, used unauthorisedly;

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been or is being, used for unauthorised use of electricity;

(c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub-section (1) and allow the person from whose custody such books of account or documents are

seized to make copies thereof or take extracts therefrom in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

PROVIDED that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

(4) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act."

"Section 145 - Civil courts not to have jurisdiction :- *No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in section 126 or an appellate authority referred to in section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."*

*"**Section 154- (Procedure and power of Special Court :-** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under [2 sections 135 to 140 and section 150] shall be triable only by the Special*

Court within whose jurisdiction such offence has been committed.

(2) Where it appears to any court in the course of any inquiry or trial that an offence punishable under sections 135 to 139 in respect of any offence that the case is one which is triable by a Special Court constituted under this Act for the area in which such case has arisen, it shall transfer such case to such Special Court, and thereupon such case shall be tried and disposed of by such Special Court in accordance with the provisions of this Act :

Provided that it shall be lawful for such Special Court to act on the evidence, if any, recorded by any court in the case of presence of the accused before the transfer of the case to any Special Court :

Provided further that if such Special Court is of opinion that further examination, cross-examination and re-examination of any of the witnesses whose evidence has already been recorded, is required in the interest of justice,it may re-summon any such witness and after such further examination, cross- examination or re-examination, if any, as it may permit, the witness shall be discharged.

(3) The Special Court may, notwithstanding anything contained in sub- section (1) of section 260 or section 262 of the Code of Criminal Procedure, 1973, try the offence referred to in sections 135 to 139 in a summary way in accordance with the procedure prescribed in the said Code and the provisions of sections 263 to 265 of the said Code shall, so far as may be, apply to such trial :

Provided that where in the course of a summary trial under this sub- section, it appears to the Special Court that the nature of the case is such that it is undesirable to try such case in summary way, the Special Court shall recall any witness who may have been examined and proceed to re-ear the case in the manner provided by the provisions of the said Code for the trial of such offence: Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding five years.

(4) A Special Court may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to, any offence tender pardon to such person on condition of his making a full and true disclosure of the circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof, and any pardon so tendered shall, for the purposes of section 308 of the Code of Criminal Procedure,1973, be deemed to have been tendered under section 307 thereof."

(5) The Special Court may determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft if determined whichever is less and the amount of civil liability so determined shall be recovered as if it were a decree of civil court.

(6) In case the civil liability so determined finally by the Special Court is less than the amount deposited by the consumer or the person, the excess amount so deposited by the consumer or the person, to the Board or licensee or the concerned person, as the case may be, shall be refunded by the Board or licensee or the concerned person, as the case may be, within a fortnight from the date of communication of the order of the Special Court together with interest at the prevailing Reserve Bank of India prime lending rate for the period from the date of such deposit till the date of payment.

Explanation : For the purposes of this section, "civil liability" means loss or damage incurred by the Board or licensee or the concerned person, as the case may be, due to the commission of an offence referred to in sections 135 to 139."

It may be required to note that Sections 126,127 and 135 of the Electricity Act, as discussed above, pertains to different realm and having separate procedure as produced above.

10. Now, with regards to separate procedure in Section 126 of the Act and Section 135, the Judgment of Hon'ble Apex Court reported in **West Bengal State Electricity Distribution Company Ltd. & Ors. V/s. M/s. Orion Metal Pvt. Ltd. & Anr - Civil Appeal No.6547 of 2019, reported in AIRONLINE-2019-SC-982** is to be taken into consideration, which learned trial Court has also discussed in impugned order.

The observations made by Hon'ble Apex Court in the said case in relevant paragraphs are re-produced herein below ;

"12. It is clear from the reading of Section 126 (6)(b)(iii) of the Act that instances of use of energy through a tampered meter is included in the definition of unauthorized use of electricity. If that is so, there is no reason, for excluding the power of the authorities for making assessment under Section 126(1) of the Act to assess the loss of energy, where electricity is used through a tampered meter. <u>All instances of unauthorized use of energy may not amount to theft of electricity within the meaning of Section 135 of the Act, but at the same time, the theft of electricity which is covered by Section 135 of the Act, will fall within the definition of unauthorized use of electricity</u>. As per Section 135(1A) of the Act, without prejudice to the other provisions of the Act, the licensee or supplier, as the case may be, upon detection of theft of electricity, is empowered to disconnect the power supply immediately. Further, as per the third proviso to Section 135(1A) of the Act, the licensee or supplier, as the case may be, on deposit or payment of assessed amount or electricity charges, without prejudice to the obligation to lodge a complaint, can restore the power supply electricity within forty- eight(48) hours of deposit /payment of such amount. <u>Thus, it is clear that the authorities under the Act are empowered to make a provisional and final assessment by invoking power under Section 126(1) of the Act, even in cases where electricity is unauthorisedly used by way of theft. When a consumer deposits the assessed amount, the licensee or the supplier has to restore the power supply.</u> The assessed amount referred to in the aforesaid proviso, relates to assessment which is contemplated under Section 126(1) of the Act only. There is apparent distinction between Section 126 and Section 135 of the Act.

Section 126 forms part of the scheme which authorizes electricity supplier to ascertain loss in terms of revenue caused to it by the consumer by his act of "unauthorized use of electricity" whereas Section 135 deals with offence of theft if he is found to have indulged himself in the acts mentioned in clauses (a) to (e) of sub-section (1) of Section 135 of Electricity Act. Further, it is also clear from Section 154 of the Act, which prescribes procedure and power of Special Court, that the Special Court is empowered to convict the consumer and impose a sentence of imprisonment. <u>The Special Court, in cases, where a criminal complaint is lodged, is also empowered to determine civil liability under Section 154(5) of the Act. As per Section 154(6)</u> of the Act, in case civil liability so determined by the Special Court is less than the amount deposited by the consumer or the person, the excess amount so deposited by the consumer or the person, shall be refunded by the licensee or the concerned person, as the case may be. <u>Merely because the Special Court is empowered to determine civil liability under Section 154(5) of the Act, in cases where a complaint is lodged, it cannot be said that there is no power conferred on authorities to make provisional assessment/final assessment under Section 126 of the Act.</u>

