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सत्यमेव जयते

In the Court of Principal Senior Civil Judge,
At. Vanthli (Dist. Junagadh)

Special Civil Suit No. 15 of 2019
Old Special Civil Suit No. 05 of 2018
Old Special Civil Suit No. 06 of 2012

Exhibit : 116__

Plaintiff	P.G.V.C.L. Company Ltd. Through Deputy Engineer Sub-Division, Bantwa Dist. Junagadh.
Defendants	Directors of Jadeshwar Ginning Factory 1. Ashokbhai Hirabhai Nakum, Age: 47 years, Occup: Business, Religion: Hindu, R/o. Sultanabad, Taluka Manavadar. 2. Harsukhbhai Hirabhai Nakum, Age: Adult, Occup: Business, Religion: Hindu, R/o. Sultanabad, Taluka Manavadar.

	3. Hililal Diralal Nakum, Age: 56 years, Occup: Business, Religion: Hindu, R/o. Sultanabad, Taluka Manavadar. Address of Defendants No. 1 to 3: Jadeshwar Ginning Factory, Manavadar Road, Sultanabad, Taluka Manavadar.
Appearance	Ld. Adv. Mr.K. T.Dubey for Plaintiff. Ld. Adv. Mr.S.G.Khanpara for Defendants.
Subject	Suit under Section 154(5) of the Electricity Act for recovery of the supplementary bill amount for power theft in respect of Consumer No. 35234/00600/2, together with delayed payment charges totaling Rs. 31,38,577.02 Ps.

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

1. The summarized facts giving rise to the plaintiff's suit are as under:-

(1.1) The plaintiff is an autonomous organization engaged in supplying electricity throughout the State of Gujarat for various purposes. Its head office is situated at Rajkot. For administrative convenience, the plaintiff company has established various circles, divisions, and sub-divisions. Accordingly, under the Porbandar Circle, the Bantwa Sub-Division Office is functioning where the deponent is serving as Deputy Engineer. As per the rules of the plaintiff company, the deponent is duly authorized to sign the plaint, vakalatnama, affidavits, and to institute suits before the court on behalf of the plaintiff company.

(1.2) The defendants are consumers of the plaintiff company and fall within the jurisdiction of the Bantwa Sub-Division Office. The consumer number of the defendants is 35234/00600/0, and they hold an industrial electricity connection of 100 H.P.

(1.3) The defendants run a factory named Jadeshwar Ginning Factory situated at Sultanabad. The said factory is located on land bearing Account No. 677, Survey No. 230 (part), admeasuring 1.24 Gunthas. The owner of this land is Smt. Nitaben Ashokbhai Nakum, resident of Bantwa, who is the wife of defendant Ashokbhai Hirabhai Nakum. The said land was taken on rent by the defendants for operating the ginning factory at a monthly rent of ₹10,000. For running the said ginning factory, the defendants obtained an industrial electricity connection from the Bantwa Sub-Division of the plaintiff company on 01-01-1998 by following the prescribed procedure. In the electricity supply agreement executed with the plaintiff company, the director and authorized signatory of Jadeshwar Ginning Factory, Shri Ashokbhai Hirabhai Nakum, signed on behalf of the factory. Initially the defendants had obtained 75 H.P. electricity load, which was later enhanced according to rules. At the time of checking, the defendants were having 100 KW industrial electricity connection, bearing Consumer No. 35234/00600/0.

(1.4) On 11-08-2009, in the presence of the consumer, a modem was installed in the meter, bearing Modem No. 09605927 with SIM No. 9687647109, and the connection was activated.

(1.5) On 24-02-2010, officials of the electricity company removed the three-phase electricity meter installed at the premises of the defendants for checking. The meter was sealed and packed in paper in the presence of the defendants' representative Ashokbhai Hirabhai Nakum. The laboratory testing of the meter was conducted on 21-10-2011. During the laboratory test, defendant director Ashokbhai H. Nakum remained present. Before opening the sealed meter, it was verified that the seal placed on 24-02-2011 was intact. The packing was opened with his consent and after recording that the results of the laboratory examination would be binding upon him and all directors of the company. The said statement was read over to him and he signed the same in

English.

(1.6) Thereafter the seal was removed and the meter was examined. The findings were recorded in the joint laboratory test report. During the test, the MRI data of the meter was downloaded into a computer. On analysis, the anomaly “XDT” appeared which indicated an abnormal condition. It was found that the defendants had used an external instrument to hang the meter, thereby preventing it from recording actual electricity consumption despite the usage of electricity. Thus, by tampering with the meter, electricity was being consumed without being recorded. The condition of the meter indicated that the defendants, either themselves or with the assistance of some expert person, had manipulated the meter through an external instrument so that the meter would hang (similar to changing channels on a television) without physically touching the meter.

