

GJJN210014152024



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**IN THE COURT OF 2nd ADDITIONAL DISTRICT JUDGE,
JUNAGADH AT KESHOD.**

Regular Civil Appeal No. 47 of 2024

Ex. _____

Owner Of The Ratnakar Ice And Cold Storage

01. Rameshbhai Mavjibhai Khorava,
Age: 45
Address: Bandar Road, Near Jahaniyapirni Dargah, Mangrol Ta-
Mangrol
02. Kanjibhai Dhanjibhai Khorava,
Age: 30
Address: Bandar Road, Near Jahaniyapirni Dargah, Mangrol Ta-
Mangrol
03. Mavjibhai Lakhamanbhai Khorava,
Age: 75
Address: Bandar Road, Near Jahaniyapirni Dargah, Mangrol Ta-
Mangrol
04. Muljibhai Mavjibhai Khorava
Age: 50
Address: Bandar Road, Near Jahaniyapirni Dargah, Mangrol Ta-
Mangrol

.....APPELLANTS

V/s.

01. Paschim Gujarat Vij Company Ltd. (PGVCL),
Through: Dy. Engineer
Town Sub Division,
At. Mangrol District Junagadh

.....RESPONDENT

Appearance:-

Ld. Advocate for the Appellant. : Mr. D V Kumbhani
Ld. Advocate for the Respondent. : Mr. K T DUBEY

Subject: Appeal U/s. 96 of CPC to set aside the Judgment and decree passed in Special Civil Suit No. 34/2019 dtd. 21.11.2024 by the Principal Senior Civil Judge, Keshod.

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

1. The appellant (original defendant), being aggrieved and dissatisfied with the judgment & decree dated 21.11.2024, passed by the Principal Senior Civil Judge, Keshod, (herein after referred to as Ld. Trial court) in Special Civil Suit No. 34/2019, has filed this appeal U/s. 96 of CPC.

For the sake of convenience and brevity, the parties shall be hereinafter referred to in this judgment as per their original status in the Special Civil Suit No. 34/2019.

2. The brief facts of the plaintiff's suit was as under :

The Plaintiff's are partners in a firm named 'Ratnakar Ice and Cold Storage' and which is engaged in ice production and cold storage at Mangrol. The Defendant Company is engaged in generating electricity and are also supplying and selling electricity to its consumers. The defendant's sub-divisional office is located at Mangrol, while the head office is situated at Rajkot. At the office situated at Mangrol, the deputy engineer is the head of the office and he is responsible for administration and providing electric connection and he is recovering the due amount against the consumption of electricity from its consumer and providing electric meter to the consumers. The Plaintiff firm has obtained industrial category electricity connection of 125 Horsepower

with Consumer No. 80501/55041/0. The plaintiffs are using the electricity and are regularly paying the bill amount and there is no due to be paid by the plaintiffs.

The Plaintiff further states that on 10/12/10, the Plaintiff's electricity meter was removed and on 18/12/10, it was checked in the laboratory in the presence of the Defendant's officers. At that time, despite of no fault being found in the Plaintiff's meter, a supplementary bill dtd. 23/12/2010 for Rs. 11,29,739.45/- was issued. Thereafter the plaintiffs deposited the said entire amount under protest. Thereafter, without any reason, the defendant again issued revised supplementary bill for Rs. 27,16,718.25/- on 02/04/2011. As this bill was illegal and without authority and against settled principles of law, the plaintiffs challenged this bill by filing Special C.A. No. 5029/11 before Hon'ble Gujarat High Court. In the said matter, Hon'ble Gujarat High Court on 05/05/2011 passed Oral Order to the effect that upon furnishing bank guarantee for the remaining amount of Rs. 15,86,097.25 paise, the electric connection of the plaintiffs be restored. Accordingly, the Plaintiff furnished the bank guarantee and the connection was restored. The Plaintiff further states that in the Special C.A. No. 5029/11, the Hon'ble High Court passed order dtd. 25/02/2013 and has held that the Special Court has jurisdiction to decide dispute regarding the disputed bill and has disposed the said matter. Thereafter the plaintiffs filed Civil Misc. Application no. 553/2013 for direction for extension of time of Bank Guarantee. In this matter order was passed to extend the time of bank guarantee till 25/03/2013.

Based on these facts, the plaintiffs have instituted the present suit on various grounds. It is contended that the bill issued by the defendant is based upon assumptions, the plaintiffs have never committed electric

theft and have not used any instrument to obstruct the reading of the electric meter and have not tampered with the meter. There is no history of any complaint of electric theft against the plaintiffs and the plaintiffs are regularly paying the bill amounts and there is no complaint of any fault by the person of the defendant who is taking note of unit consumption on regular basis. At the time of removing meter, there was no fault in the meter and at the time of testing of the meter in laboratory, again no fault was found and it was told there that there is nothing to worry and they took signature on two printed forms /blank documents. The electric meter was neither checked by Electrical Inspector nor it was checked in his presence. The electric bill was not prepared by the Electrical Inspector. The plaintiffs have not been given opportunity of being heard and the defendant has not issued notice to the plaintiff to provide such opportunity. Even any notice was not issued before disconnection of electric supply and the defendants have violated the self declared policy and principle of natural justice. The bill is not prepared by the Assessing Officer and any opportunity was not given to plaintiffs before arriving at the amount of bill and final bill is not prepared which is against the law.

It is further contended that the electricity is being used by the plaintiffs for 7-8 hours only on each day and on one day there is compulsory power cut and the supply of electricity is not regular and on the national/religious holidays, the plaintiff's unit is remaining closed. Any instrument has not been found from the plaintiff's place through which the meter reading can be stopped. The Bank Guarantee is continuing and if needed, the plaintiffs are ready to extend the date of the Bank Guarantee. The defendant is having monopoly in supplying electricity and there was no alternative arrangement for running the Factory. The defendant has issued bills to adjust their financial deficit and is infringing

the rights of the plaintiffs and it may permanently close the business of the plaintiffs. The disputed electric meter belongs to defendant and therefore, it is the responsibility of the defendant to maintain and take care of the meter. At the time of installing the meter, the plaintiffs had asked the defendant not to install meter of L & T Company but the officers working at that time told that they have been restrained from installing the meter of any other company and have forcefully installed the meter of L & T company. The meter reading cannot be stopped due to error code appearing in the meter of L. & T. Company and the report of the company is incorrect in this regard. There is seasonal off in business of the plaintiffs during period from June to August and bill for the said period is also included

By submitting these facts, the Plaintiffs have prayed to declare that the supplementary bill of Rs. 27,16,718.25/- dated 02/04/11, is illegal, void ab-initio, unconstitutional, without jurisdiction, against provision of law and without following the principle of natural justice and not binding to the plaintiffs and the defendant is not entitled to recover the amount of the bill from the plaintiffs. Furthermore, the Plaintiff seeks a permanent injunction to restrain the Defendant, its servants, agents, or officers from disconnecting the Plaintiff's electricity connection under Consumer No. 80501/55041/0 in connection with the disputed bill, and prays for the costs of the suit and any other appropriate relief.

3. The process of the suit was duly served upon the defendants and the defendants have filed their written statement vide Exh. 14, wherein they have pleaded that the plaintiff's suit is not true and is not maintainable. The defendant has admitted the fact that the Plaintiffs are consumers of the defendant company. It came to the attention of the Corporate Office

of the Defendant Company that power theft was being committed by many consumers by putting L&T company meters into a 'hanged condition' using external devices. This was identified by the observation of codes such as '949672.95' or 'KW KVA KVARH LAG', and the recording of the anomaly 'LDT' in the meter data. Consequently, a letter dated 09/02/10 was issued by the corporate office to the Subdivisional Office to inspect L&T meters. The Defendant further states that based on this letter, the meter was removed from the Plaintiff's premises on 10/12/10 and it was subjected to a laboratory test on 18/12/10 in the presence of Bhimjibhai Mavjibhai Khorava. During this test, the anomaly 'AQQQ XDTQQQQ000' was detected. At the time of lab test, Representatives of the L&T Company were present and they took MRI of the meter, and subsequently submitted a report on 20/12/10, which revealed that "Meter is subjected to external device which has lead to meter in hanged condition, prevent meter to log hourly energy consumption data appearance or anomaly condition with 'XDT' and this resulted into prevention of reading of actual energy".