14. We also do not find any valid reason for making a distinction as made by the High Court in applying Section 126 of the Act. From the scheme of the Act, it appears that after inspection team notices unauthorized use of energy by tampering the meter, the authorities can disconnect the power supply immediately and make immediate assessment for loss of energy, by invoking power under Section 126(1) of the Act. The term "unauthorized *use of energy" is of wide connotation. There may be cases of unauthorized use of energy, not amounting to theft, which are cases viz. Exceeding the sanctioned load or using the electricity in the premises where its use is not authorized etc. But at the same time, when there is an allegation of unauthorized use of energy by tampering the meter, such cases of unauthorized use of energy include 'theft' as defined under Section 135 of the Act. <u>The power conferred on authorities for making assessment under Section 126(1) of the Act and power to determine civil liability under Section 154(5) of the Act, cannot be said to be parallel to each other. In this regard, we are of the view that the High Court has committed an error in recording a finding, that both proceedings cannot operate parallelly.</u> In a given case where there is no theft of energy, amounting to unauthorized use of energy, in such cases no complaint of theft can be lodged as contemplated under Section 135 of the Act. In such cases for loss of energy, on account of unauthorized use of energy not amounting to theft, it is always open for the authorities to assess the loss of energy by resorting to power under Section 126(1) of the Act. <u>In cases where allegation is of unauthorized use of energy amounting to theft, in such cases, apart from assessing the proceedings under Section 126(1) of the Act, a complaint also can be lodged alleging theft of energy as defined under Section 135(1) of the Act. In such cases, the Special Court is empowered to determine civil liability under Section 154(5) of the Act</u>. On such determination of civil liability by the Special Court, the excess amount, if any, deposited by the petitioner, is to be refunded to the consumer. <u>It is a settled principle that to prove the guilt of the accused in a criminal proceeding, authorities</u>*

have to prove the case beyond reasonable doubt and the element of mens rea is also to be established. On the other hand, such a strict proof is not necessary for assessing the liability under Section 126(1) of the Act."

Section 126 and Section 135 of the Electricity Act are discussed, herein above, and as per ratio, unauthorized use of electric energy may not amount to theft of electricity within the meaning of Section 135 of the Electricity Act. But at the same time, the theft of electricity which is covered by Section 135 of the Act, will fall within the definition of unauthorized use of electricity. It is also discussed that even in case of unauthorized use of electric energy by theft, authorities have power under Section 126 (1) to make assessment.

Thus, Section 126 of the Act, as discussed above, authorized the electricity supplier to settle loss in terms of revenue caused to it from consumers by his act of using unauthorized use of electricity energy, whereas Section 135 of the Act deals with offence of theft if person is found indulged in the acts mentioned in clauses (a) to (e) of sub-section (1) of the Section 135 of the Electricity Act. Thereafter, as per provision of Section 154 (5) and 154 (6) of Electricity Act, Special Court is empowered to determine Civil liability also. It may be noted that, if criminal complaint is filed, it does not take away the power or authority to make provisional assessment or final assessment under Section 126 of the Act.

Further, it is also mentioned that in Paragraph-14 of above authority that the power conferred on authorities for making assessment under Section 126(1) of the Act and power to determine civil liability under Section 154(5) of the Act, cannot be said to be parallel to each other. Because, in case of unauthorized use of energy not amounting to theft, it is always open for the authority to assess the loss of energy by using the power under Section 126 of the Act. It is also observed that Special Court is empowered to determine the Civil liability under Section 154 of the Act, in case where complaint of theft of energy is filed under Section 135 of the Act and when Special Court found that amount deposited by the litigant is in excess, then appropriate order of refund can be passed in favour of consumer.

Thus, Special Court is having power under section 154 to decide Civil liability as well, while deciding the criminal liability against the accused and that is incidental to the proceedings under Code of Criminal Procedure, which is analogous to power of Court in proceedings under the Gujarat Land Grabbing (Prohibition) Act, 2020, wherein the Special Court is empowered as per Section 9 of the said Act, to decide title and possession disputes and same will have force of decree of a Civil Court,. Thus, there is authority to decide both Criminal and Civil liability, but only because the Special Court has power as per Section 9 to decide the title and possession that does not mean that all civil suits are to be filed before that Special Court. Here also as per Section 154 of the Electricity Act, the Special Court has to decide the offence as per provision of Section 262 to 265 of the Cr.P.C. as the summary trial and incidentally, Special Court is having power to decide the Civil liability as well, having force of decree of a Civil Court, but that does not mean that Civil suits are to file before Special Court. Learned trial Court has committed error in wrongly interpreting the ratio of Hon'ble Apex Court and coming to the conclusion that only Special Court has jurisdiction to decide the disputes about civil liability and hence civil suit should be filed before Special Court. Section 126 and Section 135 of the Act, are separate proceedings, and Special Court will have jurisdiction to decide Civil liability, but regular Civil Court is simultaneously also empowered to decide suits for recovery and there is no bar.

11. Thereafter, learned trial Court has relied upon two authorities viz, Bahuchar Stone Industries Prop.V/s. State of Gujarat - R/Special Civil Application No. 20000 of 2018 and (2) Kamlaben Manohar Bisnoi V/s. Dakshin Gujarat Vij Company Ltd. - R/Special Civil Application No.13616 of 2021. Both are on the same issue and both authorities are of Hon'ble Gujarat High Court and same ratio has been decided. Hence, both authorities are discussed herein together.

It may be noted that in said authorities, the judgment of Hon'ble Apex Court in **North Delhi Power Ltd. (Supra)** has been cited and discussed. The relevant paragraphs of **Bahuchar Stone Industries Prop.V/s. State of Gujarat - R/Special Civil Application No. 20000 of 2018** are re-produced herein below ;

" 3.7 Learned advocate Mr.Mangukiya at this stage would further contend that against the order passed by Delhi High Court in the case of North Delhi Power Limited V/s Devinder Singh and others, Civil Appeal No.20842 of 2017 was filed before the Hon'ble Supreme Court and the Hon'ble Supreme Court has held that the Special Electricity Court acts as the

Court of Sessions and has been set up to try offences that are committed under the Act. By no stretch of imagination, can it be stated that civil suit would be within the jurisdiction of such court. It is thus contended that the decision rendered by the Division Bench of this Court in the case of Torrent Power AEC Ltd.(supra) is impliedly overruled. Learned advocate Mr.Mangukiya has placed on record the aforesaid judgments rendered by this Court, Delhi High Court and the Hon'ble Supreme Court.

