

GJJN210014172024



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**IN THE COURT OF 2<sup>nd</sup> ADDITIONAL DISTRICT JUDGE,  
JUNAGADH AT KESHOD.**

**Regular Civil Appeal No. 49 of 2024**

Ex.\_\_\_\_\_

Paramveer Ice Factorys Owner

01. Parsotambhai Keshavbhai Khorava  
Age: 53  
Address: Bandar Road, Mangrol Ta-Mangrol

in the capacity of power of attorney of  
Viruben Parsotambhai Kherava (Owner of Paramveer Ice Factory)  
Age: 50  
Address: Bandar Road, Mangrol

**.....APPELLANT**

**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. 47/2019 on dtd. 20.11.2024 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 20.11.2024, passed by the Principal Senior Civil Judge, Keshod, (herein after referred to as Ld. Trial court) in Special Civil Suit No. 47/2019, 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. 47/2019.

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

Plaintiffs are the owner of a factory in the name of "Paramveer Ice Factory" which is situated 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 situated at Mangrol, while the head office is situated at Rajkot. The Plaintiffs' firm holds an industrial category electricity connection of 91 Horsepower with Consumer No. 80501/55096/8. The said electric connection was earlier belonging to the Madhav Ice Factory and latter on it was transferred to the plaintiff. The plaintiff further states that when the defendant conducted an inspection on 30/1/2010, no irregularities were found at the time of inspection. Thereafter, on 29/3/10, the officers of the defendant company conducted an inspection at 12:57 hours, during which also no irregularities were found. However, in the inspection carried out by the inspecting officer, a fault/error was displayed in the meter and thereafter, a supplementary bill of Rs. 4,07,622.60/- was issued to "Madhav Ice Factory." Upon the threat of disconnecting the power connection, Madhav Ice Factory deposited Rs. 4,07,625.00/- against the said bill and also paid other charges on 29/6/10. Thus, Rs. 4,64,040.00/- (including other charges) of the plaintiffs are deposited with the

defendant company. The plaintiffs further state that on 2/4/11, in connection with the inspection dated 29/3/10, a second supplementary bill of Rs. 9,14,692.61/- was issued after one year. As this bill is illegal, it should be recovered from the original owner of Madhav Ice Factory. Since the plaintiff was not the consumer on 29/3/10, and at the time when the meter was transferred to the plaintiff's name, all dues prior to the transfer were cleared by the old owner; hence, after the transfer to the plaintiff's name, the defendant is entitled to recover dues from the plaintiff after the agreement with her. As plaintiff has regularly paid the bills after the meter was transferred to plaintiff name, the present suit is filed seeking a declaration that the defendant has no right or authority to recover the supplementary bill of Rs. 9,14,692.61/-. Furthermore, the Plaintiff has prayed for permanent injunction to restrain the Defendant, its servants, agents, or officers from disconnecting the Plaintiff's electricity connection with Consumer No. 80501/55096/8 and has disputed the bill, and also prayed 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. 11, wherein they have pleaded that the plaintiff's suit is not true and is not maintainable. The defendant has admitted the fact that the Plaintiff is consumer of their company. However, defendant has denied the allegations made against it in the suit. Defendant has further stated that when the officers of the defendant company inspected Madhav Ice Factory in the presence of the plaintiff, the electricity meter showed a reading anomaly. During this test, the anomaly 'A00T000000000000' was detected. As the internal mechanism of the meter had been tampered with, it was observed that the plaintiff had made an arrangement such that despite the power consumption being ongoing, the consumption would not be recorded in