As per the report of L & T company the plaintiffs without touching the meter and by using external means put the meter in hang condition and inspite of consumption of electric energy, the same was not recorded in the electric meter and thereby the plaintiffs have committed electric theft. Hence as per A.B.C.D. formula, supplementary bill for Rs. 11,29,739.45 paise was issued, which the Plaintiffs paid with request to restore their connection. Thereafter, the defendant has restored the electric connection of the plaintiffs. Thereafter the Divisional Office pointed out that there is mistake in calculation of supplementary bill and therefore a revised bill of Rs. 27,16,718.25 paise was issued as per Divisional Office instructions. After deducting the earlier payment of Rs. 11,29,739.45 paise, a balance of Rs. 15,86,978.80 paise remains

outstanding. The Defendant contends that the Plaintiff is bound by their undertaking to pay these dues and that the present suit challenging the bill is false and should be rejected. The Defendant has filed a Counter-Claim stating that the protection against disconnection granted by the Hon'ble High Court of Gujarat in Special C.A. No. 5029/11 has expired. The defendant has claimed that they have right to disconnect the electricity supply if the revised dues are not settled. They have also prayed to pass order declaring that the Plaintiff is liable to pay the revised bill amount, interest, and reconnection charges, and for decree in their favour for the recovery of the due amount.

4. The trial court framed issues and recorded its findings to those issues, which are as under:

4(A) Issues:-

1. શું વાદી સાબીત કરે છે કે, પ્રતીવાદીએ આપેલ રૂા. ૨૭,૧ ૬,૭૧૮-૨૫/- પૈસાનું તા. ૦૨/૦૪/૨૦૧૧ના રોજનું બીલ ગેરકાયદેસર છે?
2. શું પ્રતિવાદીનું કાઉન્ટર કલેઈમ કોર્ટ ફીની ખામીના કારણોસર નામંજુર થવાને પાત્ છે?
3. શું પ્રતિવાદીનું તેમના કાઉન્ટર કલેઈમ અનુસાર પુરવાર કરે છે કે, તેઓ તા. ૨/૪/૧૧નું રીવાઈઝ બીલની રકમ વસુલ થાય ત્યાં સુ વ્યાજ સાથે મેળવવા હકકદાર છે?
4. શું હુકમ અને શું હુકમનામું ?

- 4(B) The Trial Court has recorded its findings to the above issues as under:

1. નકારમાં.
2. હકારમાં
3. નકારમાં
4. આખરી હુકમ મુજબ.

5. The parties have produced following evidences before the trial court:

A) **Oral as well as documentary evidence on behalf of plaintiff :-**

Sr. No.	Particulars	Exhibit No.
1	Affidavit of the witness Rameshbhai Mavjibhai Khorava	50
2	Power of Attorney in the name of the Plaintiff (Xerox)	51
3	Supplementary Bill (Xerox)	52
4	Payment Receipts (Total 4) (Xerox)	53
5	Receipt of the amount deposited by the Plaintiff (Xerox)	54
6	Revised Supplementary Bill (Xerox)	55
7	Bank Guarantee Receipt dated 19/07/12 (Xerox)	56
8	Bank Guarantee Receipt dated 20/07/12 (Xerox)	57
9	Order of Gujarat High Court in SCA No. 5029/11 dtd 05/05/11 (Xerox)	58
10	Order of Gujarat High Court in SCA No. 5029/11 dtd 25/02/13 (Xerox)	59
11	Order in CMA No. 553/13 dtd 12/03/13 (Xerox)	60

B) Oral as well as documentary evidence on behalf of Defendant :-

Sr. No.	Particulars	Exhibit No.
1	Affidavit of witness Pravin Ratilal Dulera	125
2	Affidavit of witness Pritiben Sanjivbhai Vaidya	189
3	Affidavit of witness Pithabhai Ramshibhai Karangiya	190
4	Original Site Inspection Report (Place Rojkam)	61
5	Original Lab Inspection Report (Old Removed Meter)	62
6	Original Lab Inspection Report (New Installed Meter)	63
7	Office copy of Plain Paper Seal	64
8	Original Meter Seal Checking Report (Proforma No. 15)	65
9	Original Reading Data Sheet (Old Meter)	66
10	Original Gate Pass	67
11	Original Three Phase Meter Testing Report	68
12	Original Reading Data Sheet (Old Meter)	69
13	Office copy of Calculation Sheet for Power Theft Bill	70
14	Office copy of Power Theft Bill	71
15	Office copy of covering letter sent with Power Theft Bill	72

16	Original Letter by Plaintiff requesting installments	73
17	Original Indemnity Bond / Undertaking by Plaintiff	74
18	Original Inspection Report of Reconnection of Meter	75
19	Xerox of FIR (Power Theft) registered against Plaintiff	76
20	Office copy of Revised Supplementary Bill	77
21	Office copy of covering letter with Revised Supplementary Bill	78
22	Original Site Inspection Report (Sthal Rojkam)	79
23	Original Disconnection Inspection Report	80
24	Original Meter Reading Sheet (Removed Meter)	81
25	Meter Seal Checking Report (Proforma 15) (Removed Meter)	82
26	Office copy of Plain Paper Seal	83
27	Original Disconnection Order	84
28	Original Inspection Report for Meter Re-installation	85
29	Re-connection Meter Seal Checking Report (Proforma 15)	86
30	Re-connection Site Inspection Report (Place Rojkam)	87
31	Original Meter Reading Sheet (Removed Meter)	88
32	Original Gate Pass	89
33	Original Reconnection Order	90
34	Gujarat HC Order in SCA 5029/11 (Xerox dtd 05/05/05)	91
35	Gujarat HC Order in SCA 5029/11 (Original dtd 11/02/13)	92
36	Xerox of Bank Guarantee provided by Plaintiffs	93
37	Undertaking/Indemnity Bond given by Plaintiff to PGVCL	94
38	Notice for Revised Bill Payment (Office Copy)	95
39	Notice for Revised Bill Payment (Office Copy)	96
40	True Copy of PGVCL Corporate Office Letter (Dated 09/02/10)	128
41	True Copy of Site Rojkam (Dated 10/12/10)	129
42	True Copy of sheet of newly installed meter	130
43	True Copy of sheet of old removed meter	131
44	True Copy of Plain Paper Seal Note	132
45	True Copy of Meter Seal Checking Report (Proforma No. 15)	133
46	True Copy of Reading Data Sheet of the meter	134
47	True Copy of Gate Pass	135
48	True Copy of Phase Meter Testing Report (Meter removed 10/12/10)	136

49	True Copy of L&T make Meter Reading Sheet	137
50	True Copy of Calculation Sheet for theft units	138
51	True Copy of MRI Data Sheet (Total 10 Pages)	139
52	True Copy of L&T Company Report regarding Plaintiff's meter	140
53	True Copy of Site Rojkam for Removal of Meter for power theft	141
54	True Copy of Meter Reading Sheet (Removed Meter)	142
55	True Copy of Calculation Sheet for power theft bill	143
56	True Copy of Power Theft Bill issued to Plaintiff	144
57	True Copy of letter sent with Power Theft Bill	145
58	True Copy of letter by Plaintiff requesting installments	146
59	True Copy of Undertaking given by Plaintiff to Defendant	147
60	True Copy of Inspection Report of reconnection of meter	148
61	True Copy of Meter Reading Sheet of reconnection	149
62	True Copy of order to restore/start electricity meter	150
63	True Copy of FIR (Rajkot P.S. CR No. 2875/10) against Plaintiff	151
64	True Copy of Muddamal (Seizure) Receipt	152
65	True Copy of Corporate Office Letter regarding Revised Bill	153
66	True Copy of Calculation Sheet for Revised Bill	154
67	True Copy of Reminder Bill (Revised)	155
68	True Copy of letter accompanying Revised Bill	156
69	True Copy of Site Rojkam of meter disconnection	157
70	True Copy of Inspection Report regarding disconnection	158
71	True Copy of Meter Reading Sheet of removed meter	159
72	True Copy of Proforma No. 12 (Removed Meter)	160
73	True Copy of sheet showing seal details in Plain Paper Seal form	161
74	True Copy of Disconnection Order for non-payment	162
75	True Copy of Inspection Report (Installation per HC order)	163
76	True Copy of Proforma No. 15 (Meter Details)	164
77	True Copy of Site Rojkam regarding reconnection of meter	165
78	True Copy of Meter Reading Sheet (Dated 06/09/11)	166
79	True Copy of Gate Pass for meter from Divisional Office	167

