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	11	**9**	**10**

CNR No. : GJJN100005652019

सत्यमेव जयते

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

Special Civil Suit No.21/2019

(Old Sp.C.S. No. 4/2014)

Exh. :........

Plaintiff :	**Sole Proprietor of a firm doing business in the name of M/s. Punit Traders Kiritbhai Prabhudasbhai Bataviya** Age : 54 years, Occupation : Business, R/o. V.P. Road, Bantva, Tal. Manavadar.
Defendants:	**(1) Paschim Gujarat Vij Company Ltd. Through Deputy Engineer Shree** Rural Sub Division, Bantva, District Junagadh.
Appearance:	Ld. Advocate for the plaintiff **Mr. K.C.Shingala.** Ld. Advocate for the defendant **Mr. K.T.Dubey.**

Subject : **Suit for recovery of an amount of Rs. 5,50,000.01 along with interest**

-:: <u>J U D G M E N T</u> ::-

1. The Plaintiff has filed the present Suit against the Defendant for recovery of an amount of Rs.5,50,000-01 with interest.

2. The present suit was initially instituted before the Hon'ble Principal District Court, Junagadh as Special Civil Suit No.04 of 2014. Pursuant to the Hon'ble Legal Department's notification the said case is transferred to Additional District Court, Vanthali and registered as Special Civil Suit No.15/2018. Thereafter, pursuant to Hon'ble District Court's notification No. U.H.C./B/28/19, dated 01/08/2019 and the Office Order No. Judi./55/2019 dated 02/08/2019 issued by the Hon'ble Principal District Court, the said case was transferred to this Court and re-registered as Special Civil Suit No. 21 of 2019.

The facts leading to this suit, in brief, are as under:-

3. It is the case of the plaintiff that he is running a business in the name of Punit Traders at village Bantwa, Taluka Manavadar, mainly engaged in oil mill and groundnut processing work. For this purpose, he has an industrial electricity connection of 50 H.P., but since the oil mill mostly remains closed, only about 12 H.P. electricity is actually used. It is stated that to prevent electricity theft, the electricity company installed digital meters, mostly manufactured by Larsen & Toubro, and such a meter was installed in the plaintiff's factory in 2005; that the plaintiff regularly receives and pays electricity bills, later, in 2009, a modem was installed to enable the company to download consumption data remotely and there was also a T.C. meter installed to check consumption in parallel. It is stated that plaintiff has never committed electricity theft and no such allegations were made in the past, however, on 16-09-2011, officials visited the premises, disconnected the electricity supply, and removed the meter for testing and during laboratory testing on 05-12-2011, an “XDT anomaly” was shown on the display, and on that basis the defendant presumed electricity theft, disconnected supply, filed a criminal complaint under Section 135 of the Electricity Act, and later issued a supplementary bill of about Rs.3,81,937.01.

3.1 It is stated that the readings of the TC meter installed on the pole have not been compared with the readings of our digital meter. PGVCL is intentionally not providing us the TC meter readings; otherwise, by comparing both readings, it would clearly be proved that no electricity theft has taken place. The plaintiff contends that this action was illegal because no comparison was made with the T.C. meter readings, proper scientific testing was not conducted, and no external device or tampering was found in the meter. It is further stated that other electricity companies do not treat such display figures as proof of theft, the plaintiff paid the bill amount in installments under protest to avoid further business loss and damage to machinery. It is stated that when a static meter is tested in the laboratory, an ordinary consumer has no technical knowledge, and since PGVCL is itself a party and beneficiary, the entire testing process ought to have been conducted in the presence of a State Government-appointed Electrical Inspector, which was not done in the present case. It is further stated that no independent witnesses or technically qualified neutral officers were present during laboratory testing, and therefore the inspection and the consequential billing action are illegal.

3.2 It is stated that there is no uniform interpretation among PGVCL officers regarding L&T digital static meters and the corporate office letter dated 09-02-2010, which refers to certain MRI data patterns for presuming theft. There is confusion as to whether all defects must exist together or a single defect is sufficient, and mere appearance of figures or codes does not prove theft, especially when no external tampering has been established in the present case. It is further stated that other electricity companies and even L&T have taken different views and, in some instances, similar codes were not treated as theft. Incidents where suspicious figures appeared after fitting a modem also raise doubts about possible manufacturing or installation defects. Despite numerous such cases in the Saurashtra-Kutch region, no departmental action has been taken, showing lack of scientific certainty. Therefore, it is contended that heavy bills and serious FIRs are being issued on technical assumptions without proper basis.