4. On the other hand, learned advocate Ms.Bhaya appearing for the respondent-electricity company has opposed this petition and thereafter referred to the affidavit-in-reply as well as affidavit-in-sur-rejoinder filed by the respondent. At the outset, it is <u>contended that this Court may not entertain the present petition as the petitioner is having alternative remedy before the Special Court under Section 153 of the Act where the civil liability can be adjudicated by the said Court.</u> Learned advocate for the respondent has placed reliance upon the decision rendered by the Division Bench of this court in the case of Torrent Power AEC Ltd.(supra), Executive Engineer, Southern Electricity Supply Company of Orissa Limited (Southco) V.s Sri Seetaram Rice Mill, reported in 2012(2) SCC 108, the order dated 26.4.2011 passed by the Division Bench of this Court in the case of Ranchhodbhai Haribhai Sutaria V/s Union of India through Secretary, passed in Special Civil Application No.13931 of 2009 and allied matters and order dated 14.2.2011 passed by the Division Bench in the case of Abdul Rashid Kapadia and Baba Hiragal V/s Torrent Power Limited passed in Letters Patent

Appeal No.1685 of 2010. Learned advocate, therefore, urged that this Court may not entertain the petition on merits and the petitioner be relegated to the alternative remedy. It is further submitted that there are disputed questions of fact in this petition which cannot be decided by this Court.

9. From the aforesaid decision rendered by the Hon'ble Supreme Court in the case of North Delhi Power Limited (supra), it is revealed that in the civil suit filed before the Special Court by the concerned consumer, the electricity company has filed application under Order VII Rule 10 of CPC contending that only Civil Courts will have jurisdiction to try the suit and not the Special Court. When the said application was dismissed, the petition was filed before the High Court. The High Court also held that the jurisdiction of Special Court was not barred. When the matter was carried to the Hon'ble Supreme Court, it was held that the civil suit would not be within the jurisdiction of Special Court. <u>Thus, it appears that the consumer filed civil suit for declaration and permanent injunction before the Special Court. In that context, it was held that the Special Court has no jurisdiction to decide the civil suit. On the contrary, it was the case of the electricity company that the civil suit should be filed before the concerned civil Court. In the present case, the petitioner has prayed for quashing of the supplementary bill issued by the respondent. Thus, this Court is of the humble view that the aforesaid decision would not be applicable to the facts of the present case.</u>

10. In the case of Executive Engineer, Southern Electricity Supply Company of Orissa Limited (supra), the Hon'ble Supreme Court has held in paragraphs 28,29, 30 and 87 as under:

"28. Section 135 of the 2003 Act deals with an offence of theft of electricity and the penalty that can be imposed for such theft. This squarely falls within the dimensions of criminal jurisprudence and mens rea is one of the relevant factors for finding a case of theft. On the contrary, Section 126 of the 2003 Act does not speak of any criminal intendment and is primarily an action and remedy available under the civil law. It does not have features or elements which are traceable to the criminal concept of mens rea.

29. Thus, it would be clear <u>that the expression "unauthorised use of electricity"under Section 126 of the 2003 Act deals with cases of unauthorized use, even in the absence of intention. These cases would certainly be different from cases where there is dishonest abstraction of electricity by any of the methods enlisted under Section 135 of the 2003 Act.</u> A clear example would be, where a consumer has used excessive load as against the installed load simpliciter and there is violation of the terms and conditions of supply, then, the case would fall under Section 126 of the 2003 Act. On the other hand, where a consumer, by any of the means and methods as specified under Sections 135(a) to 135(e) of the 2003 Act, has abstracted energy with dishonest intention and without authorisation, like providing for a direct connection bypassing the installed meter, the case would fall under Section 135 of the Act."

30. Therefore, there is a clear distinction between the cases that would fall under Section 126 of the 2003 Act on the one hand and Section 135 of the 2003 Act on the other. There is no commonality between them in law. They operate in different and distinct fields. The assessing officer has been vested with the powers to pass provisional and final order of assessment in cases of unauthorized use of electricity and cases of consumption of electricity beyond contracted loan will squarely fall under such power. The legislative intention is to cover the cases of malpractices and unauthorized use of electricity and then theft which is governed by the provisions of Section 135 of 2003 Act.

12. Thus, keeping in view the aforesaid decisions rendered by this Court as well as the Hon'ble Supreme Court, if the facts of the present case are carefully examined, this Court is the view that the petitioner has alternative remedy before the Special Court where he can challenge the supplementary bill. However, this Court cannot exercise the powers under Article 226 of the Constitution of India and decide the disputed question of facts. Therefore, this petition is not entertained only on this ground. This Court has not examined the merits of the case of the petitioner. Thus, as and when the petitioner files proceedings before appropriate Court/forum, the same shall be decided on its own merits."

Now, It is required to note that as per facts in the case of **Bahuchar Stone Industries Prop. (Supra),** at time of checking of the connection of the Petitioner, there was no seal on the material metal box and number of loose seals were found and seals on the terminal cover were found tampered with and it was case of theft of electricity and hence FIR was filed and supplementary bill was issued.

Now, taking into consideration provision of Section 154, the Hon’ble High Court of Gujarat has distinguished and has held that the decision of Hon’ble Apex Court in case of **North Delhi Power Ltd. (Supra),** will not be applicable, because, as per view of Hon’ble High Court, in case before Hon’ble Apex Court a Civil suit was filed and in that context it was held that Special Court has no jurisdiction to decide the Civil Suit. However, in case before Hon’ble High Court of Gujarat, supplementary bill was issued in case of electricity theft and F.I.R. was filed and proper remedy was available to the Petitioner under section 154 of the Electricity Act, and Special Court can decide Civil liability as well, hence the petitioner was relegated to avail that remedy before Special Court by Hon’ble High Court. Thus, in such above stated peculiar facts, as the criminal complaint was already filed, and Special Court while exercising jurisdiction under Cr.P.C. could also decide civil liability as per Section 154 of the Act, hence, Hon’ble High Court has held that ratio of Hon’ble Apex Court in North Delhi Power Ltd. (Supra), would not be applicable. But here, P.G.V.C.L. has filed civil suit for recovery and it can not be said that Civil Court will have no jurisdiction and only Special Court, functioning as per Cr.P.C. will have jurisdiction. Here it is not case of criminal complaint to be decided as per Section 154, and had there be any such criminal proceeding going on, then definitely Special Court would have jurisdiction, but that is not the case here. In case before Hon’ble High Court of Gujarat there was no civil suit proceeding pending or filed before trial Court and only criminal case was pending and in that context it was held that proper remedy would be as per Section-154 of the Electricity Act before Special Court. But here as per civil suit is filed, the ratio of **Bahuchar Stone Industries Prop. (supra) and Kamlaben Manohar Bisnoi (supra),** would not be applicable, but ratio of Hon'ble Apex Court in **North Delhi Power Ltd. (Supra),** would be applicable. Thus, the trial Court has committed error in wrongly applying ratio of **Bahuchar Stone Industries Prop. (supra) and Kamlaben Manohar Bisnoi (supra) in present case.**