80	True Copy of order to restore supply per HC order	168
81	True Copy of Gujarat High Court order in SCA 5029/11 (05/05/11)	169
82	True Copy of High Court order dated 11/02/13	170
83	True Copy of Bank Guarantee provided by Plaintiff per HC order	171
84	True Copy of Undertaking given by Plaintiff to Defendant office	172
85	True Copy of notice given to Plaintiff for payment of revised bill	173
86	True Copy of Gujarat High Court order in SCA 5029/11 (12/03/13)	174
87	True Copy of notice to Plaintiff for payment of revised bill	175
88	True Copy of GERC Notification of the Respondent office	176
89	Xerox of Reply to the Notice given by Plaintiffs	179
90	Original Computerized Ledger (Plaintiffs' Account)	180
91	Office copy of letter seeking permission to file suit	181
92	Original Permission/Sanction granted to file suit	182
93	Office copy of Legal Notice given to Plaintiffs	183
94	True Copy of Approval by Company Secretary to file suit	187

- 6.** The trial court observed that the plaintiff side has dismissed the suit on 21.11.2024 whereby it has passed following operative order:

::– આજરી હુકમ –:::

- 1) વાદીનો દાવો આથી નામંજુર કરવામાં આવે છે.
- 2) પ્રતીવાદીનો કાઉન્ટર દાવો સી. પી. સી. ઓર્ડર ૭ રૂલ ૧૧ (સી) મુજબ નામંજુર કરવામાં આવે છે.
- 3) દાવાનો ખર્ચ વાદીએ પ્રતીવાદીને ચુકવવો અને તેને થયેલ ખર્ચ તેણે જાતે ભોગવવો.
- 4) હુકમ મુજબ હુકમનામું દોરવું.

It is this judgment and decree which is under- challenge in this appeal.

7. The process of this appeal was duly served upon the respondent and the respondents appeared before this court through the Ld. Advocate.
8. The record of the Trial proceedings has been called for by this Court. Heard the ld. advocates for the parties.
9. The appellant has challenged the Judgment and decree mainly on the grounds mentioned in the memo of appeal and the same has been argued by the Ld. Advocate for the appellant which can be summarized as under:

The appellant submits that the lower court erred, misjudged and misinterpreted the evidence and legal provisions, and failed to properly consider the plaintiff's pleadings, documentary evidence, and witness testimonies. The appellants have taken contention as per their grounds raised in memo of appeal and have prayed that the court may accept plaintiffs' contention, reverse the lower court's judgment, and grant them any other relief deemed necessary. The appellants have relied upon on the principles laid down in following judgments:

1. AIR 2000 H. P. 11; H.P. Horticultural Produce Marketing and Processing Corporation Ltd. V. United India Insurance Company Ltd. And another, (Note-B).
2. AIR 2014 MP 173, Smt. Baijantibai Vs. M.P. Kshetriya Vidyut Vitran Co. Ltd. Bhopal and Ors.
3. AIR 2013 Allahabad 47, M/s. Venus Stone Crushing Co. & Anr. v. U. P. Power Corporation Ltd. & Ors..
4. Shree Vinayak Synthetics Pvt Limited V/s Gujarat Electricity Board; Citation: 1995 LawSuit(Guj) 73,
5. AIR 2003 Guj 95; Ashok Textiles V/s Gujarat Electricity Board.
6. 2006 (3) KLT 465; Nirmala Metal Industries Vs K.S.E.B.

7. AIR 2010 (NOC) 978; Punjab State Electricity Board, Patiala V. M/s Kissan Rice Mills.
8. 2011 (2) CCC 162 (Raj.); Rajasthan High Court, Rajasthan State Electricity Board & Ors. Versus Ram Bhakta Hanuman Oil Industries.
9. AIR 2009 (NOC) 1836 (PAT.) ; M/s. S.K. Food Product v. Bihar State Electricity Board having its office situated at Vidhyut Bhawan & Ors.
10. 1996 (1) GLR- page 15 (Para 3 &6); Shree Vinayak Synthetics Pvt. Ltd. V. Gujarat Electricity Board.
11. AIR 1993 Punjab and Haryana 197; Punjab State Electricity Board, Ludhiana and another, Vs. Ashwani Kumar.
12. 2003 (1) G.L.H 293 (Para 27,28 & 29); Modern Terry Towels Ltd. Vs. Gujarat Electricity Board and Ors.
13. 2010 Law Suit (Del) 136, (Para 2 to 4); R.P Arora Vs. Union of India.
14. 2010 Law Suit (Del) 4632 (para 7 and 17); Simplex Concrete Piles (India) Ltd. Vs. Union of India.
15. 2006 Law Suit (BOM) 901; Veena S Bajaj Vs. Maharashtra State Distribution Co. Ltd.
16. 2005 Law Suit (CAL) 508; Kawsar Ali Alias Kawsar SK v/s State of West Bengal.
17. AIR 2009(NOC) 161 (All.) = 2008 (5) ALJ 383 (DB); Ashok Kumar and Ors. V. State of U.P. and Ors.
18. WPA. NO. 1153 of 2023, Sri Angshuman Sarkar Vs. The West Bengal State Electricity Distribution Company Limited and Others. (Important para 62 and 63).(Cal) Judgment dated 03/03/2023.

19. 2006 (2) GLR 1580 (Guj.), Note A, B, C, D, E, F and Para 9,16,17; Torrent Power A.E.C Ltd. V. Gayatri Intermediates Pvt. Ltd.
20. 2022 Law Suit (Cal) 57; Ashok Kumar Maity Vs. West Bengal State Electricity Board. WPA No. 21298 of 2021. (para 14)
21. AIR 2009 All. 137; M/s. Citi Hotel Vs. Commissioner Lucknow Divn., Lucknow and Ors.
22. AIR 2014 Madhya Pradesh 173; Smt. Baijanti Bai Vs. M.P. Kshetriya Vidyut Vitran Co. Ltd., Bhopal and Ors.
23. 2012 (3) CCC 153 (Raj.) (Para 20, 22 to 29) ; Manoj Sharma Vs. Dodhpur Vidyut Vitran Nigam and Ors.

10. Argument on behalf of the Respondent in this appeal in nutshell are as under:

That the Judgment and decree is just and proper. The court has evaluated all the materials available before it and has decided the suit considering every aspect of the matter and there is no error in the judgment of the trial court. Ld. Advocate for the respondent has submitted that the plaintiff had not produced any evidence to prove their contention. Thus, the appeal is without any basis and hence the appeal of appellant be dismissed and there is no requirement of any interference in the order of the lower court.

11. I have gone through the pleadings of the parties in the suit proceeding and have also gone through the evidences produced on record of case and the judgment and decree passed.

12. Under above facts and circumstances, following points arise for my determination:

1. Whether the appellants proves that the Trial Court has not properly appreciated the facts on record and its judgment and decree is based upon the assumptions of facts or the facts against the record or by misinterpretation of legal provisions and is erroneous/perverse and needs interference of this court ?
2. What order?

13. My findings to above points are as under:

- (1) In Affirmative.
- (2) As per final order.