3.3 It is also stated that the defendant had no authority to issue such penalty under Section 135, and that proper procedure, natural justice, and independent laboratory testing were not followed. The plaintiff further stated that the defendant wrongly presumed electricity theft on the basis of certain digital meter display figures without satisfying the conditions mentioned in its own circular dated 09-02-2010 or conducting proper scientific testing. It is further stated that MRI data showed normal meter functioning with no tampering, software damage, or missing consumption data, and that neither on-site nor laboratory testing using an Accu-check meter or an independent NABL-accredited laboratory was carried out. It is further stated that no external device was found in the meter, yet a criminal complaint was filed, the electricity connection was disconnected, and a supplementary bill of Rs.3,81,937.01 was issued. The plaintiff further relies on RTI information from other electricity companies indicating that such meter figures alone are not treated as proof of theft, and therefore claims that the defendant’s actions violated principles of fair play and natural justice, compelling him to pay the amount under protest to avoid business loss. It is further stated that due to the illegal disconnection, criminal case, and issuance of the supplementary bill, the plaintiff suffered financial loss, mental harassment, travel expenses, and damage to business reputation. Therefore, he has filed the present suit claiming recovery of Rs.5,50,000.01 including the bill amount, interest, and other damages, and seeking declarations that the defendant’s circular, actions, and bill are illegal.

The written statement filed by the defendant in the present suit, in brief, is as follows :

4. Summons of the suit were duly served upon the defendant. Defendant appeared through its learned advocate and filed its written statement at Exh.10, wherein averments made in the plaint are denied by the defendant and further contended that the plaintiff’s suit is illegal, not properly filed, nor within limitation, and also contends that the Court has no jurisdiction to entertain the claim. While admitting that the plaintiff is an industrial consumer having a 50 H.P. electricity connection no.35102/04118/3 in the name of Punit Traders at Bantwa village, the defendant denies that the plaintiff was using only 12 H.P. power. It is stated that alleged electricity theft bill was given to the plaintiff and as he has done power theft he paid the amount of electricity theft bill. The defendant admits installation and checking of the digital meter and states that on 16-09-2011, the meter was attached with modem and was in normal condition and removed the meter in the presence of the plaintiff, sealed, and later tested at the Gondal laboratory and during testing, abnormal anomaly strings such as AQQQXDTQQQQQ000 were noticed, which, according to the meter manufacturer's opinion and MRI/load survey data, indicated tampering through external devices without physically touching or breaking the meter seals. The defendant further stated that proper procedure was followed, documents were prepared in the plaintiff's presence, and the plaintiff had signed undertakings agreeing to be bound by MRI test results. The defendant also stated that MRI data for 09/06/11 to 11/06/11 showed missing data, abnormal phase remarks, and verification failures, which proved that the plaintiff had technically interfered with the meter to stop recording of electricity consumption and thereby committed power theft. It is contended that the plaintiff has wrongly interpreted the corporate office circular and that laboratory testing and the manufacturer's certificate show that the plaintiff used external devices to stop the meter's energy recording and committed electricity theft without breaking seals or physically touching the meter. It is further stated that the anomaly readings indicate interference with the meter's memory. Accordingly, a supplementary bill of Rs.3,81,937.01 was issued as per law and rules, which the plaintiff voluntarily paid in installments, thereby accepting liability. It is also stated that allegations based on practices of other electricity companies are irrelevant as each case depends on its own facts.

4.1 The defendant further stated that interpretation of technical circulars and meter conditions is a matter of expert opinion and cannot be decided by the consumer. It further contends that similar theft cases have been detected in many industrial units and that each case depends on its own facts. The plaintiff’s allegations regarding reputation loss, business loss, or entitlement to recover Rs.5,50,000.01 are denied. The defendant states that the plaintiff has filed a false suit after taking legal advice despite earlier accepting the findings and paying the bill. The defendant also seeks dismissal of the suit with costs and claims entitlement to recover the theft bill amount with interest.

5. The Plaintiff has led the oral evidence and produced the documentary evidence as under:-

(A) Plaintiff's Oral evidence:-

Sr. No.	**Exhibit**	**Particulars**
1	37	Affidavit-in-Chief of Kiritbhai Prabhudasbhai Bataviya

(B) Plaintiff's Documentary evidence:-

Sr. No.	**Exhibit**	**Particulars**
1	39	Registered sale deed no. 829/1969
2	40	Rent Agreement
3	41	Copy of plaintiff's ration card
4	42	Copy of plaintiff's birth certificate
5	43	No objection certificate of Bantva NagarPalika
6	44	Certificate issued by Bantva NagarPalika to plaintiff
7	45	Application for getting electricity connection
8	46, 47	Indemnity Bond
9	48	Inspection Report of Electrical

		Installation
10	49	Place Rojkam
11	50	Meter seal checking report
12	51	Meter reading sheet
13	52	Joint Laboratory Testing Report of Meter
14	53	L & T CT data sheet
15	54	L & T temper data report
16	55	ABCD Formula sheet
17	56	Electricity theft bill
18	57	Letter of electricity bill
19	58	Letter of L & T
20	59	Complaint of electricity theft
21	60	F.I.R.
22	61	Approval of defence in the suit
23	64	Judgment of Sp. Electricity Case No.3/2013
24	69	Copy of Sale deed no. 1078/1998

Thereafter Plaintiff has submitted a closing pursis at Exhibit 70,stating that he does not want to produce any further evidence.