Further, the L&T Company certificate dated 07-04-2011 also stated:

“Meter is subjected to some external means which has led the meter into a hanged condition preventing it from registering hourly consumption data. Appearance of anomaly condition with ‘XDT’ resulted in prevention of registering of actual energy.”

(1.7) Thus, it was established that the defendants had tampered with the electricity meter and committed power theft. Therefore, a supplementary bill of Rs. 30,96,474.46 was issued to Jadeshwar Ginning Factory. Since the defendants failed to pay the amount, the three-phase electricity connection was permanently disconnected on 01-12-2011. Necessary inspection reports, site reports, Form No. 15, paper seal documents, and other relevant documents were prepared in the presence of Ashokbhai and were signed by him as well as the officials of the electricity company.

(1.8) As the defendants were found committing power theft, a criminal complaint under Section 135 of the Electricity Act was filed against them at Rajkot Police Station, registered as Crime No. 1384/2011 dated 03-11-2011.

(1.9) Since the defendants failed to pay the supplementary bill amount, the panel advocate of the electricity company issued a legal notice dated 30-01-2012. Thereafter, another notice dated 21-08-2012 was issued demanding payment. Despite receipt of notices, the defendants failed to pay the outstanding amount, compelling the plaintiff to file the present suit.

(1.10) Out of the payable amount, the defendants had earlier deposited the following security deposits: Rs. 9,000 dated 15-01-1998 (Receipt No. 66627) Rs. 92,045 dated 29-06-2006 (Receipt No. 16798) Rs. 57,745 dated 06-12-1994 (Receipt No. 11154). After adjusting the above deposits, the balance recoverable amount is ₹31,38,577.02.

(1.11) Despite legal notice, the defendants have failed to pay the outstanding dues. Therefore, the plaintiff company is entitled to recover the outstanding amount along with Delayed Payment Charges (DPC) at 18% per annum.

(1.12) Thus, the plaintiff is entitled to recover from the defendants: Power theft supplementary bill: Rs. 30,96,474.46, DPC (Oct-2011 to Nov-2012): Rs.42,102.56
Total: Rs. 31,38,577.02
Therefore, the plaintiff prays that:

1. The defendants be ordered to pay ₹31,38,577.02 towards the power theft supplementary bill and delayed payment charges, recoverable from their movable and immovable properties.

2. The defendants be ordered to pay interest at the rate of 18% per annum on the above amount until realization.

3. The costs of the suit be awarded in favor of the plaintiff.

4. Any other consequential or appropriate relief deemed fit by the Hon'ble Court may kindly be granted.

2. On service of notice, the defendants have appeared through their advocate and have filed its written statement/reply vide exh.19, inter alia, contending therein that:-

(2.1) The plaintiff's suit is false and based on fabricated facts and therefore is liable to be dismissed.

(2.2) As per the provisions of law, the plaintiff's suit is not maintainable and is not liable to be allowed.

(2.3) The plaintiff's suit is clearly barred by jurisdiction as well as limitation and therefore is not maintainable.

(2.4) The plaintiff has not paid the requisite court fees on the suit.

(2.5) The plaintiff has filed the present suit without issuing the mandatory legal notice as required by law; therefore the suit is not maintainable.

(2.6) The plaintiff has filed the suit without joining necessary parties; hence the suit is not maintainable.

(2.7) The plaintiff has not obtained the necessary permission before filing the present suit; therefore the suit is liable to be dismissed.

(2.8) The plaintiff has not shown any clear cause of action for filing the present suit and has shown a false cause of action; therefore the suit is not maintainable in any manner.

(2.9) The defendants, have never committed any electricity theft as alleged in the suit. Nevertheless, a false case of electricity theft and the present suit have been filed against us. Therefore, it is prayed that the plaintiff's suit be dismissed.

(2.10) The plaintiff electricity company has filed the present case and complaint against us without any supporting evidence of alleged electricity theft. The alleged assessment mentioned in the suit has also been made without any supporting evidence. Further, our electricity connection has been illegally disconnected. Therefore, the suit is not maintainable in any manner. Hence, it is prayed that a preliminary issue be framed in this regard and decided immediately, and an interim order be passed directing restoration of our electricity connection immediately.

(2.11) With regard to the alleged illegal assessment and the notices referred to in the suit, we have made written and oral representations. However, the plaintiff company has ignored the same and filed the present suit, which is liable to be dismissed.

(2.12) With regard to paragraph No.1 of the plaint, we state that the plaintiff must prove the contents mentioned therein. We do not admit that any authority or rights were granted to sign the plaint, vakalatnama, affidavits, or to file the suit in court.

(2.13) With regard to paragraphs No.2 and 3 of the plaint, although the facts mentioned therein are true, we reserve our right to make further submissions after the plaintiff produces the relevant records and evidence.

(2.14) With regard to paragraph No.4 of the plaint, it is true that a modem was installed on 11/08/2009. However, we do not admit that the modem was installed in the presence of the defendants.