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

14. Before entering into the merits of the matter, it is proper to discuss the scope and ambit of Appeal U/s. 96 of Cr.P.C. under which this petition has been filed. In this regard the Hon'ble Supreme Court has laid down principles in following citations:

1. **2015 0 AIR(SC) 1139; Shasidhar & Others VERSUS Smt. Ashwini Uma Mathad & Anr.**
(a) Code of Civil Procedure, 1908 – Section 96 r/w Order XLI rules 31 – First appeal – First appellate court being the final court of fact, is duty bound to consider all pleadings, arguments and evidence independently – Instantly, High Court not dealing with any submissions urged by appellants and/or respondents, nor taking note of grounds taken by the appellants or cross objections filed by plaintiffs under Order XLI Rule 22 – Not making any attempt to appreciate evidence adduced by parties – No finding as to whether judgment of trial Court was sustainable or not and if so, how, and if not, why? – Impugned judgment not sustainable. (Para 23, 25)
2. **2017 1 JLJR(SC) 167; 2016 12 Scale 902; 2017 2 SCC 415; LALITESHWAR PRASAD SINGH & ORS. Versus S.P. SRIVASTAVA (D) THR. LRS.**
(b) Code of Civil Procedure, 1908 – Section 96 – First appeal – Appellate court is the final court of facts – Its judgment must

reflect application of mind by recording its findings supported by reasons – The first appellate court, while reversing the findings of the trial court, must record its findings in clear terms explaining how the reasonings of the trial court is erroneous. (Para 12, 13)

Thus, the scope of interfering with the order of the Trial Court in appeal is well established and this court can interfere only if the Trial Court has ignored any important evidence or has wrongly appreciated the evidence on record or there is patent defect in the order or there is an error of jurisdiction or law or the Trial Court has arrived at findings on assumptions of facts which are not on record.

From the principles laid down in above judgment, it is also clear that this Appellate Court must apply its mind to the facts/evidences produced on the record of the Trial Court.

15. After going through pleadings of the parties before the Trial Court and the evidences produced in this matter during the trial, the uncontroverted facts which have come on record are that the Defendant company is a company registered as per law and it supplies electricity to its consumers. It is also undisputed fact that the plaintiffs had made application to provide them electric connection and upon their application, they have been provided electric connection by the defendant with consumer number 80501/55041/0 and it is L.L. Industrial type 125 horsepower electricity connection.

However, there is dispute regarding the fact that whether the plaintiffs have manipulated the meter provided by the defendant and whether plaintiff have committed electric theft and have unauthorizedly consumed electricity.

16. Thus, it becomes very important fact that in which manner the Plaintiffs have committed theft and what are evidences to prove those facts.

The case of the defendant is that when there is anomaly condition with XDT then it is to be treated as hanged condition of the meter due to subjecting meter to some external means which means that upon displaying of code XDT, the same is to be treated to be a case of electric theft. It is alleged by the defendant that same anomaly has been found in the present case. In this matter the officer of the defendant has stated similar facts in his examination-in-chief. The defendant's officer Pravinbhai Ratilal Dulera who has been examined vide Exh. 125 has stated as under:

મંગરોળ મુકામે તા.૧૨/૦૧/૨૦૨૨ના રોજથી ફરજ બજાવુ છું. આ દાવાના કામે જે દસ્તાવેજ રજૂ કરવામાં આવેલ છે તે પૈકી એક પણ દસ્તાવેજમાં મારી કોઈ જગ્યાએ સહી કરવામાં આવેલ નથી. એ વાત ખરી છે કે, આ દાવો જે તે સમયના નાયબ ઈજનેરશ્રીએ દાખલ કરેલ છે. નાયબ ઈજનેરશ્રીને ૫૦ હજાર સુધીનો દાવો કરવાનો સતા રહેલ છે અને તેનાથી વધારે રકમ માટે વિભાગીય કચેરીની મંજૂરી લેવાની હોય છે. વિભાગીય કચેરીના હેડ કાર્યપાલક ઈજનેરશ્રી હોય છે. કાર્યપાલક ઈજનેરશ્રીને કેટલી રકમ સુધીનો દાવો કરવા કે બચાવ કરવા સતા રહેલ છે તેની મને માહિતી નથી. એ વાતની મને માહિતી નથી કે, અમારી કંપની દ્વારા તા.૩૧/૦૩/૨૦૦૫ના રોજના ઓફીસ ઓર્ડરથી અમારી કંપનીના કયા અધિકારીને કેટલી રકમ સુધીના દાવા દાખલ કરવાની સતા છે તે અંગેનો ઓફીસ ઓર્ડર બહાર પાડવામાં આવેલ છે. એ વાત ખરી છે કે, ઉપરી અધિકાર દ્વારા જે ઓફીસ ઓર્ડર પાડવામાં આવે તેનું અમારે પાલન કરવાનું હોય છે. એ વાત ખરી છે કે, જે તે અધિકારી પાસે જેટલી રકમનો દાવો કરવાની સતા આપવાના અધિકાર હોય તેટલી જ રકમનો દાવો કરવા કે બચાવ કરવા માટે સતા અધિકાર આપી શકે. આ

કામે દાવો કરવા અને બચાવ કરવા નાયબ ઈજનેરને યોગ્ય સતા ધરાવતા અધિકારીએ સતા આપેલ છે કે કેમ? તેની તમોને માહિતી છે કે કેમ? તેવા સવાલના જવાબમાં જણાવુ છુ કે, સતા આપેલ છે. એ વાત ખરી છે કે, ચીફ એન્જીયર અથવા એડીશ્નલ લીગલ એડવાઈઝર ઓફ કોર્પોરેટ ઓફીસએ સતા આપેલ હોય તેવો કોઈ પત્ર આ કામે રજુ કરવામાં આવેલ નથી. એ વાત ખરી છે કે, ચેર્કીંગ સમયે કે મીટર ટેસ્ટીંગ સમયે હું હાજર ન હતો અને તેથી સ્થળ ઉપર અને લેબોરેટરીમાં શું કાર્યવાહી થયેલ તેની મને જાત માહિતી નથી. **એ વાત ખરી છે કે, રતનાકર આઈસ એન્ડ કોલ્ડ સ્ટોરેજ તે અમારા કાયદેસરના ગ્રાહક છે.** એ વાત ખરી છે કે, વાદીની સામે ફોજદારી કેસ દાખલ કરવામાં આવેલ છે અને તે સ્પે. ઈલે. કેસ નં ૩૭/૧૭ થી પેન્ડીંગ છે. એ વાત ખરી છે કે. કોઈ જોડાણ ડીસ્કનેશન થયેલ હોય તેને પુનસ્થાપિત કરવામાં આવે ત્યારે કંપની દ્વારા ગ્રાહક પાસેથી રૂા. ૧૦૦/-ના સ્ટેમ્પ ઉપર બાંહેધરી ખત લખાવવામાં આવે છે અને તેનો નમુનો અમારી કંપની દ્વારા નકકી કરવામાં આવેલ છે. એ વાત ખરી છે કે, હાલના કેસમાં ગ્રાહકે બાંહેધરી ખત લખી આપેલ ન હોત તો તેને જોડાણ પુર્નસ્થાપિત કરી આપત નહી. એ વાત ખરી નથી કે, અમારી કંપનીને વીજળી પુરી પાડવા માટેની મોનોપોલી છે. **અમારી કંપની સિવાય સૌરાષ્ટ્રમાં બીજુ કોઈ કંપની દ્વારા વીજ પુરવઠો પુરો પાડવામાં આવતો નથી.** મે બન્ને તકરારી બીલ જોયેલ છે. એ વાત ખરી છે કે, આ બન્ને બીલ બનાવતા પહેલા આ કામે કોઈ પ્રોવીઝનલ બીલ બનાવી ગ્રાહકને સાંભળવાની તક આપેલ હોય તેવું બનેલ નથી. એ વાત ખરી છે કે, અમો જે તારીખે બીલ બનાવીએ ત્યારથી ગ્રાહક પાસેથી લેણુ ચાલુ થઈ જાય છે અને તે વસુલ કરવા માટે બીલમાં નોટીસ પણ આપવામાં આવે છે. આ કેસમાં પ્રથમ બીલ તા.૨૩/૦૫/૨૦૧૦ના રોજ આપેલ છે અને ત્યારે પ્રથમ વખત અમોએ બીલની માંગણી કરેલ હતી. ત્યારબાદ બીજુ બીલ તા.૨/૪/૨૦૧૧ ના રોજ આપવામાં આવેલ છે. એ વાત ખરી છે કે, બીલની તારીખથી અમારૂ લેણુ વસુલ કરવાની કામગીરી શરૂ થઈ જાય છે. **ચેર્કીંગ અધિકારી દ્વારા**