6. The Defendant has led the oral evidence and produced the documentary evidence as under:-

(A) Defendant’s Oral evidence:-

Sr. No.	**Exhibit**	**Particulars**
1	71	Affidavit-in-Chief of Girishkumar Babulal Vaghels
2	73	Affidavit-in-Chief of defendant's witness Utkarshkumar Chandrakant Sutariya
3	75	Affidavit-in-Chief of defendant's witness Mrugesh Sumanbhai Paghdar
4		Affidavit-in-Chief of Rajanbhai Mahendrabhai Rana

After leading oral as well as documentary evidence the Defendant submitted a closing pursis at Exhibit-77, stating that he do not want to produce any further evidence.

7. Considering pleading of the parties, following issues were framed at Exh. 11 for determination of the suit:

No.	Issue
1.	Whether plaintiff/s is/are entitle to recover Rs.3,81,937.01 as electricity charges alongwith Rs.1,48,000 + 20,063.00 delay payment charges, Total amount of Rs.5,50,000.01 from defendant/s.?
2.	Whether Plaintiff is entitle to recover delay payment charges @ 1.5% per Month ?
3.	What order and decree ?

8. The following are the answers to the above issues, in light of the available evidence on record.

1. In the negative.

2. In the negative.

3. As per final order.

<u>Arguments</u>

9. Learned Advocate for the plaintiff has mainly argued as per the plaint and further orally argued that the defendant company did not take the M.R.I. data and that the meter was not tested in any independent laboratory. It is further argued that the meter in question was a smart meter and only the anomaly “XDT” was observed therein. It is also argued that the letter of year 2010 issued by P.G.V.C.L. has not been produced before this Hon’ble Court for its perusal. The plaintiff has led oral evidence at Exh.37, which is requested to be taken into consideration. The plaintiff has also relied upon the cross-examinations at Exh.71 and 73, as well as documentary evidence at Exh.50. Further reliance is placed upon the judgment passed in Special Electricity Case No.3/2013, produced at Exh.64, wherein the plaintiff has been acquitted of the offence of electricity theft. On the basis of the aforesaid contentions and evidence, the plaintiff has filed the present suit seeking recovery of the amount of supplementary bill of Rs.3,81,347/- along with compensation of Rs.2,00,000/- towards mental harassment, and has prayed that the suit be allowed.

9.1 Defendant's Arguments :

On the other side Ld. Advocate for the defendant has produced written argument at Exh.79 and has mainly reiterated the facts in the written objection. It is further argued that plaintiff is an industrial consumer of the defendant electricity company having Consumer No. 35201/04118/3 with a sanctioned load of 50 H.P. On 16-09-2011, the defendant’s officers visited the plaintiff’s premises to replace the old meter and installed a new meter after preparing the site inspection report and meter sealing report in the presence of the plaintiff, with signatures of both sides. The removed meter was later tested in the Gondal laboratory on 05-12-2011 in the presence of the plaintiff’s representative, where electricity theft was detected. It is argued that although no external device was found during testing, the defendant contends that theft could still be inferred from MRI data and tamper records showing the anomaly code “A000 XDT 000000,” which is recorded in common L&T meters when an external circuit is used to stop consumption recording. It is further argued that all procedures were carried out in accordance with rules, with the plaintiff present at every stage, the defendant relies on laboratory reports, CT data, tamper data, and a circular issued by Larsen & Toubro dated 09-09-2011 stating that the appearance of

"XDT" indicates power theft. It is further argued that the plaintiff voluntarily paid the full supplementary bill amount, thereby acknowledging liability. The defendant argues that it has duly proved its documents and witnesses, whereas the plaintiff examined only himself and failed to discharge the burden of proof under Sections 101 to 103 of the Civil Procedure Code. The defendant also submits that the plaintiff's acquittal in the criminal electricity theft case was on the ground of benefit of doubt due to the higher standard of proof ("beyond reasonable doubt"), which does not bind the civil court where the standard is "preponderance of probabilities." Therefore, It is argued that since the plaintiff has failed to prove the framed issues, the suit is liable to be dismissed. Ld. Advocate for the defendant has relied upon following case law :

- Kishan Singh(d) Through L R S Vs. Gurpal Singh, reported in 2010 LawSuit (SC) 544.

10. Heard Learned Advocates for the respective Parties. Also taken into consideration the written submission produced by the learned advocate for the plaintiff and defendants. Also gone through the oral and documentary evidence produced by the parties.

11. Before I proceed to record my findings on the issues framed at Exh.11, it is necessary to first appreciate the oral evidence led by the plaintiff and the defendant on record. The same is discussed herein below:

12. The plaintiff, defendant as well as its witnesses, have adduced their oral evidence. The plaintiff has filed his Affidavit-in-Chief at Exh.37. In the said affidavit, he has substantially reiterated the averments made in the plaint Hence the same is not reproduced here. Apart from these the plaintiff has further stated that he has been acquitted from the offence of electricity theft.