12. It is required to note that issue with regard to maintainability of the suit before the Civil Court has been discussed by Hon'ble High Court of Gujarat in **Plasto Processors Versus Gujarat Electricity Board, reported in 2005 SCC OnLine Guj 48 : (2005), which will be fruitful to refer and hence reproduced as follows ;**

"26. The reliance was placed by the learned counsel for the Board and the Electricity Co. upon the decision of the Delhi High Court in the case of Sohanlal (supra) for excluding the cases of theft of electric energy under the scheme of Sections 126 and 127 of the new Act. In view of the observations made hereinabove, with cases. If the <u>legislature specifically provides for detailed procedure to be followed for unauthorised use of electricity, which can be said of inclusive of theft cases, there is no reason to exclude the cases of theft cases from the method and manner of making assessment under Section 126 and for hearing of the appeal under Section 127</u>. Further, while comparing the distinction of language of Section 135 of the Act, more

particularly, at paras 41 and 42 of the said decision the Delhi High Court has not considered that whether the meter is tampered by the person himself or somebody else has tampered the meter, so far as the consumption of electricity is concerned, it would be through tampered meter which even otherwise also is included in the unauthorised use of electricity. Therefore, said decision of the Delhi High Court is of no help to the respondent Board and the electricity company nor the said decision can be read as laying down the proposition to the jurisdiction of the civil court after the conclusion of proceedings under Section 127 of the Act.

30. <u>On plain reading of the aforesaid section, the jurisdiction of the civil court is excluded for entertaining any suit or proceeding in respect of any matter which the assessing officer referred to in Section 126 or the appellate authority referred to under Section 127</u> or adjudicating officer appointed under this Act has to determine. It is <u>further expressly provided that no injunction shall be granted by any court or any authority in respect of any action taken or to be taken in pursuance of powers conferred or under this Act.</u> Therefore, there is express provision for excluding the jurisdiction of the civil court in respect of the matters, which the assessing officer has to decide under Section 126 or the appellate authority has to decide under Section 127 of the Act. It has been further expressly provided that no injunction shall be granted in respect of any action taken or to be taken in pursuance of powers conferred under this Act. Therefore, pending the procedure of assessment under Section 126 and pending the decision by the appellate authority or the *adjudicating officer, as the case may be, no injunction can be granted by the civil court. Further, the jurisdiction of the civil court is expressly excluded in respect of the matters to be decided by the assessing officer under Section 126 or the appellate authority under Section 127 or; the adjudicating officer under Section 143, but it cannot be held that even if the action is ultra vires the powers under Section 126 or 127, or if the action is in breach of the statutory provisions of the Act, the jurisdiction of the civil court shall stand excluded. In any event, it is apparent that until the decision is rendered by the assessing officer or by the appellate authority or the adjudicating officer under this Act, the jurisdiction of the civil court stands expressly excluded. However, if the decision is taken by the appellate authority finally upon the assessment made and if as per the consumer exercise of power is ultra vires the provisions of the Act or in breach of the statutory provisions of the Act, at that stage, but after final decision under Section 127 of the new Act the jurisdiction cannot be said to be as excluded.*

36. As observed earlier, the electricity code which may be framed under Section 50 of the Act by the State Commission may provide for disconnection in case of unauthorised dues of electricity including through tampered meter which are said as theft cases and it may also provide for restoration of supply of electricity in the case of tampering or distress or damage to the electric lines or the meter. However, if such Code is so framed by the State Commission, it would prevail, but, until such Electricity Supply Code is specified by the State Commission as there is no inconsistency, the right of disconnection with the Board and the

Electricity Company and the right of restoration of the electricity supply with the consumer pending the finalisation of assessment shall be governed by the existing provisions of conditions of supply which have been framed under old Act or Gujarat Electricity Act, as the case may be. It is an admitted position that uptil now, the electricity supply code is not specified by the State Commission. Therefore, after provisional assessment as per the conditions of supply is served upon the person concerned under Section 126 of the Act if he deposits the full assessed amount he shall not be subjected to any further liability or any action whatsoever and therefore in any case he would be entitled for restoration of electricity supply. But, in the event the provisional assessment is not acceptable to the person concerned and he is desirous to file objections, he may file objections as per sub-section (3) of Section 126, but after the provisional assessment is served upon him, if he is desirous of getting the electricity supply restored, he would be required to deposit the amount as required under the prevailing conditions of supply for restoration of electricity supply in case of malpractice and also theft cases. But, after the assessment is so finalised by the assessing officer as per Section 126 of the Act, pending the appeal before the appellate authority under Section 127 unless any interim order is passed by the appellate authority after entertaining the appeal against disconnection, may be on condition or otherwise, as the facts and circumstances of each case may require the consumer or the person concerned would be required to deposit the amount with the Board or the electricity company, as the case may be, pending appeal in case if he so desires to continue with the electricity supply. It is hardly required to be stated that even if *the interim order is passed, such interim order shall be qua the assessment under Section 126 of the Act, and therefore, <u>in any case, consumer would be required to pay the regular bill of electricity for electricity consumption pending finalisation of assessment by the assessing officer under Section 126 and pending hearing of appeal by the appellate authority under Section 127 of the new Act.</u>*

37.In view of the above observations conclusions can be drawn as under:

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(ii) The scope and ambit of assessment under Sections 126 and 127 <u>of the new Act is applicable in case of unauthorised use of electricity including through tampered meter, which are described as malpractices or theft of electricity in the existing conditions of supply</u>, etc. However, the amount deposited under Section 126(4) of the new Act does not operate as bar to any criminal liability or action for committing crime/offence by the consumer person concerned.

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(vii) In view of Section 145 of the new Act, the jurisdiction of the civil court is excluded for matters where the assessing officer has to decide under Section 126 or the appellate authority has to decide under Section 127 of the Act or the adjudicating officer has to decide under Section 143 of the new Act, <u>but, after the decision is rendered by the assessing officer or the appellate authority or the adjudicating officer, as the case may be, the civil court will have the jurisdiction only in those cases where the</u>

provisions of the new Act have not been complied with or the assessing officer or the appellate authority have not acted in conformity with the fundamental principles of judicial procedure. In any case, in all cases, the civil court shall not grant injunction in respect of any action taken or to be taken in pursuance of the powers conferred by or under the new Act."