અમારી કચેરીમાં એવું કોઈ સાધન આપવામાં આવેલ નથી કે જેનાથી પાવર હેંગ થઈ શકે. એલ. એન્ડ ટી. કંપનીના અધિકારીને ચેકીંગ વખતે હાજર રહેવા કોઈ પત્ર આપેલ હોય અને તે આ કામે રજુ કરેલ હોય તેવી મને માહિતી નથી. ગ્રાહકને રીવાઈજ બીલ આપેલ તે પહેલા ગ્રાહકને બીલ અંગે ખુલાસો કરવા કે સાંભળવાની તક આપેલ હોય કે નોટીસ આપેલ હોય તેવું બનેલ નથી. એ વાત ખરી છે કે, ગ્રાહકએ ડીપોઝીટ પેટે બીલની રકમ અમારી કંપનીમાં જમા કરાવી દીધેલ છે.

તા.૦૯/૦૨/૨૦૧૦ના રોજનો પરીપત્ર વાંચેલ છે. એ વાત ખરી છે કે, આ પરિપત્રમાં મે સરતપાસમાં જણાવેલ આંકડા દર્શાવેલ નથી. એ વાત ખરી છે કે, ચેકીંગ સમયે હું ગ્રાહકને ઓળખતો ન હતો. સાહેદ જણાવે છે કે, હું ચેકીંગમાં ન હતો. એ વાત ખરી નથી કે, હાલના દાવામાં બચાવ કરવા નાયબ ઈજનેરશ્રીને સતા ન હોય તેમ છતાં અને તેઓને કોઈ યોગ્ય રીતે અધિકૃત કરેલ ન હોય તેમ છતાં તેઓએ વગર અધિકારે દાવામાં બચાવ કરેલ છે. એ વાત ખરી છે કે, દાવાના જવાબમાં મે સહી કરેલ નથી. ચેકીંગ વાળા વિસ્તારમાં કોઈ પાવર લોશ હતો કે કેમ? તેની મને માહિતી નથી. સામાન્ય રીતે લોશ આવતો હોય છે.

Similarly, the witness of the defendant i.e. Pritiben Sanjaybhai Vaidya who has been examined vide Exh. 189, has stated in his cross-examination as under:

હાલ હું વિભાગીય કચેરી, કેશોદ ખાતે ફરજ બજાવુ છું. એ વાત ખરી છે કે, હાલનું રીવાઈઝ બીલ બનાવેલ તે પહેલા પણ મે એક બીલ બનાવેલુ હતું. પહેલા બીલ બનાવેલ હતુ તેની રકમ હું મોઢે કહી શકુ નહી કે પ્રથમ બીલ કોણે બનાવેલુ હતુ તે હું કહી શકુ નહી. રીવાઈઝ બીલ અંગે ગ્રાહકને કોઈ વાંધો તકરાર છે કે કેમ તે રજુ કરવા નોટીસ આપેલ કે કેમ તે અંગેની મને માહિતી નથી. એ વાત ખરી છે કે, જે તારીખે બીલ ઈસ્યુ કરવામાં આવેલ તે તારીખથી અમારી ગ્રાહક પાસેની માંગણી શરુ

થઈ જાય છે. પ્રથમ બીલમાં કઈ રીતની કેલ્ક્યુલેશનની ભુલ હતી તે હું જોઉં તો કહી શકું. આ રીવાઝઈડ બીલ શાના ઉપરથી બનાવવામાં આવેલ છે તે હું કહી શકું નહીં.

Similarly, the witness of the defendant i.e. Pithabhai Ramshibhai Karangiya who has been examined vide Exh. 190, has stated in his cross-examination as under:

ચેકીંગ વખતે હું નાયબ ઈજનેર તરીકે માંગરોળ ટાઉનમાં મારી ફરજ બજાવતો હતો. લેબોરેટરીમાં હું મીટર લઈને ગયેલો હતો. એ વાત ખરી છે કે, લેબોરેટરીમાં કઈ તારીખે ચેકીંગમા જવાનું છે તેની જાણ અગાઉથી ગ્રાહકને જાણ કરવામાં આવે છે. એ વાત ખરી છે કે, હાલના કિસ્સામાં લેખીત જાણ ગ્રાહકને કરેલ છે કે કેમ તેનો લેખિત પુરાવો આ કામે રજૂ કરેલ કે કેમ તેમ તે મને યાદ નથી. એ એ વાત ખરી છે કે, લેબોરેટરીમાં બાહ્ય ડીવાઈઝ કે પાવરચોરી થઈ શકે તેવું ઈન્સ્ટ્રુમેન્ટ લગાડીને મીટર ટેસ્ટ કરવામાં આવેલ નથી. એ વાત ખરી છે કે, અમો લેબોરેટરીમાં ચેકીંગ માટે ગયેલા ત્યારે આપુ કોઈ બાહ્ય ડીવાઈઝ કે સાધન સાથે લઈ ગયેલા લઈ ગયેલા ન હતા કે લેબોરેટરીમાં પણ આપુ કોઈ ડીવાઈઝ કે સાધન મળી આવેલ ન હતું. એ વાત ખરી છે કે, મીટર ટેસ્ટીંગ લેબોરેટરી અમારી કું. ની માલીકીની છે અને તેમા અમારી કું. ના અધિકારીઓ ફરજ બજાવે છે અને તે જ મીટર ટેસ્ટ કરે છે અને અભિપ્રાય પણ અમારી કું. ના અધિકારી આપે છે. એ વાત ખરી છે કે, આ મીટર ઈલેક્ટ્રીકલ ઈન્સ્પેક્ટરને ટેસ્ટીંગ માટે રીફર કરવામાં આવેલ નથી. એ વાત ખરી નથી કે, આ મીટર અમારે ત્યાં લેબોરેટરીમાં ટેસ્ટ થયા બાદ અન્ય કોઈ લેબોરેટરીમાં ટેસ્ટ કરવામાં આવેલ નથી. સાહેદ જણાવે છે કે, મીટર એલ.એન્ડ ટી. કું. ને મોકલેલ હતું અને તેનો રીપોર્ટ મેળવેલ છે. એ વાત ખરી છે કે, આ મીટર એલએન્ડટી કું. માં રીફર કરેલ હોય તેની જાણ ગ્રાહકને કરેલ નથી. એ વાત ખરી છે કે, એલએન્ડટી એ અમને કે

ગ્રાહકને પોતાની લેબોરેટરીમાં મીટર ટેસ્ટ કરતી વખતે હાજર રહેવા માટે લેખિત જાણ કરેલ ન હતી અને તેથી અમો ત્યાં હાજર રહેલા ન હતાં. એ વાત ખરી છે કે, આ એલએન્ડટી ક્વું. એ તૈયાર કરેલ રીપોર્ટ કેવા સંજોગોમાં તૈયાર કરેલ છે તે અંગે મને જાત માહિત ન હતી. આ મીટર એલ એન્ડ ટી ક્વું. નું હતું. એ વાત ખરી છે કે આ મીટરમાં જે કોડ આવેલ છે તે એલ એન્ડ ટી ક્વું. ના મીટરમાં કોડ આવે છે. એ વાત ખરી નથી કે, એલ એન્ડ ટી મીટરમાં ખામી આવવાના આકસ્મિક કારણો ઘણાબધા હોય છે. એ વાત ખરી છે કે, મીટર ટેસ્ટ કરવામાં મે જાતે કોઈ કામગીરી કરેલ ન હતી. લેબોરેટરીમાં વિડિયોગ્રાફી કરવામાં આવેલ કે કેમ તે મને યાદ નથી.

સવાલ :- તમોએ તમારી સરતપાસમાં જણાવેલ એરર કોડ તમારી કું. ના તા.૦૯/૦૨/૧૦ ના પરિપત્રમાં દર્શાવેલ નથી?