(2.15) With regard to paragraph No.5 of the plaint, we do not admit that the paper packing was done in the presence of the defendants on 24/02/2011 or that the meter was sent for laboratory testing on 21/10/2011, since no legal procedure as required by law was followed and no record was prepared in our presence.

(2.16) With regard to paragraph No.6 of the plaint, the allegations that the paper seal on the meter packing was cut, that the paper was opened, that the meter was examined, that a joint inspection report was prepared regarding the condition of the meter, that MRI data was downloaded into a computer and studied, and that certain anomalies were detected indicating that the meter was made to hang by using an external instrument so that electricity consumption would not be recorded, are all completely false and fabricated by the plaintiff company. We deny all such allegations. We also deny that we ourselves or with the help of any mastermind used any external instrument to tamper with the meter. The allegations regarding any certificate issued by the L&T Company dated 07/04/2011 and the English statements mentioned in paragraph 6 of the plaint are also completely false, fabricated, and contrary to the truth, and therefore denied.

(2.17) With regard to paragraph No.7 of the plaint, the allegations that the defendants tampered with the meter and obtained electricity supply illegally and committed power theft as found during laboratory testing are completely false and fabricated. We deny the same. The alleged bill of Rs.30,96,474.46 for power theft is illegal and not binding upon us. We are not liable to pay any such amount. Nevertheless, our electricity connection has been illegally and permanently disconnected. The alleged rojkam and inspection report prepared by PGVCL officials and the alleged signatures of the defendants thereon are false and fabricated. The documents such as the inspection report, Form No.15 for meter sealing, and other documents allegedly signed by Ashokbhai and officials are also fabricated and are not admitted by us.

(2.18) With regard to paragraph No.8 of the plaint, the allegation that the defendants committed theft is completely false. Even though a complaint has been filed against us at Rajkot Police Station based on false facts, we deny all such allegations.

(2.19) With regard to paragraph No.9 of the plaint, since we have never committed any electricity theft, the alleged illegal assessment demanding payment for power theft is not binding upon us and we are not liable to pay any amount. The alleged notices dated 30/01/2012 and 21/08/2012 issued by the panel advocate are based on false facts and are illegal. Further, the said notices were not legally served upon the defendants. Therefore, the present suit filed by the plaintiff is illegal and based on false facts and is liable to be dismissed as no cause of action has arisen.

(2.20) With regard to paragraphs No.10, 11 and 12 of the plaint, the deductions of the deposit amounts mentioned by the plaintiff are illegal. The calculation of DPC and the amount mentioned in the alleged bill have been made illegally. The claim for recovery of Rs.31,38,577.02 is illegal and based on false facts. The plaintiff is not entitled to recover 18% DPC or any amount mentioned in the suit, and we are not liable to pay any such amount. Therefore, the claim of Rs.30,96,474.46 and DPC amount of Rs.4,102.56 is denied.

(2.21) With regard to paragraph No.13 of the plaint, the plaintiff is not entitled to claim or receive any relief whatsoever.

(2.22) With regard to paragraph No.14 of the plaint, the allegations that checking was carried out at the defendants’ premises on 24/02/2011 and that power theft was detected during laboratory testing are completely false and fabricated. The alleged cause of action mentioned by the plaintiff is denied. No cause of action has arisen for filing the suit either on 24/02/2011 or at any time thereafter. This Hon’ble Court has no jurisdiction to entertain the suit. The suit is also barred by limitation, the required court fee has not been paid, and copies of the documents mentioned in the D.E. list have not been supplied to the defendants. The documents produced are also denied.

(2.23) Further, it is stated that: The defendants’ factory had remained closed for a long period and there was no electricity consumption. However, the plaintiff company did not consider these representations nor conducted any proper investigation. The alleged meter checking was not conducted legally and the disputed meter was not sent to the Electrical Inspector for independent examination. Even according to the alleged meter checking report, the results are shown to be normal and there is no mention of any external device or tampering with the meter. The MRI data examination also shows normal conditions and does not indicate any electricity theft. Before the alleged inspection date, the plaintiff company had installed a modem connected to its office computer for continuous monitoring. If any electricity theft had occurred as alleged, it would have been detected during such monitoring. Even in the laboratory testing, the condition of the meter and seals was shown to be normal. The plaintiff company has not stated that any comparison was made between the transformer meter and the consumer meter, which is required. No device capable of affecting the meter was found at the premises. No report of the meter manufacturing company has been produced. Earlier, on 25/11/2010, a team from Porbandar checked our meter and it was found to be in proper condition. The modem was also functioning normally and no electricity theft was detected. Even according to the modem readings, no electricity theft is shown. The police complaint also does not establish any electricity theft. Despite this, a false civil suit and a false criminal case have been filed against us. Therefore, considering our written statement, submissions, and the evidence that will be produced, it is humbly prayed that the Hon’ble Court be pleased to dismiss the plaintiff’s suit with costs and award costs to the defendants. It is further prayed that appropriate orders be passed directing the plaintiff company to compensate the defendants for loss of goodwill and business caused due to the illegal actions. It is also prayed that appropriate legal action be directed against the responsible officers and employees for filing a false case, making illegal assessment, illegally disconnecting the electricity connection, and depriving the defendants of electricity supply.