the meter and the meter would be bypassed. Upon finding that power theft had occurred, an inspection report was prepared in the presence of the plaintiff. According to the details of the checking sheet, the meter along with the cable wire was seized. As per the rules of the electricity company, after deducting the seasonal period and adding the preceeding three months, a power theft bill of Rs. 4,07,622.60/- was sent to Madhav Ice Factory, which was paid on 29/6/10 along with charges towards reconnection and minimum charges, and thus the electricity connection was restored. The plaintiff purchased Madhav Ice Factory and changed its name to Paramveer Ice Factory. The plaintiff had executed an undertaking (bond) in favor of the company stating that if any decision is rendered in the future regarding a criminal case against them or Madhav Ice Factory, or if any company dues arise or any legal issue occurs, plaintiff shall be liable and the company's decision shall be binding upon them. Based on this, the meter of Madhav Ice was transferred to the plaintiff. An undertaking exists in favor of the company that if any company dues arise in the future, the plaintiff is bound to pay it. It is further stated that regarding the supplementary bill given to Madhav Ice, the Superintending Accountant (Revenue) of the defendant's office pointed out a calculation error in the bill given to the plaintiff and instructed to provide a revised bill. Consequently, the revised supplementary bill amount came to Rs. 9,14,692.61/-, and after deducting the amount previously paid, the plaintiff was liable to pay the remaining supplementary bill amount of Rs. 5,07,070.01/- to the defendant company. Despite this, the plaintiff did not pay and has challenged the bill in the present suit. Since the plaintiff cannot be granted such relief and has filed a false suit, the defendant has prayed for a declaration that the Plaintiff is liable to pay the revised bill amount, interest, and reconnection charges, and has also prayed for a decree in defendant's

favor for the recovery of these sums.

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, આ કામે પ્રતીવાદીએ તા. ૨/૪/૧૧ના રોજ આપેલ રૂ. ૯,૧૪, ૬૯૨-૬૧/- પૈસાનું રીવાઈઝ પુરવણી બીલ વસુલ મેળવવા પ્રતીવાદીને કોઈ હકક અધીકાર નથી?
2. શું વાદી સાબીત કરે છે કે વાદીના નામે કનેક્શન ટ્રાન્સફર કર્યા પહેલાનું પ્રતીવાદીનું લેણું વસલ લેવા પ્રતીવાદી હકકદાર નથી?
3. શું વાદી સાબીત કરે છે કે પ્રતીવાદીએ આપેલ તા. ૨/૪/૧૧ના રોજનું રૂ. ૯,૧૪, ૬૯૨-૬૧/-પૈસાનું બીલ ગેરકાયદેસર છે?
4. શું વાદીના દાવાને અપુરતી કોર્ટ ફી સ્ટેમ્પનો બાધ નડે છે?
5. શું વાદી માંગ્યા મુજબની કે અન્ય કોઈ દાદ મેળવવા હકકદાર છે?
6. શું હુકમ અને હુકમનામું ?

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

1. નકારમાં.
2. નકારમાં
3. નકારમાં
4. નકારમાં
5. નકારમાં
6. 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 Parsotambhai Keshavbhai	25
2	True copy of Power of Attorney in the name of the Plaintiff	36
3	True copy of Supplementary Bill	37
4	True copy of Receipt	38
5	True copy of receipt for payment of Reconnection Charges	39
6	True copy of receipt for payment of Energy Charges	40

7	True copy of receipt for payment of Agreement Fees	41
8	True copy of receipt for payment of Deposit amount as per Agreement	42
9	True copy of Notice issued by Defendant to pay Revised Supplementary Bill	43
10	True copy of Bill received along with the Notice	44
11	True copy of Village Form No. 2 in the name of the Plaintiff	45
12	True copy of application for transfer of electricity connection	46
13	True copy of Undertaking (Bond) given by Madhav Ice Factory to Defendant	47
14	True copy of Reply to Notice given by the Plaintiff	48
15	True copy of Gate Pass	66
16	True copy of Sale Deed No. 122/2010 dated 30-01-2010 for Survey No. 1286/1 of Village Mangrol	67
17	True copy of receipt for payment of Document Copy Fees	68
18	Copy of the charge sheet in the case filed against the Plaintiff under Sections 135, 138, and 150 of The Indian Electricity Act (Criminal Case No. 237/12), along with the order of the Special Judge (Electricity) dated 09/09/2023 under Exhibit-1 and the certified copy of Exhibit-46	114

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

<b>Sr. No.</b>	<b>Particulars</b>	<b>Exhibit No.</b>
1	Affidavit of witness Pravin Ratilal Dulera	87
2	Affidavit of witness Utkarshkumar Chandrakant Sutariya	102
3	Affidavit of witness Pithabhai Ramsibhai Karangiya	108
1	Original Site Inspection Report (Place Rojkam)	60
2	Original Inspection Report	61
3	Original Annexure-4 (Details of seized items)	62
4	Original Calculation Sheet	90
5	Office copy of Power Theft Bill issued to Plaintiff	91
6	Office copy of letter accompanying Power Theft Bill	92
7	Office copy of Revised Supplementary Bill issued to Plaintiff	93
8	Office copy of letter accompanying the Revised Bill	94
9	Office copy of letter written for payment of Revised Bill	95
10	Office copy of Undertaking (Bond) given by Plaintiff to Defendant	96
11	Original calculation sheet of the First Power Theft Bill	97
12	Original calculation sheet of the Revised Bill	98