જવાબ :- આ પત્રની અંદર મારી સરતપાસમાં જણાવેલ એરર કોડ એકદમ બેહેબેહો સરખો બતાવેલ નથી પરંતુ એનમલીમાં તે પછીના અમુક સ્થાને એકડીટી૦૦૦ આવતો હોય તો બાહ્ય ઈલકેટીક સાધનનો ઉપયોગ (સર્કિટ) મીટરની એનમલી હેંગ કરવામાં આવેલ હોય તેવું પત્રમાં દર્શાવેલ છે.

સમગ્ર ગુજરાત રાજ્યમાં ગુજરાત સરકારે પાવર ડીસ્ટ્રીબ્યુટ કરવા માટે કુલ ૪ વિભાગો પાડેલ છે. પી.જી.વી.સી.એલ. સિવાય બીજી કુશું. માં પણ આ જ પ્રકારના નિયમો હોય કે કેમ તે મે બીજી કાં. માં નોકરી ન કરેલ હોવાથી કહી શકું નહીં. એ વાત ખરી નથી કે, મળેલ ન હતો. એ વાત ખરી છે કે. "મીટર ખોલેલ ત્યારે લેબોરેટરીમાં મીટર મીટરની આંતરિક પરિસ્થિતિમાં કોઈ ફેરફાર જોવા કે, લેબોરેટરીમાં મીટર સાથેના સીલ તપાસમાં આવેલા તે બરોબર માલુમ પડેલા. એ વાત ખરી છે કે, મીટરનો પોલારીટી ટેસ્ટ કરવામાં આવેલ તે પણ બરોબર માલુમ પડેલો.

Thus, it is clear that in the deposition of the defendant's officers / witnesses, there is no allegation of any physical damage to the meter and the allegation of the defendant is based upon error/ anomaly displaying in the meter.

Thus, the only evidence of electric theft is the error code displaying in the meter, which is nothing but a technical and software aspect of the meter. Therefore, to prove that this type of error will reflect only in case of electric theft and not in case of any fault in the meter or in any other circumstance, a technical person having knowledge of software used in the meter was required to be examined. However, neither any engineer of L & T Company has been examined nor any independent Engineer having knowledge of such software has been examined by the defendant. Even the meter has not been inspected by the Electrical Inspector or any other independent person having knowledge of software of meters. It is not claimed by any of the defendant's witness that they have knowledge of software used in L & T meters. From Exh. 128, it also transpires that the anomaly is appearing only in meters manufactured by L & T company.

So far as the contention of appellants regarding testing of meter by Electrical Inspector is concerned, principles have been laid down with regard to requirement of inspection of meter by Electrical Inspector in following Judgments:

1. AIR 2003 Guj 95; Ashok Textiles V/s Gujarat Electricity Board.
2. 2006 (3) KLT 465; Nirmala Metal Industries Vs K.S.E.B.
3. AIR 2010 (NOC) 978; Punjab State Electricity Board,

Patiala V. M/s Kissan Rice Mills.

4. 2011 (2) CCC 162 (Raj.); Rajasthan High Court, Rajasthan State Electricity Board & Ors. Versus Ram Bhakta Hanuman Oil Industries.

From the principles laid down in the above judgments, it is clear that only the Electrical Inspector is authorized person for meter testing and without testing of meter by him, it cannot be held that the plaintiffs have committed any theft of electric energy. The above principles are laid down under Old Electricity Act considering sec. 26 of the old Act. However, any corresponding new section has not been inserted in the new Act. However, it is settled legal position of fair practice that in case of electric theft by using meter, the meter is should be tested by Electrical Inspector or any independent agency more particularly when objection is taken. However, it is admitted fact that the meter was not sent for testing to Electrical Inspector or any independent agency. Hence, there is clearly breach of the principle of fair practice.

Among the documents produced by the defendant, the document which are relevant to throw light on the manner of electric theft are the documents produced vide Exh. 128, 129, 131. The document produced vide Exh. 128 is the letter of the Chief Engineer (Tech), PGVCL, Rajkot wherein there is mentioning of :-

“ The common pattern observed in MRI data of meters tempered with such external devices is as under:

1.xxxxx

2.xxxxx

3. Meter records anomaly and “TXDT” appears in the anomaly

string (L & T make meters).”

However, in Checking sheet produced vide Exh. 131, there is mentioning of anomaly as “ AϕϕϕXDTϕϕϕϕϕ000”. Thus the anomaly found at the time of preparing checking sheet is not TXDT but was AϕϕϕXDTϕϕϕϕϕ000. Same fact comes on record in the Rojkam produced vide Exh. 129.

Thus, the code which has reflected in the meter is also not exactly same as mentioned by the letter of Chief Engineer (Tech), PGVCL, Rajkot which is produced. It is not mentioned in this document that there might be other characters along with the said code. Hence the same cannot be treated to be the same error code. Hence as per this document also the code is not exactly matching.

Thus, it is not proved from any of the document that the code which is allegedly anomaly i.e. XDT, appears only in case of electric theft and it will not reflect in any other circumstance. Moreover, the alleged code is also not exactly matching with code found in present case. Hence, it cannot be said with certainty that the defendants have committed electric theft and therefore when the theft itself is not proved, the defendant is not entitled to claim any amount towards supplementary bill which is prepared considering/assuming theft of electricity.

Further, the appellants have submitted that they have been acquitted in the criminal case filed under sec. 135 of the Electricity Act. The appellants have relied upon the principles laid down in following citations wherein Effect of Acquittal in criminal Case has been laid down:

1. WPA. NO. 1153 of 2023, Sri Angshuman Sarkar Vs. The West Bengal State Electricity Distribution Company Limited and Others. (Important para 62 and 63).(Cal) Judgment dated 03/03/2023.
2. 2022 Law Suit (Cal) 57; Ashok Kumar Maity Vs. West Bengal State Electricity Board. WPA No. 21298 of 2021. (para 14)
3. AIR 2009 All. 137; M/s. Citi Hotel Vs. Commissioner Lucknow Divn., Lucknow and Ors.
4. AIR 2014 Madhya Pradesh 173; Smt. Baijanti Bai Vs. M.P. Kshetriya Vidyut Vitran Co. Ltd., Bhopal and Ors.

In the judgment reported in 2022 Law Suit (Cal) 57; Ashok Kumar Maity Vs. West Bengal State Electricity Board, in paragraph no. 34 it is laid down as under :

34. As such, following the dictum of the Supreme Court in Executive Engineer (supra) and the Division Bench of this Court in Basudeb Paine (supra), it cannot but be held that even an acquittal of the petitioner on the charge of theft levelled under [Section 135](#) of the 2003 Act, on the test of evidence beyond reasonable proof, does not ipso facto exonerate the petitioner from the civil liability cast under [Section 126](#) of the 2003 Act, which is subject to the more liberal test of preponderance of probability.

Thus, in the above judgment Hon'ble High Court has relied upon on the principles laid down by the Hon'ble Supreme Court and has dismissed the writ petition of the consumer. Thus, merely because the appellants

have been acquitted in criminal case, the same is not sufficient to exonerate them from civil liability. Thus, the principles laid down by Hon'ble Supreme Court in the judgment referred to in the citations relied upon by the appellants, is against the appellants themselves. As such appellants cannot be exonerated from civil liability on the ground of acquittal in criminal case .

17. So far as issuance of provisional bill under sec. 126 of the Electricity Act is concerned, the said provision reads as under:

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

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

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

(4) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

Thus, in this matter the Electric Company has not issued provisional bill as required under sec. 126 of the Electricity Act and hence there is breach

of mandatory provision.