3. Considering pleading of the parties, following issues were framed at Exh. 22/B for determination of the suit:-

I S S U E S

1. Whether plaintiff proves that defendants have made mal practice in meter? and made theft of electricity from disputed connection?
2. Whether plaintiff proves that plaintiff entitle to recover Rs. 31,38,577=02 Paise from the defendants?
3. Whether plaintiff is entitled to recover interest from the defendants? If yes, then what rate?
4. Whether plaintiff is entitled to get relief as prayed for?
5. What order and decree?

4. My findings for the above issues are as under :-

1. In the negative.
2. In the negative.
3. In the negative.
4. In the negative.
5. As per final order.

5. In support of the suit, the plaintiff has produced following oral as well as documentary evidence:-

ORAL EVIDENCE

Sr.No.	NAME OF THE WITNESS	EXH.
1	Examination-in-chief in form of affidavit of the Plaintiff Vasudevbhai Balrambhai Katariya,	28
2	Examination-in-chief in form of affidavit of the Plaintiff's witness Girishkumar Babulal Vaghela.	83
3	Examination-in-chief in form of affidavit of the Plaintiff's witness Sanjaykumar Utambhai Patel.	94
4	Examination-in-chief in form of affidavit of the Plaintiff's witness Rajanbhai Mahendrabhai Rana.	100
5	Examination-in-chief in form of affidavit of the Plaintiff's witness Rajeshbhai Govindbhai Jadav.	101

DOCUMENTARY EVIDENCE :

Sr.No.	DESCRIPTION OF THE DOCUMENTS	EXH.
1	Certified copy of the resolution to file suit	41
2	Copy of the letter written by the Deputy Engineer to the Executive Engineer, Porbandar, regarding filing of the suit against the defendant.	42
3	Copy of the letter sent by the Executive Engineer to the Superintending Engineer, Porbandar, forwarding the proposal for filing the suit.	43
4	Copy of the letter written by the Superintending Engineer to the Company Secretary, Corporate Office Rajkot, for approval of the proposal to file the suit.	44
5	Copy of the letter sent by the Company Secretary to the Superintending Engineer, Porbandar, regarding forwarding/approval of the proposal for filing the suit.	45
6	Copy of Performa No. 12.	46
7	Copy of the site rojkam (spot proceedings record).	47
8.	Copy of the inspection report (Checking Sheet No. 1354) dated 24.	48
9	Copy of the lab test report of the defendant’s electricity meter.	49
10	Copy of the downloaded meter data (Page 6).	50
11	letter of L&T company showing details of defendants' meter	51
12	Report given by Larsen and Toubro company after examining the defendant's meter	52
13	Copy of the electricty theft bill given to defendant	53
14	copy of the power of attorney given in favour of Ashokbhai Hirabhai	54
15	copy of the application filed by Ashokbhai Hirabhai for getting electricity connection A-1 and registration	55

	at serial no. 36	
16	Copy of the undertaking given by defendant Ashokbhai Hirabhai at the time of electricity connection.	56
17	copy of the criminal complaint against the defendant	57
18	Copy of the Muddamal Pavti produced in the criminal case.	58
19	copy of the site rojkam performed at the time of permanent disconnection of the defendant's electricity connection.	59
20	Copy of the meter inspection report at the time of permanent disconnection of the	60
21	Copy of paperseal	61
22	Copy of performa no. 15	62
23	Copy of gate-pass.	63
24	Copy of legal notice given by advocate to Mr. Ashokbhai Nakum.	64
25	Copy of receipt of R.P.A.D.	65
26	Copy of the notice given to Ashokbhai Nakum.	66
27	Copy of receipt of R.P.A.D.	67
28	Copy of the notice given to defendant no.3 Harsukhbhai Hirabhai Nakum	68
29	Copy of receipt of R.P.A.D.	69
30	Copy of the notice given to defendant no.3 Dilipbhai Hirabhai Nakum.	70
31	Copy of receipt of R.P.A.D.	71
32	Copy of the ledger of the customer/defendant	72
33	Copy of the ledger showing the amount recoverable at the time of filing of the suit.	73

5.1. In support of his defense, the defendant has produced following oral as well as documentary evidence:-

ORAL EVIDENCE

Sr. No.	Name of witness	Exh
1	Examination-in-chief in form of affidavit of Defendant Ashokbhai Heerabhai Nakum.	107

Documentary Evidence:

Sr.No.	Description of Document	Exhibit
1.	Judgement in special electricity case no. 24/2015	76

6. Heard Learned Advocates for the respective Parties. Gone through the oral and documentary evidence produced by the parties. Also taken into consideration the written arguments produced by the respective learned advocates for the parties vide exh. 109 & 111 respectively. The plaintiff has relied upon the pronouncement of Kishan Singh (D) through L. Rs. v. Gurpal Singh & ors, AIR 2010 Supreme Court 3624, wherein it was held: findings of facts recorded by Civil Court would not have any bearing on criminal case and vice-versa. The law enunciated in the judgment is now a settled law and does not require any more discussions.