Thus, the Hon'ble High Court of Gujarat has observed in above authority that Section 126 has specifically provided detailed procedure which is required to be followed for unauthorized use of electricity, which can be said of inclusive of theft cases. There is no reason to exclude the case of theft cases from the method and manner of assessment under Section 126and 127 of the Electricity Act as per said ratio.

Further, at the paragraph No.37 of the above judgment, it is held that in case of malpractice or theft of electricity, Sections 126 and 127may be applicable and even after amount is deposited under Section 126, that would not have any effect on criminal liability or action for the alleged crime by the consumer or person concerned. Further, it is also observed that jurisdiction of Civil Court is excluded as per Section 145 of the new Act when matter is referred by the Assessing Officer as per Section-126 or when the matter is referred to appellate authority under Section 127 of the Act. But, however, after the decision is rendered, as per Section-126 or Section-127 of the Electricity Act, as the case may be, the civil court will have the jurisdiction only in those cases where the provisions of the new Act have not been complied with or the assessing officer or the appellate authority have not acted in conformity with the fundamental principles of judicial procedure. It is also clarified in the said Judgment that Civil Court shall not grant any injunction in respect of action taken or to be taken as per Electricity Act.

Thus, Hon'ble High Court of Gujarat has held that under few circumstances civil suit is maintainable and there is no bar of filing of suit. Hence, it can not be said that Civil Court has no jurisdiction in case of malpractice or theft cases so far as civil liability is concerned.

13. Thereafter, even if the suit can be filed by a consumer, or concerned person, then also there are certain other limitations which are to be borne in mind. The Hon'ble High Court of Gujarat in case of **Second Appeal No.21 of 2005, Gujarat Electricity Board- Now Paschim Gujarat Vij. Co. Ltd., Vs Pragjibhai Bhagwanbhai Patolia**, has decided the issue and observed as follows ;

" 7. Having heard learned advocate Mr.Dave and considering the judgment in Second Appeal No.11 of 2012 passed by Co-ordinate Bench having complete binding precedent, <u>I am totally surprised by finding given by learned Courts below, whereby, learned Courts below intend to decide legality of supplementary bill which has attained finality in absence of any valid challenge to it. It was simple suit for recovery of supplementary bill.</u> There is no reason for the learned Appellate Court or learned Trial Court to decide any legality in regards to supplementary bill. Learned Appellate Court as well as learned Trial Court instead of seeing wood try to see branches of tree. Relevant finding of Co- ordinate Bench in case of <u>Bhikhabhai Arjanbhai Varu (supra) in para 5, 5.1 and 5.2 reads as under :-</u>

"5.0. Heard the learned advocates for the respective parties at length. At the outset, it is required to be noted that respondent hereinoriginal defendant was found to have indulged in the malpractice and has committed the theft of electricity by using illegal means for which a supplementary bill of Rs.30560.66 was issued. <u>It is required to be noted that as per the condition of Supply of Electrical Energy if the consumer is aggrieved by the supplementary bill, in that case, he is required to prefer an appeal before the Appellate Authority</u>. It is also required to be noted that as per the condition of Supply of Electrical Energy if a person/ consumer is found to be indulged into malpractice, is required to pay additional charge as per the ABCD formula as per the condition of Supply of Electrical Energy. It is an admitted position that respondent herein original defendant has not challenged the supplementary bill before the Appellate Authority as provided under the condition of Supply of Electrical Energy. Therefore, as such the supplementary bill issued by the appellant original plaintiff has attained the finality. As the respondent did not make payment of the supplementary bill, the appellant hereinoriginal plaintiff instituted suit for recovery of amount under the aforesaid supplementary bill i.e. for recovery of Rs.30560.66 and in the said suit preferred by the appellant to recover an amount under the supplementary bill, for the first time in the said suit the respondent hereinoriginal defendant challenged the supplementary bill. <u>Therefore, short question which is posed for consideration of this Court is whether in a case where consumer has not challenged the supplementary bill by way of appeal before the Appellate Authority as provided under the condition of Supply of Electrical Energy and thereafter</u>

<u>when the Board has filed the suit for recovery of the amount under the supplementary bill is it open for the consumer to challenge the supplementary bill and / or take the same contention by way of defence in the suit filed for recovery of the dues under the supplementary bill which he could have taken in an appeal before the Appellate Authority ?</u>

5.1. Identical question came to be considered by the Division Bench in the case of Vrajlal Devjibhai vs. GEB in First Appeal No.2506 of 2003 and it is held by the Division Bench that if consumer is found to have indulged in to any malpractice etc he has to pay additional charge as may be levied by the Board and if the <u>supplementary bill is issued, the proper remedy for the consumer is to prefer the appeal to the Appellate Authority as provided in the condition of Supply of Electrical Energy and if the consumer has not availed of that remedy, thereafter it is not open for him to take up same contention by way of defence in the suit filed for recovery of dues assessed in accordance with the conditions of supply.</u> In the said decision the Division Bench considered the decisions of the Hon'ble Supreme Court in the case of Punjab State Electricity Board and Anr vs. Ashwani Kumar reported in (1997) 5 SCC 120 as well as in the case of Hyderabad Vanaspathi Ltd vs. A.P. State Electricity Board and Others reported in (1998) 4 SCC 470 and in para 5 the Division Bench has observed and held as under;

5. As held by the Supreme Court in PUNJAB STATE ELECTRICITY BOARD & ANR v. ASHWANI KUMAR [(1997) 5 SCC 120], although Civil Court had jurisdiction to go into disputed questions of civil nature, cognizance of civil cause was *excluded by virtue of supplementary rules providing for disposing of the disputes expeditiously. It was held that the Civil Court was not justified in entertaining the suit and giving a declaration without directing the party to avail of the remedy provided under the Indian Electricity Act, the Indian Electricity (Supply) Act and the instructions issued by the Board in that behalf from time to time. It is also held by the Supreme Court in HYDERABAD VANASPATHI LTD. v. A.P.STATE ELECTRICITY BOARD & OTHERS [(1998) 4 SCC 470] that the Board in performance of a supplementary duty supplied energy on certain specific terms and conditions framed in exercise of a supplementary power and undoubtedly they were supplementary in character. It is also held that for ascertaining the loss and fixing the compensation, a uniform procedure has to be framed and a machinery constituted and if a consumer is found indulging in any malpractice etc., he has to pay additional charges as may be levied by the Board. Thus, the proper remedy for the appellant was to prefer an appeal to the Appellate Authority as provided in the Conditions of Supply of Electrical Energy and the appellant having admittedly not availed of that remedy, it was not open for him to take up the same contentions by way of defence in the suit filed for recovery of the dues assessed in accordance with the Conditions of Supply. The trial Court has not committed any error in reaching its findings in favour of the respondent for the reasons given by it with which we fully agree"*

5.2. Under the circumstance, the learned trial Court has materially erred in considering defence of the consumer

<u>challenging the supplementary bill when the said bill has not been challenged by the consumer by way of appeal before the Appellate Authority as provided under the condition of Supply of</u> Electrical Energy. Considering the aforesaid facts and circumstances, the learned trial Court ought to have passed the decree for the entire amount under the supplementary bill i.e. Rs.30,560.66."