Further the plaintiff no. 1 Rameshbhai Mavjibhai Khorava has been examined vide Exh. 46 and he has stated

અમો માંગરોળ ગામે રત્નાકર આઈસ એન્ડ કોલ્ડ સ્ટોરેજ ફેક્ટરીના નામે ધંધો કરીએ છીએ. રત્નાકર આઈસ ફેક્ટરીનું અંદાજે સને-૨૦૧૦ માં ચેકીંગ કરવામાં આવેલ. ચેકીંગ વખતે હું બહારગામ ગયેલ. ચેકીંગ વખતે ફેક્ટરીના માણસો હાજર હતા. રત્નાકર આઈસ ફેક્ટરીમાં અમો ચાર ભાગીદાર છીએ. જેમાં એક હું પોતે બીજા મુળજીભાઈ માવજીભાઈ ખોરાવા વીજા કાનજીભાઈ ધનજીભાઈ ખોરાવા અને ચોથા માવજીભાઈ લખમભાઈ ખોરાવા એમ ચાર ભાગીદારો છીએ. ભીમજીભાઈ માવજીભાઈ મારા ભાઈ થાય છે. આ ફેક્ટરીનો વહીવટ તે સંભાળે છે. મને માર્ક-૨૮/૨ થી ૨૮/૧૦ બતાવવામાં આવે છે તે ચેકીંગ સીટને લગતા કાગળો છે તેમાં મારા ભાઈ ભીમજીભાઈ માવજીભાઈની સહી છે તે હું ઓળખુ છું જે અનુક્રમે રજુ ઇ.આંક-૬૧ થી ૬૯.

એ વાત ખરી છે કે રત્નાકર આઈસ ફેક્ટરીના નામનું રૂ.૧૧,૨૯,૭૩૯-૪૫ પૈસાનું પાવરચોરીનું બીલ આપવામાં આવેલ. મને માર્ક-૨૮/૧૪ નું ગણતરીપત્રક બતાવવામાં આવે છે તે રજુ ઇ.આંક-૭૦ તેમજ માર્ક-૨૮/૧૫ નું વીજચોરીનું બીલ બતાવવામાં આવે છે જે રજુ ઇ.આંક-૭૧ અને માર્ક-૨૮/૧૬ બતાવવામાં આવે વીજચોરી બીલ સાથેનો પત્ર છે જે અમોને પ્રતિવાદી કંપનીએ મોકલેલ છે જેની ઓ.સી. રજુ ઇ.આંક-૭૨. મને માર્ક-૨૮/૧૭ બતાવવામાં આવે છે જે મેં પ્રતિવાદીને વીજચોરી બીલના હક્ક કરી આપવનો પત્ર છે જેમાં મારી સહી છે જે રજુ ઇ.આંક-૭૩. મને માર્ક-૨૮/૧૮ બતાવવામાં આવે છે જે બાહેધરી પત્રક રત્નાકર આઈસ એન્ડ કોલ્ડ સ્ટોરેજના ભાગીદારોના કુલમુખત્યાર દરજજે મેં લખી આપેલ છે જે રજુ ઇ.આંક-૭૪, મને માર્ક-૨૮/૧૯ બતાવવામાં આવે છે જે રીકનેક્શન ઓર્ડર છે

જેમાં મારી સહી છે જે રજુ ઇ.આંક-૭૫. મારી સામે વીજચોરીની ફોજદારી ફરીયાદ કરવામાં આવેલ છે જે એફ.આઈ.આર. ની નકલ માર્ક-૨૮/૨૨ થી રજુ છે જે રજુ ઇ.આંક-૭૬. મને માર્ક-૨૮/૨૬ બતાવવામાં આવે છે જે લેબ રીપોર્ટ મુજબનુ રીવાઈઝ પુરવણી બીલ રૂ.૨૭,૧૬,૭૧૮-૨૫ પૈસાનુ આપવામાં આવેલ છે જે રજુ ઇ. આંક-૭૭. મને માર્ક-૨૮/૨૭બતાવવામાં આવે છે જે રીવાઈઝ પુરવણી બીલ સાથેનો લેટર છે જે રજુ ઇ. આંક-૭૮. મને માર્ક-૨૮/૨૮ નુ રોજકામ તથા ૨૮/૨૯ નો ડીશકનેક્શન ઓર્ડર બતાવવામાં આવે છે તેમાં મારા (ભાઈ ભીમજીભાઈની સહી છે જે હ ઓળખ છે જે રજુ ઇ.આંક-૭૯ અને ૮૦. મને માર્ક-૨૮/૩૦ મીટર રીડીંગ સીટ બતાવવામાં આવે છે તેમાં મારા ભાઈ ભીમજીભાઈની સહી છે જે રજુ ઇ. આંક-૮૧. મને માર્ક-૨૮/૩૧ મીટર સી ચેકીંગ રીપોર્ટ બતાવવામાં આવે છે તેમાં મારા "ભાઈ ભીમજીભાઈની સહી છે જે રજુ ઇ.આંક-૮૨. મને માર્ક ૨૮/૩૨ નુ સાદા પેપરસીલની ઓફીસ કોપી મને બતાવવામાં આવે છે તેમાં મારા ભાઈ ભીમજીભાઈની સહી છે જે રજુ ઇ.આંક-૮૩. મને માર્ક-૨૮/૩૩ નો ડીશકનેક્શનનો હુકમ બતાવવામાં આવે છે જે રજુ ઇ.આંક-૮૪. મને માર્ક-૨૮/૩૪ થી ૨૮/૩૮ બતાવવામાં આવે છે જેમાં માર્ક-૨૮/૩૪ થી ૨૮/૩૭ ના દસ્તાવેજમાં મારી સહી છે અને માર્ક-૨૮/૩૮ મીટર સ્ટોરમાંથી લીધાનો ગેઈટ પાસ છે જે રજુ ઇ.આંક-૮૫ થી ૮૯. મને માર્ક-૨૮/૩૯ બતાવવામાં આવે છે તેમા જણાવ્યા મુજબ બેન્ક ગેરેંટી તથા નોટરાઈજ બાહેંધરી આપતા અમારુ વીજ કનેક્શન રીકનેક્શન કરવાનો હુકમ હાઈકોર્ટે કરેલ તે રજુ ઇ.આંક-૯૦. મને માર્ક-૨૮/૪૦ અમોએ હાઈકોર્ટમાં કરેલ સ્પે.સીવીલ એપ્લીકેશન ૫૦૨૯/૧૧ ના ઓરલ ઓર્ડરની નકલ રજુ છે જે રજુ ઇ.આંક-૯૧. મને માર્ક-૨૮/૪૧ હાઈકોર્ટની નોટીસ બતાવવામાં આવે છે જે રજુ ઇ.આંક-૯૨. મને માર્ક-૨૮/૪૨ થી હાઈકોર્ટના હુકમના આધારે આપેલ બેન્ક ગેરેંટીનો પત્ર રજુ છે જે રજુ ઇ.આંક-૯૩. માર્ક-૨૮/૪૩ થી બાહેંધરીખત આપેલ જેમાં રત્નાકર આઈસ ફેક્ટરીના ચારેય

ભાગીદારોની સહી છે જે રજુ દા.આંક-૯૪. મને માર્ક-૨૮/૪૪ અને ૨૮/૪૫ બતાવવામાં આવે છે જે પ્રતિવાદીએ આપેલ નોટીસની ઓફીસ કોપી છે જે રજુ દા.આંક-૯૫ અને ૯૬.

એ વાત ખરી છે કે અમોએ જે કંઈ વીજચોરીના બીલ પેટે રકમ ભરપાઈ કરેલ છે તે કોર્ટના હુકમથી ભરપાઈ કરેલ છે. એ વાત ખરી છે કે આજની તારીખે અમારુ વીજકનેક્શન ચાલુ છે.

Thus the plaintiff no. 1 Rameshbhai Mavjibhai Khorava has been examined vide Exh. 46, has stated that they have not committed any electric theft. However, the initial burden to prove the facts constituting electric theft lies upon the person who asserts existence of the fact and not upon person who denies the facts. When, as discussed herein-above, the defendant has failed to prove that the plaintiffs have committed electric theft, then the evidence of the plaintiff need not be dealt with in details.