7. In support of his plaint, the plaintiff has filed his examination-in-chief in form of affidavit vide exh. 28, wherein, he has re-iterated the facts of the present suit. Further, this witness has been cross examined by the learned advocate for the defendants, wherein, he has stated: the suit has not been filed by him; it is true that the examination in chief has been given on the basis of records; it is true that he has no personal knowledge of the facts of the suit; it is true that the amount claimed in the suit is on account of theft of electricity; on being asked as to who had calculated the amount payable, he answered that it was done by Deputy Engineer; it is true that the calculation was not made under his supervision; it is true that he has no personal knowledge as to what documents were considered for assessing the payable amount; it is not true that no notice was given to the defendant before making assessment; it is not true that the defendant was not given any opportunity of making submission with respect to the theft assessement; it is true that the assessment was carried out before the declaration of judgment in criminal matter; he does not know that there was a sub-meter intalled at the electricity pole through which the electricity connection was given to defendant company; he does not know whether the reading of parallel/sub-meter was considered; it is true that the laboratory where the meter was examined was of PGVCL and the meter was not tested in any independent laboratory or in the presence of electrical inspector; the modem installed with meter sends data to the office; the date sent through modem is received in the zonal office at Porbandar; he does not know whether the data sent to the zonal office was not considered before making the assessment. Rest of the questions put to the witness were targeted towards the facts which are already proved or admitted, hence those questions and answers to them are not reiterated here.

7.1 Further, the plaintiff has examined one witness namely Girishkumar Babulal Vaghela vide exh.83, wherein, he has reiterated the facts of the suit in his examination-in-chief. This witness is also cross examined by the learned advocate for the defendants, wherein, he has stated: he cannot say whether the meter was working properly or not when it was taken off; it is true that the meter was never sent to Government Laboratory for testing; it is true that the transformer through which the defendant had electricity connection was located on road at the electricity pole; he cannot say that only the defendant was given connection through the said pole; it is true that adjacent to the transformer, a meter of PGVCL was fitted; it is true that the reading of parallel meter fitted adjacent to the transformer was not taken into consideration; later he clarified that it is fitted for energy audit. Rest of the question asked are either targeted to the facts which are already proved or are admitted. Hence, those question and answers to them are not reproducted here.

7.2 Further, the plaintiff has examined one witness namely Sanjaykumar Utambhai Patel vide exh.94. This witness, in his examination in chief, has submitted as under :-

(1)On 24/02/2011, and during that period, I was serving as a Junior Engineer at Bantwa Sub-Division. At present, I have been serving for the last one year as a Deputy Engineer in the Vigilance Department of G.U.V.N.L., Vadodara.

(2)On 24/02/2011, we, on behalf of the plaintiff organization, had gone to the premises of the defendant for checking. During the inspection, it was recorded as follows: “Today, the undersigned officers and employees of PGVCL Company were present along with the staff for checking the electricity connection of Shri Jadeshwar Ginning Factory having a load of 100 H.P. connection, as mentioned above. At the site, Ashokbhai Hirabhai Nakum was present. At the site, an electricity meter was installed. As per office instructions, since the electricity meter was required to be sent for laboratory testing, the said electricity meter along with M.M.B. (Metering Measurement Box) was removed. The incoming cable and outgoing cable connected to the M.M.B. were cut and the electricity meter was packed in a gunny bag, sealed with a paper seal bearing the customer’s signature, and properly packed. The main side cable coming from T.C. (Transformer) to the M.M.B. connected to the electricity meter was found to be intact. The said electricity meter along with the M.M.B. was removed, packed with paper seal, and another electricity meter was installed in its place. In this regard, Performa-15 (STPIN No. 976) and new checking sheet No. PBR(X) 1353 were filled, and for the newly installed meter, checking sheet No. PBR(X) 1354 was also filled. A MODEM was fitted in front of the said electricity meter. Thus, the said electricity meter which was required to be sent for laboratory testing was removed and replaced with a new electricity meter. In the new meter, the main side cable from T.C. to the meter was kept intact and continuous. Based on the above facts, prepared the site panchnama (spot proceedings) and explained the same to the representative of the defendant present at the site. Thereafter, I and the staff accompanying me signed the document; however, the representative of the defendant present there refused to sign it. The said site proceedings (rojkam) are produced in this suit at Exhibit-47. We also prepared a detailed electricity inspection report including the load details at the site, which bears my signature and the signatures of the staff accompanying me. However, the representative of the defendant did not sign the inspection report. The said inspection report is produced in this suit at Exhibit-48. This witness is also cross examined by the learned advocate for the defendants, wherein, he has stated: it is true that he went for checking on 25/11/2010, the meter was checked on the site and it was proper and no error or fault was seen in the meter; all the seals were intact; it is true that the checking sheet dated 25/11/10 has not been produced in the present case; the work performed at the site was not videographed or done in the presence of independant witnesses; it is true that only defendant had the connection through the transformer; it is true that the reading of the meter adjacent to the transformer was not taken; it is true that during checking nothing was noticed regarding theft of electricity being committed.