In the course of cross-examination by the learned advocate appearing for Defendant No. 1, the plaintiff has stated that: he has taken a 50 horse power electricity connection, it is true that the electricity meter was detached on 16/09/11; it is true that his signature was taken in the site inspection report; documents vide exhibit 48-53 bear his signatures; he was called in the P.G,V.C.L. laboratory in Gondal on 05/12/11; it is not true that the meter was inspected in his presence; it is true that a bill for theft of electricity amounting to Rs.3,81,937/- was issued as per the rules; it is true that the bill has been paid by him through cheque and in installments; it is not true that he paid the amount at his own will; it is true that the procedure of taking off the meter was done in his presence; the work of meter checking was not done in his presence. Rest of the questions asked are either admitted or proved, hence, those questions and answers to them are not reproduced here.

13. From the defendant side Mr. Girishkumar Babulal Vaghela, Dy. Engineer has filed his Affidavit-in-Chief at Exh.71. In the said affidavit, he has substantially reiterated the averments made in the written objection, hence the same is not reproduced here .

In the course of cross-examination by the learned advocate appearing for plaintiff, the witness has stated that: the present suit is filed under his signature; he was not present at the site at the time of checking; he has no personal information with respect to the situation at the site; it is true that he has stated on the basis of documents and reports; it is true that the plaintiff was utilizing load of 12 H.P. at the time of checking; it is true that no external or internal devise was found attached to the meter; it is true that the anomaly "XDT" was seen in the display of meter which caused suspicion of electricity theft; he is aware of the letter dated 09/02/10; it is true that display of 'TXDT' in the meter and missing of hourly consumption data could reflect towards electricity theft; it is not true that there was no missing hourly consumption data of the meter; it is true that the meter was not tested with accucheck meter at the site as well as in the laboratory; it is not true that the laboratory was of Larsen and Toubro; It is true that plaintiff's meter was not tested in N.A.B.L. laboratory; it is true that the software of electricity meter gets damaged if any external or internal device is used for stopping the recording of consumption of electricity; it is not true that the plaintiff has paid the money under protest. Rest of the questions asked are either admitted or already proved, hence, those questions and answers to them are not being reproduced here.

13.1 Defendant has also produced Affidavit-in-Chief of its witness Mr.Utkarshkumar Chandrakant Sutariya, Executive Engineer at Exh.73. In the said affidavit, he has stated that on 16-09-2011 and during that period, the deponent was serving at Porbandar as Deputy Engineer in the I/C Squad (Rural) and is presently working as Executive Engineer at Porbandar, on 16/09/2011 while carrying out checking at the plaintiff’s premises as per instructions of the departmental office to replace the old meter, the incoming and outgoing cables of the installed meter were cut from both sides and the meter box seals were removed from the wall in the same condition. The meter was then packed in a gunny bag and sealed with a paper seal bearing the name of the consumer and signatures of the company officers and staff. It is further stated that if any defect was found during laboratory testing of the new meter, the result would be binding on both parties. The parameters of the old meter were also recorded, and a checking sheet as well as a site rojkam (inspection note) was prepared. It is also stated that the old meter was removed and a new meter was installed, and this was recorded in the site rojkam and Performa No. 15. The meter inspection report, site rojkam and Performa No. 15 were prepared in the presence of the consumer and bear the signatures of the deponent, accompanying staff and the consumer. These three documents have been produced in this suit at Exhibits 48, 49 and 50 respectively.

In the course of cross-examination by the learned advocate appearing for plaintiff, the witness has stated: it is true that exhibit 48, 49, 50 were not prepared at the spot; it is written in exhibit 48, " as per the direction of zonal office, assembled for changing the old meter"; it is true that the old meter which was taken off had no problem or issue; all the seals were intact and proper; it is true that exhibit 48, 49 and 50 were prepared in his presence and bear his signatures. The other questions asked to the witness were either related to admitted facts or were too remote to the enquiry in the suit that answers to them would not affect the credibility of the witness, hence, those are not reiterated here.

13.2 Defendant has produced Affidavit-in-Chief of another witness Mr.Mrugesh Sumanbhai Paghdar, Deputy Engineer at Exh.75. In the said affidavit, he has stated during the period around 05-12-2011, the deponent was serving as a Junior Engineer in the laboratory at Gondal and is presently working as a Deputy Engineer at the Corporate Office, Rajkot. The deponent is aware of the facts relating to the suit from that date. It is further stated that on 05-12-2011, the meter was received at the Meter Testing Laboratory, Gondal for testing. On examination, it was found that the meter had been repacked in a gunny bag with a simple paper seal bearing the signatures of PGVCL officers and the consumer, and the condition of the seal was found to be proper. After opening the packing, one Mintek MMB was found inside, which had been cut and removed from both side cables, and its continuity was found to be proper. The seals on the MMB were verified and found to be consistent with the details mentioned in the checking sheet, and were found intact on inspection. It is also stated that the meter modem contained three wires covered with a paper cover, and the seals on the paper cover and terminal cover were checked on verification of seals on paper cover it is found that (1) Seal No. 1865846 (Inteal) was found inside on the MRI module, which was consistent with Y No. 15-0993/27-03-2008 and axis seal No. 1885801. On opening and checking, it was found intact, (2) Seal No. 1865847 (Intel) was found on the terminal cover, (3) Seal No. 1865848 was also found consistent with Y No. 0993/17/02/08, Emplosive 1865801. Further, the MRI data of the meter was loaded in HH-795025, and on examining the anomaly string, an entry “AØØØ XDT ØØØØØØ000” was noticed, which was unusual under normal circumstances. As per the explanation given by the meter manufacturing company, such an anomaly may occur when the meter is affected by an external device. The laboratory report of the meter has been produced in this suit at Exh. 52 and bears the signatures of the deponent, other officers and the consumer Kiritkumar Prabhudas.