Further the appellants have raised dispute that if complaint is registered u/s. 135 of the Electricity Act, then civil suit is not maintainable. The appellants have relied upon on the principles laid down in following judgments:

1. WPA. NO. 1153 of 2023, Sri Angshuman Sarkar Vs. The West Bengal State Electricity Distribution Company Limited and Others. (Important para 62 and 63).(Cal) Judgment dated 03/03/2023.
2. 2006 (2) GLR 1580 (Guj.), Note A, B, C, D, E, F and Para 9,16,17; Torrent Power A.E.C Ltd. V. Gayatri Intermediates Pvt. Ltd.
3. 2012 (3) CCC 153 (Raj.) (Para 20, 22 to 29) ; Manoj

Sharma Vs. Dodhpur Vidyut Vitran Nigam and Ors.

However, with regard to jurisdiction of civil court in case of electricity theft, Hon'ble Supreme Court has laid down as under:

North Delhi Power Limited (Now Known As Tata Power Delhi Distribution Ltd.) Versus Devinder Singh; 2017 (0) AIJEL-SC 63368

6. *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.*

Thus from the above principles it is clear that suit claiming amount toward Electric theft is to be tried by civil court of the ordinary jurisdiction. As the principles laid down by Hon'ble Supreme Court will prevail over the judgments of any Hon'ble High Court, therefore, the submissions of the appellants with regard to jurisdiction of civil court is not tenable under law.

18. Discussions on other citations relied upon by the appellants:

In the case of Shree Vinayak Synthetics Pvt Limited V/s Gujarat Electricity Board; Citation: 1995 LawSuit(Guj) 73, there was error in the meter and the meter was running slow. This was not due to any act of the consumer and therefore, the consumer was not liable to pay bill for electric theft. However, in the present matter the meter was not inspected by Electrical Inspector and there is nothing on record to show that wheter the meter was slow and if yes, to what extent. There is also nothing to show any act on the part of consumer causing the meter to run slow and therefore, to that extent this judgment is applicable and therefore the appellants are not liable to pay against bill prepared for electric theft.

The appellant has relied upon principles laid down in case of AIR 2000 H. P. 11; H.P. Horticultural Produce Marketing and Processing Corporation Ltd. V. United India Insurance Company Ltd. And another, which relates to interpretation of provisions of The Companies Act and there is no interpretation of provisions related to Electricity Department or Electricity Act and hence, the principles laid down in this judgment is not applicable to the present matter.

The appellant has relied upon principles laid down in case of AIR 2013 Allahabad 47, M/s. Venus Stone Crushing Co. & Anr. v. U. P. Power Corporation Ltd. & Ors., wherein it is laid down that bill cannot be prepared on the basis of report of meter manufacturing company. In this matter also the defendant had prepared bill on the basis of report of manufacturing company and not upon the basis of any report of Electrical Inspector. Hence, the principle laid down in this judgment is applicable to the suit of the plaintiff.

The appellant has relied upon principles laid down in case of AIR 2009 (NOC) 1836 (PAT.) ; M/s. S.K. Food Product v. Bihar State Electricity Board having its office situated at Vidhyut Bhawan & Ors., wherein it is laid down that without testing meter, assessment made can not be held to be legal . In this matter there is testing of meter but there is nothing in the said test to justify the anomaly alleged. Hence this judgment is totally in different context and therefore, it does not apply to present case.

The appellant has relied upon principles laid down in case of 1996 (1) GLR- page 15 (Para 3 &6); Shree Vinayak Synthetics Pvt. Ltd. V. Gujarat Electricity Board wherein it is held that testing report of authorized inspector cannot be brushed aside. In present matter there is no report of authorized inspector and therefore, the principles laid down in this judgment is not helpful to the plaintiffs.

The appellant has relied upon principles laid down in case of AIR 1993 Punjab and Haryana 197; Punjab State Electricity Board, Ludhiana and another, Vs. Ashwani Kumar, wherein the matter was related to wrong metering and no opportunity was given to the consumer to take objection. However, in the present matter it is not even proved that the meter was running slow or there was any fault in giving meter reading. Hence I am not discussing the principles laid down in this judgment as the same are not applicable to present case.

The appellant has relied upon on principles laid down in case of 2003 (1) G.L.H 293 (Para 27,28 & 29); Modern Terry Towels Ltd. Vs. Gujarat Electricity Board and Ors., wherein the seal of meter was broken and thus there was physical damage to the meter and in that context also it was observed that the appellant is not liable for theft bill. However, in present matter there is no physical damage to the meter. Therefore, the defendant was required to prove more than mere anomaly in the meter. Hence, this judgment is applicable to that extent in the present matter.

The appellant has relied upon principles laid down in case of 2010 Law Suit (Del) 136, (Para 2 to 4); R.P Arora Vs. Union of India which relates to service condition of employee and any principle related to theft of electric energy is not laid down in this judgment and therefore, principles laid down in this judgment is not applicable in the present matter.

The appellant has relied upon principles laid down in case of 2010 Law Suit (Del) 4632 (para 7 and 17); Simplex Concrete Piles (India) Ltd. Vs. Union of India, which relates to matter based upon contract and any principle related to theft of electric energy is not laid down in this judgment and therefore, principles laid down in this judgment is also not applicable in the present matter.

The appellant has relied upon principles laid down in case of 2006 Law Suit (BOM) 901; Veena S Bajaj Vs. Maharashtra State Distribution Co. Ltd. which relates to bill prepared on the based of meter reading and any principle related to theft of electric energy is not laid down in this judgment and therefore, principles laid down in this judgment is not applicable in the present matter.

The appellant has relied upon principles laid down in case of 2005 Law Suit (CAL) 508; Kawsar Ali Alias Kawsar SK v/s State of West Bengal and AIR 2009(NOC) 161 (All.) = 2008 (5) ALJ 383 (DB); Ashok Kumar and Ors. V. State of U.P. and Ors., wherein it is laid down that without issuing provisional bill u/s 126 of The Electricity Act, final bill cannot be prepared. In present matter also any provisional bill has not been prepared and therefore, principles laid down in this judgment applies to present matter.

19. Thus, in the fact of this matter the defendant has not examined any software expert to prove that the code displaying on the meter is error caused due to theft of electricity only and it does not display in any other situation and the meter has also not been tested either by Electrical Inspector or by any other agency having knowledge about the software installed in meter. Hence in this matter it is not proved that the plaintiffs have committed electricity theft and therefore defendant is not entitled to amount towards supplementary bill or interest thereupon and hence my findings to issue no. 1 is in Affirmative and my finding to issue no. 3 is in Negative. It is also observed by the trial court that the defendant has not paid Court Fees for its Counter Claim and the same is not disputed by the Respondent in this appeal and therefore, my finding to the issue no. 2 is accordingly in Affirmative.

20. Thus, considering above facts and circumstances, it is clear that the trial court has not properly appreciated the evidence on record to arrive at its findings to the issues and has committed grave error in holding that plaintiff has not proved the contention of the suit / plaint and hence the same requires interference of this court therefore, my finding to point no. 1 is In affirmative.
21. Under the facts and circumstances discussed herein above, I pass following order in interest of justice for point no. 2 :

-: ORDER :-

1. The present appeal is hereby allowed.
2. The Judgment and decree passed in Special (Ele.) Civil Suit No. 34/2019 dtd. 21.11.2024 by the Principal Senior Civil Judge, Keshod is hereby quashed and set aside by this order.
3. The plaintiffs' suit is decreed in favour of plaintiff and the counter claim of the defendant is dismissed.
4. It is held that the defendant is not entitled to recover the amount mentioned in Supplementary bill/revised Supplementary bill, dated 23/12/2010 & dated 02/04/2011 respectively, issued by defendant from the plaintiff.
5. The defendant is hereby directed to abstain from disconnecting the electric supply for non-payment of the amount of Supplementary bill/revised supplementary bill

above mentioned.

6. The parties of this appeal do bear their own costs.
7. Decree be drawn accordingly.
8. The record and proceeding of the Trial Court along with copy of this judgment be remitted back immediately.

Pronounced and Signed in open Court today, this 27th day of March, 2026.

Date : 27/03/2026.

Place : Keshod.

#PK

[SANJAY DHRUVAKUMAR PANDEY]

2nd Additional District Judge, Junagadh at
Keshod.

[UIC No. GJ00579]