7.3 Further, the plaintiff has also examined one witness namely Rajanbhai Mahendrabhai Rana vide exh.100. This witness, in his examination-in-chief has submitted that I have appeared to give evidence in this case in compliance with the witness summons issued by the Hon’ble Court. At present, he is employed with Schneider Electric India Pvt. Ltd., Vadodara. Earlier, the name of this company was Larsen & Toubro Ltd. (L&T). He is working in this company as a Deputy Manager. He has been shown the the laboratory analysis report. The said report relates to the electric meter. The report bears the signature of his former Assistant Manager, Mr. Rajesh Jadav. At present, he is serving as a General Manager at Schneider Electric India Pvt. Ltd., Powai, Mumbai. This witness is also cross examined by the learned advocate for the defendants, but nothing relevant to the present enquiry has come on record.

7.4. Further, the plaintiff has also examined one witness namely Rajeshbhai Govindbhai Jadav vide exh.101. This witness, in his examination-in-chief has submitted that at present he is working in Mumbai. Upon receiving information from the Hon’ble Court to give his deposition, he has appeared online through Zoom to give his testimony. He was serving as an Assistant Manager (Sales) at L&T, Vadodara from the year 2007 to 2021. He has been shown the report at mark “A”. After seeing it, he states that it is dated 10/09/2010 and it bears my signature. Inspection of the said meter was carried out. After examining the meter, an “Anomaly Condition with XDT value” was found recorded in the meter register. This means that an attempt was made to tamper with the meter. This witness is also cross examined by the learned advocate for the defendants, wherein, he has stated: it is true that he was working in sales department as assistant manager; it is true that sales department has to work with respect to sales; it is true that the meter was not examined by his company; it is true that he has not played any role in manufacturing and testing of meters in L & T Company; it is true that his company has not been authorised by Government, law or by PGVCL for testing of meters; it is true that no basis has been produced for his opinion that appearance of "XDT" would mean that there has been an attempt to tamper the meter. Rest of the questions asked are either not relevant to the present enquiry or are already proved. Hence, those questions and answers are not reproduced here.

8. One of the directors of defendants' company Mr. Ashokbhai Hirabhai Nakum has given his examination in chief on affidavit vide exhibit 107 in which the facts stated in the written statement are reiterated. In the cross examination, he has stated: he is director of Jadeshwar Jinning Company; it is not true that he was holder of power of attroney at the time of filing the written statement in the present suit; it is true that there were other directors of the company at the time when the present suit was filed; it is not true that the work of taking off the meter, packing it and testing the meter in the laboratory was performed in his presence; he was not present in the room when the testing was done, he was sitting outside the room and he had signed the report with objection; apart from this, he has denied almost all the other suggested facts.

-: <u>R E A S O N S</u> :-

9. <u>Issue no. 1:</u>

Now, the suit of the plaintiff is based upon the fact that the defendant was a consumer of electricity provided by plaintiff; the defendant had been a customer of plaintiff since some time; however, one day, the electricity meter fixed at the defendants' premises was checked in the laboratory of plaintiff wherein theft of electricity was found. It was seen in the M.R.I. data of the meter that there was a particular kind of anomaly (A.Q.Q.Q.X.D.T.8.Q.Q.Q.0.0.0.) in the data. On the basis of the same, the defendant was proceeded against and proceedings were initiated under the provisions of Electricity Act. Supplementary electricity bill was served upon the defendant. However, the defendant did not pay the supplementary bill, the electricity connection was permanently disconnected. As the defendant failed to pay the electricity bill, the present suit has been filed seeking recovery of the money payable under the supplementary electricity bill.

9.1 On the other hand, the defendants' defence is that there was no theft of electricity committed by it. The electricity meter was properly working, all the seals on the meter were intact, no external device was found and seized from the site or otherwise attached to the meter. The defendants' electricity consumption could easily be cross checked by the plaintiff through the meter installed at the electricity pole. Also, there was a modem connected with the defendants' meter which was installed for transmitting the electricity consumption data to the office of plaintiff wherein it could see the actual consumption of electricity. The defendants' past electricity consumption was also not taken into consideration before coming to the conclusion that there has been a theft of electricity by the defendants. The assessment of the supplementary bill is also illegal. The meter was not tested in any independent laboratory and in the presence of electrical inspector. The fact that the laboratory test of the meter showed some anomaly is not sufficient to believe that there has been theft of electricity by use of some external device which hangs the recording of electricity consumption by the meter. No anomaly was stated to have been seen at the site when the meter was taken off as there is no mention of such fact in the checking sheet.