In the course of cross-examination by the learned advocate appearing for plaintiff, the witness has stated: he holds a qualification of engineer; it is true that employees of PGVCL are there in the testing laboratory; it is true that the laboratory is of PGVCL; it is true that when the meter was opened in the laboratory it was in proper condition; on being asked that display of figures 'XDT' does not invite proceedings for theft, he replied, as per the letter of corporate office, on display of such figures theft proceedings could be initiated; he is aware of the letter dated 09/02/10; it is true that as per the said letter, display of 'TXDT' in the meter along with missing hourly consumption data is found, then theft of electricity could be contemplated; it is true that 'TXDT' was not seen in the data of meter; He, then clarified that the letter dated 09/02/10 mentions the letter 'XDT'; it is true that using an external meter affects and damages the software of the meter. The other questions asked to the witness were either related to admitted facts or were too remote to the enquiry in the suit that answers to them would not affect the credibility of the witness, hence, those are not reiterated here.

-: R E A S O N S :-

14. Issues Nos. 1 and 2:

14.1 The contention of the defendant is that there was no theft of electricity committed by it, but the defendant company, who is engaged in distribution of electricity to its consumers, has committed error in coming to the conclusion that the plaintiff has committed theft of electricity and given them a supplementary bill of electricity on account of theft of electricity. It is the say of the plaintiff that the defendant had failed to prove any sort of theft of electricity and the recovery of huge amount of money from them is perverse and without any authority. Therefore, it is prayed that the defendant shall be directed to refund the money along with interest and so paid by it on account of supplementary bill for alleged theft.

14.2 Now, it is not contended that the supplementary bill issued by defendant was not under the provisions of Section 50 of the Indian Electricity Act, 2003. However, the contention of the plaintiff is that it were not provided opportunity to be heard before the supplementary bill was issued by the defendant. The principle of natural justice has not been followed in the present case. Further, delay payment charges can only be levied when there is some due amount. It cannot be said that there was any bill due from the plaintiff. Further, the notification upon which the defendant's claim is based states three outputs in the MRI data would mean that there has been electricity theft. It has not been stated in the said notification that what would be the outcome if only one output out of the three prescribed outputs is recorded. Hence, to conclude that there has been theft of electricity just because there has been one of those outputs is not proper.

14.3 Now, it is plaintiff's claim that the principle of natural justice was not followed and it were not given opportunity to show cause against the revised supplementary electricity bill. However, in the case of Torrent Power Aec Ltd. vs Gayatri Intermediates Pvt. Ltd., (2006) 2 GLR 1580, in analogous circumstances, Hon'ble Gujarat High Court specifically dealt with the question of compliance with the principles of Natural Justice in the case of supplementary bill in theft cases. It was observed:

> "3. Does Assessment in theft cases require compliance with principles of Natural Justice?
>
> 13.1 Mr Tushar Mehta for the petitioners vehemently submitted that assessment under Section 126 embodies the principles of natural justice. The Legislature could not have intended that assessment in theft cases could be made without complying with the principles of natural justice.
>
> 13.2 We are unable to accept this contention either. Since such contentions raised under the repealed laws were outright rejected by the Apex Court, we may turn to them. In MP Electricity Board v. Harsh Wood Products and in Hyderabad Vanaspathi v. APSEB , the Apex Court has laid down that where a consumer is prima-facie found by the licensee to have committed theft of electricity, it is not necessary for the licensee to give any notice or an

opportunity of hearing before disconnecting electricity supply and that the supply may be restored only if the consumer compensates the licensee or pays off the dues as per the bill which may be prepared by the licensee. The Court held that the action taken by the Electricity Board in exercise of the powers under the Conditions of Supply framed under the Electricity (Supply) Act, 1948 was neither violative of Articles 20(1) and 14 of the Constitution nor violative of the principles of natural justice. The Court further held that the provision for a departmental appeal and judicial review under Article 226 thereafter were sufficient safeguards. Now that the Electricity Act, 2003 itself provides a statutory remedy before the Special Court (presided over by a Judicial Officer in the cadre of District Judges as compared to a Judicial Officer in the lower cadre of Civil Judges presiding over the Civil Court) and further appeal/revision under Section 156 before this Court as discussed in para 15 hereafter, we find that these are sufficient safeguards. Accordingly the contention based on principles of natural justice is also rejected."