As per above discussion, when a person/litigant found to be indulged in malpractice or has committed electricity theft by illegal means and supplementary bill is issued, then until and unless the consumer has challenged the supplement bill before the appellate authority, it is not open for him to file suit for the recovery of amount before the Civil Court. The Hon'ble High Court has categorically observed that litigants are required to prefer an appeal before the appellate authority as provided and if he has not avail that remedy, it is not open for litigant to take up the same contention before Civil Court by way of defence which he could have taken in appeal before Appellate Authority as per Section 127 of the Electricity Act. Thus, when electricity company has filed the suit for recovery of the bill, consumer or the person concerned will be debarred from raising such defences to supplementary bill.

14. Thereafter, following the same ratio of **Gujarat Electricity Board- Now Paschim Gujarat Vij. Co. Ltd., Vs Pragjibhai Bhagwanbhai Patolia (supra)**, another cases of Hon'ble High Court of Gujarat are also required to be take into consideration, where also Electricity Company has also filed the suit for recovery of theft amount and it was decided that, whether

it was open for the consumer to challenge the bill if he has not raised issue by virtue of appeal before the appellate authority and that issue has also been decided in negative and in following manner in case of **SECOND APPEAL NO. 276 of 2023, LILABHAI KARSHANBHAI BALAS Versus PASCHIM GUJARAT VIJ COMPANY LTD. ;**

"14. It has also come on record that the defendant denied to sign the Rojkaam, and the <u>Bill for unauthorized use of power was sent to the defendant. Even the notice for the recovery of the Bill amount was sent to the defendant, which</u> fact has been admitted by the defendant in his cross-examination. The fact remains that the defendant has neither objected to the Bill nor has produced any evidence in respect of ownership of the site where the theft has taken place, to show whether it belonged to the defendant or somebody else.

15. The fact also will have to be considered that the defendant has neither filed any objection against the Bill before the assessing officer nor filed any appeal before the competent authority. <u>In the case of Paschim Gujarat Vij Co. Ltd. Vs. Bhikhabhai Arjanbhai Varu in Second Appeal No. 11 of 2012</u>, this Court held at Paragraph 5.0, 5.1 as under:

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16. Moreover, as the defendant was found to have indulged in malpractice, he is liable to pay the additional charges as levied by the Board. If a Supplementary Bill is issued, the proper remedy available to the defendant is to prefer an appeal before the Appellate Authority, as provided under the Conditions of

Supply of Electrical Energy. As the defendant has not availed himself of such remedy, it is not open for him to raise the same contention by way of defence in the suit filed by the plaintiff for recovery of dues assessed in accordance with the said Conditions of Supply.

17. <u>Therefore, as the Bill is not challenged and there is no objection taken to the supplementary Bill, it attains finality. Consequently, without challenging the said Bill, it is not open for the defendant to take the defence that he has not committed any theft of electricity</u>."

In above judgment also, the same Judgment of **Paschim Gujarat Vij Co. Ltd. Vs. Bhikhabhai Arjanbhai Varu (supra)** is referred as it was referred in earlier case of **Gujarat Electricity Board- Now Paschim Gujarat Vij. Co. Ltd., Vs Pragjibhai Bhagwanbhai Patolia (supra).**

15. Thereafter, another decision of Hon'ble High Court of Gujarat is required to refer on same line. The Hon'ble High Court has decided the same issue that when supplementary bill is not challenged by the consumer by way of filing of appeal, then consumer is not entitled file suit before civil court and it has been decided as follows in case of **Zakhra Hathiya Odedara (Porbandar Vala) Versus Paschim Gujarat Office, Rajkot Vij Company Ltd, reported in 2025 SCC OnLine Guj 5301**, wherein Hon'ble High Court has observed as follows ;

"14. It has also come on record that the defendant denied to sign the Rojkaam, and the Bill for unauthorized use of power was sent to the defendant. Even the notice for the recovery of the Bill

amount was sent to the defendant, which fact has been admitted by the defendant in his cross-examination. The fact remains that the defendant has neither objected to the Bill nor has produced any evidence in respect of ownership of the site where the theft has taken place, to show whether it belonged to the defendant or somebody else.

15. The fact also will have to be considered that the defendant has neither filed any objection against the Bill before the assessing officer nor filed any appeal before the competent authority. In the case of Paschim Gujarat Vij Co. Ltd. v. <u>Bhikhabhai Arjanbhai Varu in Second Appeal No. 11 of 2012,</u> this Court held at Paragraph 5.0, 5.1 as under:

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16. Moreover, <u>as the defendant was found to have indulged in malpractice, he is liable to pay the additional charges as levied by the Board. If a Supplementary Bill is issued, the proper remedy available to the defendant is to prefer an appeal before the Appellate Authority, as provided under the Conditions of Supply of Electrical Energy. As the defendant has not availed himself of such remedy, it is not open for him to raise the same contention by way of defence in the suit filed by the plaintiff for recovery of dues assessed in accordance with the said Conditions of Supply.</u>

<u>17. Therefore, as the Bill is not challenged and there is no objection taken to the supplementary Bill, it attains finality. Consequently, without challenging the said Bill, it is not open for</u>

the defendant to take the defence that he has not committed any theft of electricity.”

In above judgment also, the same Judgment of **Paschim Gujarat Vij Co. Ltd. Vs. Bhikhabhai Arjanbhai Varu (supra)** is referred as it was referred in earlier case of **Gujarat Electricity Board- Now Paschim Gujarat Vij. Co. Ltd., Vs Pragjibhai Bhagwanbhai Patolia (supra),** hence not reproduced to avoid duplicacy.

Thus, in above cited authorities, it is observed that when the defendant has not filed any objection before the appellate authority as per Section 127 then it will not be open for him to challenge the supplementary bill before the Civil Court and it attains the finality. Hence, it is mandatory for the consumer or person concerned to challenge the supplementary bill before the authority under Section 127 of the Electricity Act.