9.2. Now, the plaintiffs' suit is based upon the laboratory testing report produced in the record at exhibit 49 and the letter of the manufacturing company vide exhibit 52 wherein Assistant Manager (Sales) of Larsen and Toubro Ltd has stated his observation that:

> "Meter is subjected to some external means which has lead the into hanged condition, preventing to register hourly consumption data, appearance of anomaly condition with "XDT" , and this resulted into prevention of registering of actual energy."

Looking to the laboratory test report of the meter, the testing authority has also relied upon the observations made by the Larsen & Toubro Ltd. Thus, the plaintiff's whole claim is based upon the interpretation of an anomaly A.Q.Q.Q.X.D.T.8.Q.Q.Q.0.0.0., by the manufacturing company. There is no allegation of making any alteration or causing any physical damage to the meter. It is the say of the the meter manufacturing company that display of such an anomaly in the reading of meter conveys that the meter got hunged through an external device resulting into stoppage of registration of power consumption. The witness examined by the plaintiff representing the manufacturing company has deposed vide exhibit 101 and in the cross examination he has stated that the anomaly A.Q.Q.Q.X.D.T.8.Q.Q.Q.0.0.0. is treated as an attempt to temper with the meter. However, he has also stated that no basis for treating the said anomaly as an attempt to temper with the meter has been produced by him. There is nothing on record to show or suggest the treatment of such anomaly by the plaintiff's company and further line of action for the same. Thus, the plaintiff appears to have relied upon the opinion/observation of a third party in coming to a conclusion that there has been an attempt of tempering with the meter.

9.3 The only evidence which is before the court for proving that there has been theft of electricity is the said letter at exhibit 52 of the manufacturing company. Which observation/opinion, at most, can be said to be an opinion of an expert witness. However, the witness vide exhibit 101 has stated that he had worked in sales department of L&T and not played any role in manufacturing and testing of the meter. Hence, his expertise over the interpretation of any anomaly in the M.R.I. data of the meter is also in question. He has further stated that he has not produced any reason or basis for such observation. Hence, placing reliance only upon the letter of L&T company vide exhibit 52 and reaching to any conclusion is not warranted. In such a case, when there is nothing on record apart from the letter of the manufacturing company, to support the plaintiff's claim that the defendant had committed theft of electricity, it was duty of the plaintiff to come up with other evidence to support their contention in the suit. As admitted, there was a modem attached with the defendants' electricity meter, also there was a T.C. meter of the electricity pole just adjacent to the transformer. The witness of plaintiff Mr. Sanjaykumar Uttambhai Patel in his deposition vide exhibit 94 has admitted that the transformer through which connection was given to defendant was only for defendant company and no reading of the meter kept adjacent to the said transformer was taken on 24/02/11. The witness, Mr. Girishkumar Babulal Vaghela, vide exhibit 83 has stated that the reading of the parallel meter installed on the electricity pole adjacent to the transformer was not taken into consideration. Hence, it is not the case where the plaintiff could not have secured other evidence regarding the alleged theft of electricity. The plaintiff had other materials which could have been beneficial for it for proving the alleged theft. However, plaintiff has chosen not to rely upon them but only on the letter of the manufacturing company. Even the grounds for reaching to such a conclusion have not been stated by the witness or otherwise, brought on record of the suit. Apart from the said letter, there is nothing which could be said to be offering any support to the plaintiff's claim. All the seals and the meter box were intact, no anomaly was seen in the meter before detaching it. Thus, at the conclusion of above discussions, this court is of the view that plaintiff has failed to prove any malpractice/theft of electricity committed by defendant. Hence, the issue no. 1 is decided in the negative.

10. <u>Issue no. 2:</u>

Another fact which has come on record that there has been no calculation sheet produced on record for perusal of the court. How and in what manner the entire calculation has been carried out before reaching to the amount mentioned in the supplementary bill is not stated anywhere in the suit. In fact, there is no importance given to the said fact that how and in what manner the plaintiff came to the figures mentioned in the supplementary theft bill. All that has been stated is that a theft supplementary bill was issued to the defendant which was not paid and therefore, the present suit is filed. The plaintiff wants the court to believe that whatever plaintiff says is gospel truth and there cannot be any question of having any sort of doubt over it. It appears from the evidence rendered by the plaintiff that no effort has been put by the plaintiff to show how the calculation for supplementary bill was carried out and to prove the same to be correct. None of the witnesses examined by the plaintiff has given any sort of evidence in this respect. In fact, the plaintiff has stated in his cross examination that the calculation was not made in his presence and guidance; he does not know what documents were considered by the assessment officer in assessing the theft supplementary bill. Thereafter, he stated that the plaintiff would have considered the relevant documents. The evidence produced by the plaintiff is directed only towards proving the fact that there had been theft of elctricity by the defendant, the genuinity of the procedural work carried out by them, creation of supplementary theft bill and non payment of the same by the defendant. There is not even a whisper about the manner in which calculation was made.