14.4 Further, in paragraph 17 of the Judgment, the Hon’ble High Court has observed:"In para 13 hereinabove, we have already rejected the contention that assessment in theft cases is required to be made after following the principles of natural justice. Having said so and having held that the jurisdiction of Civil Court is impliedly excluded and having regard to the principle discussed in para 15.5 hereinabove, we cannot allow the jurisdiction of Civil Court to be made available through backdoor by holding that Civil Court can still have jurisdiction in a case where the plaintiff complains against assessment in theft cases by invoking principles of natural justice, or by pleading breach of provisions of the Act when the later grievance can be looked into by the Special Court. We, therefore, hold that the observations to the contrary in the judgment under appeal do not lay down the correct law."Hence, as per the observations made in the above case, the Hon'ble Gujarat High Court has observed that the cases of theft of electricity the principles of natural justice need not be followed. In arriving to such a conclusion, the Hon'ble High

Court relied upon the pronouncement of Hon'ble Apex Court in MP Electricity Board v. Harsh Wood Products where the hon'ble Apex Court did not find the action of immediate disconnection of electricity and restoration of the same only if the consumer compensates the licensee or pays off the dues as per the bill which may be prepared by the licensee to be violative of Articles 20(1) and 14 of the Constitution nor violative of the principles of natural justice.

15. In the present case, the plaintiff did not raise any dispute regarding the assessment made and non compliance with the principles of natural justice before making the payment under the supplementary bill. As discussed, the consumer had a right to approach the Special Court and challenge the Civil liability fastened upon him on account of theft of electricity. However, no such proceedings were ever undertaken by the plaintiff before satisfying the entire outstanding amount under the supplementary bill. The amount was paid in full and, thereafter, the present suit is filed and objection is raised with respect to the various aspects including non comparing the readings of the parallel TC meter with the disputed meter. As already stated earlier, the plaintiff has said to have made the payment with protest, however, no evidence is produced to show that the payment was so made reserving right to challenge the legality of supplementary bill in the future. In this way, the plaintiff is prevented by the principle of Equitable estoppel from challenging the validity of supplementary bill by making the payment without proving that such payment was made under protest and also not challenging the supplementay bill before the Special Court under the provisions of Section 154 of the Electricity Act before making the payment. It is to be noted here that the criminal proceedings for the commission of offence punishable under Section 135 of the Electricity Act, 2003 were undertaken by the defendant in the Special Court. There is nothing on record to show that any objection against the said supplementary bill was ever taken by the present plaintiff before the Special Court under the provisions of Section 154(5) of Electricity Act, 2003. The Special Court was seized with the trial of the offence punishable under Section 135 of the Electricity Act, hence, any objection against the supplementary bill could have very well raised before the said Special Court. However, no such objection was raised before payment of supplementary bill, the payment was made in installments. The payment of amount of supplementary bill was made in the year 2011 and the present suit was filed in the year 2014. Thus, the plaintiff did not take any objection at the relevant point of time under the provisions of Section 154(5) of the Electricity Act, made the payment of the entire amount claimed in the revised supplementary bill and filed the present suit under the provisions of Section 154(5) of the Electricity Act, more than two and a half years later. The question which arises here is, why did not the plaintiff object to the calculation of amount payable under the revised supplementary bill and made payment of the same. Although, the plaintiff has stated that the said payment was made with reserving right to protest against the same, but there is nothing on record as such which would support the contention of plaintiff that such payment was made under protest. Further, no such objection was ever raised before the Special Court which was trying the offence of theft.

16. In the case of Abdul Rashid Kapadia@Baba Hiragal versus Torrent Power Limited, 2011(0)AIJEL-HC 224578, a division bench of Gujarat High Court, while deciding letters patent appeals, observed: "We may now deal with the submission made by the learned counsel for the petitioner-consumers who contended that in a given case the consumer may or may not dispute the allegation of theft made by the licensee or its officers, but the consumer may still dispute the amount of supplementary bill issued in theft cases. It is submitted that the Act does not provide for any remedy in such cases and that Section 151 allows only licensee or authorities to move the court with a complaint to take cognizance of an offence, but no provision in the Act provides for an appeal or other proceeding at the instance of the consumer to challenge assessment made by the licensee in a theft case. It is, therefore, submitted that the powers of the Civil Court cannot be treated to have been excluded when there is no remedy provided by the Act in such cases. We do not think that a consumer is without remedy in such cases, Sub-section (5) of Section 154 specifically provides that the Special Court may determine the civil liability against a consumer or a person in terms of money for theft of energy.....There is nothing to indicate that the power and jurisdiction conferred on the special Court under sub-section (5) of Section 154 is conditional upon the licensee filing a complaint before the Special Court under Section 151 of the new Act. In fact while the provisions relating to offences and penalties from Section 135 to 139 are to be found in PartXIV.....

the provisions relating to the Special Court are to be found in a separate part being Part XV of the Act. Since the power to try offences punishable under Section 135 to 139 is conferred exclusively on the Special Court constituted under Section 153 of the Act and the provisions of Sub-Section (5) of Section 154 specifically invest the Special Court with the jurisdiction to determine any dispute regarding the quantum of civil liability in theft cases, we are clearly of the view that a consumer intending to challenge the quantum of civil liability in theft cases (whether or not he disputes the allegation of theft) is still entitled to make such a challenge to the disputed bill before the Special Court, even in cases where no criminal complaint is filed against the consumer. The doubt, if any, is removed by Regulation 7.6.7 in the Gujarat Electricity Supply Code."