16. Thereafter, at this juncture, it would be not out of place to refer the observations made by the Hon’ble Apex Court on the issue that suit can be filed by the Electricity Company for recovery of dues before Civil Court against present and/or erstwhile owner. Hon'ble Apex Court in the case of **K.C. Ninan v. Kerala State Electricity Board & Ors., reported in reported in (2023) 14-Supreme Court Cases-431** observed as follows ;

*“ **VI- Implication of Section 56(2) on recovery of electricity dues by the Electric Utilities ;***

“ 118.The Electric Utilities have submitted that Section 56 of the 2003 Act only deals with the right of the licensee to disconnect

supply. Explaining the scope of the relevant provision, it has been submitted that Section 56 sets out different timelines, namely (a) when the disconnection can be made i.e. when payment of charges is not made after giving requisite notice (b) how long the disconnection can be maintained i.e. long as the outstanding dues remain ; and (c) when it is to be recorded i.e. immediately when the outstanding dues are paid. Reliance has been placed on Ajmer Vidyut Vitran Nigam Ltd. Vs Rahamatullah Khan (2020)- 4- SCC-650 and Prem Cottex Vs Uttar Haryana Bijli Vitran Nigam (2021)-20-SCC-200 to contend that the use of the expression "under this section" in Section 56(2) means that the avenue of effecting disconnection to recover money can not be restored to after the limitation period. It is further contended that Section 56 does not bar the recovery of pending charges through other avenues of recovery in accordance with law. The licensees urge that civil remedies and statutory power to recover electricity can be utilised simultaneously. It was urged that Section 56 does not restrict hte right of the licensee to insist on payment of the arrears of charges incurred on the premises, from a subsequent applicant for a fresh connection to the same premises.

125. The first issue pertains to the simultaneous exercise of statutory and civil remedies by the licensing authority to recover electricity arrears. The liability to pay electricity charges is a statutory liability and Section 56 provides the consequences when a consumer neglects to pay any charge for electricity or any sum other than a charge for electricity due from him. <u>Section 56(1) provides that the power of the licensee to disconnect</u>

electrical supply when a consumer is in default of payment is "without prejudice to his rights to recover such charge or other sum by suit". This means that the licensee can exercise both its statutory remedy to disconnect as well as a civil remedy to institute a suit for recovery against the consumer since the licensee will not necessarily obtain the amount due from the consumer by disconnecting the supply. In its decision in Bihar SEB v. Iceberg Industries Ltd., this Court has held that the power to disconnect supply under Section 56 is a special power given to the supplier in addition to the normal mode of recovery by instituting a suit. The power to disconnect the supply of electricity as a consequence of the non-payment of dues and as a method to recover dues is supplemental to the right of the licensee to institute a suit or other proceedings for the recovery of dues on account of electrical charges.

126. Section 56(1) of the 2003 Act is pari materia to Section 24 of the 1910 Act. Section 24 of the 1910 Act empowered the Electricity Board to issue a demand and to discontinue supply to consumers who neglected to pay charges, without prejudice to the right to recover such charges or other sums by way of a suit. The import of Section 24 was considered by this Court in Isha Marbles (supra), where it was observed that the action of cutting off electricity supply after service of the notice as prescribed under Section 24 was in addition to the general remedy of filing a suit for recovery.

127. In M/s Swastic Industries v. Maharashtra State Electricity Board,58 this Court held that the right to discontinue supply of energy under Section 24 was not taken away by Section 60A of *the 1948 Act, which provided an option to the Electricity Board to file a suit within the period of limitation stipulated there. This Court observed that:*

"5. It would, thus, be clear that the right to recover the charges is one part of it and right to discontinue supply of electrical energy to the consumer who neglects to pay charges is another part of it. The right to file a suit is a matter of option given to the licensee, the Electricity Board. Therefore, the mere fact that there is a right given to the Board to file the suit and the limitation has been prescribed to file the suit, it does not take away the right conferred on the Board under Section 24 to make demand for payment of the charges and on neglecting to pay the same they have the power to discontinue the supply or cut off the supply, as the case may be, when the consumer neglects to pay the charges. The intendment appears to be that the obligations are mutual…." (emphasis supplied).

128.Hence, the power to initiate recovery proceedings by filing a suit against the defaulting consumer is independent of the power to disconnect electrical supply as a means of recovery.

Looking to the above observations made by the Hon'ble Apex Court, it is specifically mentioned that as per Section-56 licencee has power to disconnect the supply without prejudice to his rights to recover the charges or other sum by way of suit. It is further observed that power to initiate recovery proceedings by filing a suit against the defaulting consumer is independent of the power to disconnect electrical supply as a means of recovery.

Thus, Hon'ble Apex Court has also mentioned that Electricity Company can file the recovery suit for outstanding dues. It is required to note that in the said case, the issue with regard to arrears of electricity from previous owner and erstwhile owner was discussed. In that case, it was held that civil suit is appropriate remedy in addition to Section 56 of the Act, and this ratio and observation is binding to all Courts in the country.

17. Thus, as per discussion made as above, consumer or concerned person against whom supplementary bill has been issued, is required to challenge the supplementary bill before the appellate authority of Electricity Company as per Section-127 of the Act and when he has not done so, he will be prevented from challenging the supplementary bill before the Civil Court as the unchallenged supplementary bill attains the finality and it will not be open for him to take defence which he could have taken before appellate authority as per Section-127 of the Electricity Act.

It is required to note that for the purpose of recovery of the supplementary bill, the Electricity Company has two alternative remedy, one is to file suit as observed in the case of **K.C. Ninan (supra),** and another is to file criminal complaint under Section 135 of the Electricity Act.

18. It is required to note that as discussed above, when a criminal proceedings are initiated then Special Court can certainly decide the issue with regard to Civil liability of the consumer or person concerned and amount as has been decided by the Special Court can be recovered as it is a decree of Civil

Court. The provision under Section-154 (5) is incidental proceedings, which empower the Special Court. Thus, the criminal Court is given power to decide the civil liability as well, when a criminal case proceeding against the person concerned is going on but that does not mean that such proceeding is to be given a colour of civil proceedings and suit is to be filed before Special Court. **T**he Hon'ble High Court of Gujarat in case of **Bahuchar Stone Industries Prop. (supra),** observed that Special Court will have the jurisdiction to pass appropriate order with regard to supplementary bill, when criminal case is pending, hence, under those circumstances and in that context, the litigant was relegated to avail his remedy before the Special Court. But as per observations made by the Hon'ble Apex Court in **North Delhi Power Ltd.(Supra),** it has been specifically held that Special Court has no jurisdiction to decide the issue of recovery as if it is Civil Court. Even in case of **West Bengal State Electricity Distribution Company Ltd., (supra),** Hon'ble Apex Court has observed that both the proceedings under Section 126 and Section 135 of the Act, are separate and having different standard of proof and different procedure. Even Hon'ble High Court of Gujarat has in case of **Plasto Processors (supra),** held that under certain circumstances, aggrieved person or consumer can file suit before Civil Court,and that Hon'ble Apex Court has in case of **K.C.Ninan (supra),** held that Electricity Authority can file suit for recovery. The trial Court has committed serious error in coming to the conclusion that Special Court will have the jurisdiction to decide the Civil suit as per Sections-153 and 154 of the Act. To decide civil liability in criminal case is different thing and to deal with civil suit is different thing. Hence, that impugned order is required to be set-aside.