10.1 The plaintiff has come before the court stating that it is entitled to recover the suit amount from the defendant, hence, it is a duty of the plaintiff to prove the genuinity of the damand. However, no effort has been made to prove the same and, thus, in the view of this court, the plaintiff has misrably failed in the same. Resultantly, the issue no. 2 is decided in the negative accordingly.

11. Although, no dedicated issue has been framed in the suit with respect to the jurisdiction of this court to try the suit, the defendant has heavily contested the matter on the said ground. It is the say of the defendant that only the special court has the jurisdiction to try such suits as per the provisions of Section 154(5) of the Electricity Act. The defendant has relied upon the pronouncements of various High Courts including a pronouncement of Hon'ble Gujarat High Court. The electricity supply code of different states are different, based on different set of rules, thus those pronouncements are not discussed in detail. The hon'ble Gujarat High Court in a division bench judgment in the case of Torrent Power AEC Ltd. Versus Gayatri Intermediates Pvt. Ltd. , 2006(2) G.L.H. 375. wherein the Hon'ble High Court observed: "Hence, although there is no specific reference in Section 145 of the Act to exclusion of Civil Court to entertain any proceeding in respect of any matter which the Special Court is empowered by the Act to determine or any seesssment (other than assessment under Section 126) which the licensee is empowered under the Act to determine, We are of the view that any dispute about the civil libalility in theft cases is impliedly excluded from the jurisdiction of Civil Court." Relying upon the above observation the defendant has contended that this court does not have jurisdiction to try the present suit.

11.1 However, in another division bench of Hon'ble Gujarat High Court in the case of Pro. Bhimji Dhanji Motivaras Of M/S. ... vs Paschim Gujarat Vij Company Ltd AIR 2014 (NOC) 583 (GUJ.), the Hon’ble Gujarat High Court, while dealing specifically with the question of ouster of jurisdiction of Civil Court by virtue of Section 154(5), in a suit by electricity company for recovery of supplementary theft bill observed:

"Now, so far as submission and contention on behalf of appellant that impugned judgment and decree passed by the learned Principal Senior Civil Judge, Porbandar is wholly without jurisdiction and is a nullity relying upon Section 154(5) of the Indian Electricity Act is concerned, the aforesaid submission is absolutely misconceived and has no substance. Section 154 of the Electricity Act, 2003 shall be applicable with respect to the case for the offence punishable under Section 135 to 140 and Section 150 of the Act, pending any inquiry or trial and /or civil liability against the consumer or a person in terms of money for theft of energy is yet to be determined. In any case, it shall not be applicable with respect to the suit filed by the electricity company to recover the amount of supplementary/revised supplementary bill."

11.2 Furthermore, the Hon'ble Supreme Court in the case of North Delhi Power Limited v. Devinder Singh & Anr., SLP(C) No. 6883/2017, the Court discussed the jurisdiction of the Civil Court in the context of the Electricity Act, 2003 and held that for disputes of such nature can be adjudicated by the Civil Court. The relevant paragraphs of the said decision are reproduced as under:- "It is clear from a perusal of the aforesaid sections that the Special Electricity Court acts as a 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 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."

11.3 Hence, the defendant's contention that suit for recovery of money would lie only in the Special Court as per the provision of Section 154(5) of the Electricity Act is not supported by the view of Hon'ble Gujarat High Court as well as the Hon'ble Supreme Court. Thus, this court has the jurisdiction to try the present suit.

12. <u>Issue nos. 3, 4 & 5:</u>

So far as the question of recovery of interest over the recoverable amount is concerned, the plaintiff has failed to prove that it is entitled to recover any amount from the defendant, hence, the question of any entitlement to recover interest does not arise at all. Therefore, the issue no. 3 is decided in the negative. As the plaintiff has failed to prove its case, he is not entiled to any relief claimed by him, hence, the issue no.4 is also decided in the negative and following final order is passed with respect to issue no. 5.

: O R D E R :-

- The plaintiffs' suit bearing Sp.C.S. No. 15/19 is hereby dismissed.
- All interim orders made in the suit shall stand vacated.
- Any interim application pending in the suit stands rejected and filed.
- The parties shall bear their own costs.
- Decree to be drawn accordingly.

Signed and pronounced in the open Court today on this 18th day of March, 2026.

Date : 18/03/26
Place: Vanthali

Anubhav Pandey
Principal Senior Civil Judge, Vanthali
Judge Code : GJ01133