16.1 Hence, as per the observations made in the above judgment, the consumer who intends to challenge amount of supplementary theft bill could challenge it before the concerned Special Court whether or not the Special Court was or was not seized with the trial of criminal offence of theft in such case. Here, in the present case, no such challenge was made before the Special Court. On one hand the plaintiff did not make any objection to the supplementary bill of theft and paid the same in installments and, on the other hand, raised objection to the supplementary theft bill, delay payment charges by filing the present suit almost after 2.5 years later. A assessment of supplementary theft bill is not an assessment for unauthorised use of electricity within the provision of Section 126 of the Electricity Act. As per the obervations made by the Hon'ble Gujarat high court in the Case of Torrent Power Aec Ltd. vs Gayatri Intermediates Pvt. Ltd., there does not appear any breach of rules prescribed for assessment of supplementary bill on account of theft of electricity. Hence, this court relies upon the observations made in the case of Torrent Power Aec Ltd. vs Gayatri Intermediates Pvt. Ltd. in reaching to the conclusion that there is no illegality in the supplementary bill on the ground that the plaintiff was not given opportunity of hearing.

17. Yet another contention raised by the plaintiff that, the meter was not tested in N.A.B.L. accredited laboratory and, therefore, the result of the laboratory cannot be relied upon. The laboratory test was performed just to fortify the claim of the defendant and for extracting M.R.I. data. Further, Such a contention is also not tenable as the laboratory in which the meter was tested was stated to be equivalent to a N.A.B.L accredited and its equipments are stated to have such accreditions. Further there does not appear any circumstances which reflects towards any deliberate negligence or shorcoming in the process of seizure of meter till its testing in the presence of plaintiff's representatives in the laboratory of defendant. The defendant is an government undertaking supplying electricity connection in whole of area of Paschim Gujarat. It cannot be readily believed that the defendant was inculcating any malice towards the plaintiff. Further, testing of meter in the laboratory of defendant was not objected to at that relevant time. The plaintiff could have raised such an issue before the special court which it failed to do. Hence, there appears no reason to believe that non testing of the meter in the N.A.B.L. accredited laboratory has rendered the finding of defendant that theft has been committed completely null and void.

18. Another contention of the plaintiff is that the Notification upon which the defendant’s claim is based states three outputs in the MRI data would mean that there has been electricity theft. It has not been stated in the said notification that what would be the outcome if only one output out of the three prescribed outputs is recorded. Hence, to conclude that there has been theft of electricity just because there has been one of those outputs is not proper. However, if the said letter produced at exhibit 58 is looked into, it is nowhere mentioned in the same in order to come to any conclusion regarding the electricity theft, all the three described patterns should appear in a meter at a given point of time. Hence, it cannot be said that all the above three conditions should fulfill in every case of theft of electricity by tempering electricity meter by external device. Further, in reaching to such a conclusion, this court places reliance upon the pronouncement of Hon'ble Gujarat High Court in the case of Harikrupa Ice Factory And Cold Storage vs Paschim Gujarat Vij

Company Ltd -Pgvcl & ... in Special Civil Application No. 16012 of 2013, wherein the Hon'ble Gujarat High Court, in a case where contention raised were similar to what has been raised before this court, observed:

"I have heard learned advocates appearing on behalf of the respective parties and perused the papers annexed along with the petition as well as Affidavit-in-reply. It appears from the report dated 24/12/2012 that on the display of impugned meter installed at the Ice factory of the petitioner, a number 9496729.5 had surfaced. The manufacturer company of the meter i.e. L & T Ltd. had specifically issued guideline to all electricity companies, who are purchasing meters from it, way back in the year 2011 since there were complaints made by the electricity company that the meters do not refer the correct consumption of electricity though consumed by its clients and though the meter is not physically tampered with. Way back on 09/09/2011, L & T Limited had informed Chief Engineer (Tech.), Paschim Gujarat Vij Company Limited that when the meters were checked and certain points are found out, it is presumed or concluded that the meter was affected due to high voltage Electro-Static Discharge" device. The submission made by Mr.Pujara, learned advocate for the petitioner cannot accepted that theft of electricity can be presumed only after all the three points referred in the said communication are verified by the company since letter itself is very clear suggesting that if the meter displaying / registering no.9496729.5 in any of energy register and/or meter displays anomaly as "TXDT". "XDG" or "XDT". When the meter of the petitioner company is displaying no.9496729.5, there is no need to satisfy other points before concluding that the meter is High Voltage Electro-Static Discharge" device. Since in the present case, such recording is found out, I am of the opinion that prima facie, the company has established a case of theft of electricity against the petitioner."