19. At this juncture, it is required to note that the trial Court has decided the issue of jurisdiction by initiating proceedings suo moto under Order VII Rule 11 of the Code of Civil Procedure. There is no bar in Civil Procedure Code to utilize that power to initiate the proceedings suo moto. As per provision of Order VII Rule (11) (d) of the Code of Civil Procedure, when plaint is barred by any law, then Court can reject the suit. Hence, submission of learned advocate for plaintiff that trial Court should not have suo moto exercise their power as per Order VII Rule 11 of the Code of Civil Procedure is not tenable.

20. Thus, as discussed above, the impugned order passed as per provision of Order VII Rule 11 of the Code of Civil Procedure and the decree in pursuance thereof is not tenable and required to be set-aside. As discussed above, the learned trial Court has committed serious error in the interpretation of Judgments rendered in **North Delhi Power Ltd.(Supra),West Bengal State Electricity Distribution Company Ltd., (Supra), Bahuchar Stone Industries Prop. (Supra) and Kamlaben Manohar Bisnoi (Supra)** and wrongly rejected the suit. The Regular Civil Court will have jurisdiction to decide the present suit of recovery filed by the P.G.V.C.L., as per pecuniary jurisdiction.

Bearing in mind aforesaid factual aspect emerging from the record and the provision of the law, it is sufficient to say that the findings recorded by the Trial Court in respect of rejecting the plaint under Order VII, Rule-11of the Code of Civil

Procedure is untenable at law and consequently, same is requiring interference of this Court. In this background, the point for determination no.1 to 3 are decided accordingly and for point No.4, following order is hereby passed ;

F I N A L = O R D E R

1. The present Regular Civil Appeal is hereby **allowed.**

2. The impugned order and decree dated 10/02/2026 passed by the Court of 7th Additional Senior Civil Judge, Jamnagar in Regular Civil Suit No.629 of 2025 is hereby **quashed and set-aside. And trial Court is directed to decide the said case on merits.**

3. Further following clarifications are made ;

> *"1. There is exclusive Bar of jurisdiction of civil court as per section 145 of Electricity act against the consumer or concerned person and they cannot file any civil suit without approaching concerned authority as per section 126 and as per section 127 of Electricity act.*
>
> *2. After the decision is arrived by assessing officer as per section 126 or the appellate Authority as per section 127, as the case maybe, the civil Court will have the jurisdiction only in those cases where the said provisions of the act have not been complied with or as per concerned person exercise of power by authority is ultra vires the provisions of the Act or the assessing officer or the Authority have not acted in*

conformity with the fundamental principles of judicial procedure. In any case the civil court shall not grant injunction in respect of any action taken or to be taken in pursuance of powers conferred by or under the act. [As per ratio of Plasto Processors Versus Gujarat Electricity Board, reported in 2005 SCC OnLine Guj 48 : (2005),(supra)]

3. When the supplementary bill has not been challenged by the concerned person before the authority, then the bill shall attain finality . Consequently, without challenging the said bill, it will be not open for the concerned person to raise the same defence before civil court, which he could have taken before the authority under provisions of section 126 and 127 of Electricity act. [As per ratio of Second Appeal No.21 of 2005, Gujarat Electricity Board- Now Paschim Gujarat Vij. Co. Ltd., Vs Pragjibhai Bhagwanbhai Patolia-(supra), Zakhra Hathiya Odedara (Porbandar Vala) Versus Paschim Gujarat Office, Rajkot Vij Company Ltd, reported in 2025 SCC OnLine Guj 5301, (supra) and SECOND APPEAL NO. 276 of 2023, LILABHAI KARSHANBHAI BALAS Versus PASCHIM GUJARAT VIJ COMPANY LTD (supra)].

4. There is no Bar for electricity authority to file a suit for recovery of suit before regular Civil court against the consumer or concerned person when supplementary bill has been issued. [As per ratio of

K.C. Ninan v. Kerala State Electricity Board & Ors., reported in reported in (2023) 14-Supreme Court Cases-431 (supra)]

5. Section 126, and section 135 are separate proceedings. Special court while conducting trial as per criminal procedure code, will have authority to decide civil liability as well and such order will have force of civil decree as per sec 154 of electricity act. [As per ratio of West Bengal State Electricity Distribution Company Ltd. & Ors. V/s. M/s. Orion Metal Pvt. Ltd. & Anr - Civil Appeal No.6547 of 2019, reported in AIRONLINE-2019-SC-982 (supra)].

6. But only because the during the proceedings of Cr.P.C. the special court has Authority to decide the civil liability, it cannot be said that a civil suit will also lie where summary trial proceedings are to be conducted as per Cr.P.C. Hon'ble Apex Court has specifically barred the special court from entertaining regular Civil suit." [As per ratio of North Delhi Power Ltd. V/s. Devinder Singh & Anr. –Civil Appeal No. 20842 of 2017 (Arising out of SLP © No. (s) 6883 of 2017- (supra)]

4. **The Registry is directed to communicate and forward a copy of this judgment to all the courts functioning in jurisdiction of Jamnagar, for reference.**

5. No order as to cost.

6. Decree to be drawn up accordingly.

7. The Record and proceedings of the Regular Civil Suit No.629 of 2025 be sent back to the Trial Court along with one true copy of this judgment immediately.

This order is pronounced and signed in the open Court on this 07th day of May-2026 under my hand and seal.

Digitally signed by
NEHAL RAJESHBHAI JOSHI
on 07/05/2026 17:06:45 IST.

(Nehalkumar Rajeshbhai Joshi)
Principal District Judge, Jamnagar
Code No.: GJ01318

Date: -07/05/2026
Place: - Jamnagar.
A J RAVAL/PS