19. Another contention of the plaintiff is that the Indian Electricity Act, 2003 nowhere mentions that appearance of any such readings like "XDT" in L&T electricity meters or loss in recording of hourly consumption data would amount to theft within the meaning of Section 135 of the Act. It is to be kept in mind that no law could ever be so exhaustive so as to explicitly mention every possible modus operandi for the commission of an act made punishable under such law. The law can only define the ultimate result which would be or would not be regarded a crime, but it cannot contemplate, prescribe and mention every possible way or method of achieving the said end result. The Electricity Act, 2003, Section 135 provides that:

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 supplier as the case may be; 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,
(d) uses electricity through a tampered meter; or
(e) uses electricity for the purpose other than for which the usage of electricity was authorised, 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:

20. Thus, clause (b) of Section 135(1) of the Electricity Act, 2003, mentions: whoever dishonestly uses 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 is said to commit theft of electricity. Here, in the present case, the allegation against the plaintiff is that it has used some external device which had hanged the electricity meter and which resulting in proper registration of consumption of the electricity. The letter of L & T dated 09/09/2011 suggest the anomaly which a L&T made electricity meter would show when such an external device was used from tempering the meter and the said fact is also supported by the documents produced in the record vide exhibit 52 and 54. The said fact that such number "XDT" was seen in the data of the disputed meter has also been supported by the witnesses examined by the defendant. The degree of proof in criminal case is different from the one in civil case. In Criminal case the prosecution has to prove the allegation beyond all reasonable doubts. However, in Civil case, the alleged fact is needed to be proved by preponderance of probability. The premises in which the disputed meter was installed was of the plaintiff's firm, the M.R.I. data and other readings of the disputed meter showed the figures 'XDT' and missing of hourly consumption data in the reading which was regarded by the supplier company, in the case of meters manufactured by L&T company, to be case of theft of electricity. The plaintiff has also failed to show that such an approach of the electricity supplier in treating the display of figures'XDT' in the meter to have been subjected to theft of electricity was illegal or not proper. There is no evidence to show that such approach of PGVCL was false on account of not being based upon any scientific reason. There is nothing on record to show that the said circular/letter of PGVCL or L& T has been declared illegal or unconstitutional. A mere statement that such an approach is not legal is not sufficient to prove the same. Some evidence was required to be produced by the plaintiff in support of its contention specially when no challenge to such supplementary bill was made before making the payment.

21. The next contention is that the meter was not tested with accucheck test at the spot is indicative of the fact that there was no malpractice detected by the checking team at the spot. The checking report prepared at the spot also does not mention seizure or presence of any artificial means or device at the spot. All the seals on the meter box as well as on the modem were intact which show that there was no malpractice performed with respect to the electricity meter. It should be kept in mind that the allegation of defendant is that the plaintiff had used some external device to hang the consumption of electricity by the meter without actually making any physical tempering with the meter. Hence, the intactness of the seals on the meter and the box does not warrant this court to disbelieve the allegation of the defendant that the plaintiff had committed theft of electricity.

22. The plaintiff has made several references to what happened in similar case filed against another person or reply given by PGVCL under Right to Information Act. How the other authorities which distributes electricity in the State of Gujarat treat the anomalies mentioned in the letter dated 09/09/2011. All these contentions of the plaintiff does not help him to any extent in the present case. Every case has to be decided on the basis of the material and evidence put before the court in a particular case. The manner in which a particular act of the consumer is dealt with by other electricity providers is not of any importance in the present case. The facts and acts of the consumer and the electricity provided in that case in not on trial before this court in the present case. Hence, what was done or believed by other electricity suppliers is not relevant in the present case. Lastly, the contention of the plaintiff that the recovery of delay payment charges was illegal because there was no outstanding amount and therefore no money was payable by the plaintiff's firm on which the defendant could levy delay payment charges is also not tenable. This court has come to the conclusion that the Supplementary bill raised by the defendant had no illegality in it therefore, levying delay payment charges over the said amount by the defendant was justified and legal. Thus, at the conclusion of the above discussions, this court is of the view that the plaintiff has failed to prove any illegality in the supplementary electricity bill raised by the defendant. The payment of supplementary theft bill by the plaintiff was a payment made under a legal liability, therefore, he is not liable to recover the money which was been paid by him in discharge of a legal liability. When the recovery of money was justified, there cannot be any question of getting damages for mental torture. Hence, the issue nos. 1 is decided in the negative. As the plaintiff's right to recover the payment made by him to the defendant under the supplementary theft bill is not recognized by this court, the question of levying interest upon the said amount does not arise at all. Hence, the issue no.2 is also decided in the negative and following final order is passed with respect to issue no. 3.

-: <u>O R D E R</u> :-

- The plaintiffs' suit bearing Sp.C.S. No. 21/2019 is hereby dismissed.
- All interim order made in the suit shall stands 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 09th day of April, 2026.

Date :09/04/2026.

Place: Vanthali.

(Anubhav Pandey)
Principal Sr. Civil Judge,
Vanthali, Junagadh.
[Code No. GJ01133]