13	Original Postal Acknowledgement of First Bill	99
14	Original Postal Acknowledgement of Revised Bill	100
15	Original application for transfer of Madhav Ice Factory name	64
16	Original Undertaking (Bond) written by Plaintiff	63
17	Original Revised Office Order for appointment of Panel Advocate K T Dubey	101
18	True copy of Circular from Corporate Office, Rajkot	106
19	Original Laboratory Report of the Plaintiff's meter	107

- 6.** The trial court observed that the plaintiff side has dismissed the suit on 20.11.2024 whereby it has passed following operative order:

::– આખરી હુકમ –:::

- 1) વાદીનો દાવો આથી નામંજૂર કરવામાં આવે છે.
- 2) દાવાનો ખર્ચ વાદીએ પ્રતીવાદીને ચુકવવો અને તેને થયેલ ખર્ચ તેણે જાતે ભોગવવો.
- 3) 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 appellant has taken contention as per their grounds

raised in memo of appeal and have prayed that the court may accept plaintiff's contention, reverse the lower court's judgment, and grant any other relief deemed necessary. The appellant has 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 appellant 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 plaintiff had made application to transfer and provide electric connection and upon plaintiff's application, electric connection has been provided by the defendant with consumer number 80501/55096/8 and it is L.L. Industrial type 91 horsepower electricity connection. This admitted fact is also supported by the documentary evidences produced on record.

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

16. Thus, it becomes very important fact that in which manner the plaintiff 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 deposition of the officer of the defendant Pravin Ratilal Dulera recorded vide Exh.-87 and in his cross-examination, he has stated as under:

માંગરોળ 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 છું 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 રજૂ કરવામાં આવેલ નથી. એ વાત ખરી છે કે, ચેકીંગ 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, S વાદીની સામે ફોજદારી કેસ દાખલ કરવામાં આવેલ છે અને તે સ્પે. ઈલે. કેસ ન 40/૧૭ થી પેન્ડીંગ છે. એ વાત ખરી છે કે. કોઈ જોડાણ ડીસ્કનેશન થયેલ હોય તેને પુનસ્થાપિત કરવામાં આવે ત્યારે કંપની

ધવારા ગ્રાહક પાસેથી રૂ. ૧૦૦/-ના સ્ટેમ્પ ઉપર બાંહેધરી ખત લખાવવામાં આવે છે અને તેનો નમુનો અમારી કંપની ધવારા 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 બીજી કોઈ કંપની ધવારા 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 લેશુ 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. ચેકીંગ અધિકારી ધવારા 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 રજૂ 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.૦૮/૦૨/૨૦૧૦ના 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 છતા અને તેઓને કોઈ યોગ્ય રીતે અધિકૃત કરેલ ન હોય તેમ છતા 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. Utkarshkumar Chandrakant Sutariya who has been examined vide Exh. 102, has stated in his cross-examination as under:

હું ડેપ્યુટી એન્જનીયર તરીકે ચેકીંગ સ્કોડમાં તે સમયે નોકરી કરતો હતો. એ વાત ખરી છે કે, લેબોરેટરી અમારી કંપનીની માલિકીની છે અને તેમા અમારા કંપનીના અધિકારીઓ ફરજ બજાવે છે. મે તા.૯/૨/૨૦૧૦ ના રોજનો પરીપત વાંચેલ છે. એ વાત ખરી છે કે, મારી સ.ત.ના પાના નં.૨ માં એક સાથે જે ૧૬ આકડા બતાવેલ છે તે એકી સાથે માર્ક ૧૦૪/૧ વાળા પતમાં દર્શાવેલ નથી. સ્થળ ઉપરથી કોઈ બાહ્ય ડીવાઈસ કબજે કરીને મજે આપેલ હોય અને તે મે લેબોરેટરીમાં રજુ કરેલ હોય તેવું બનેલ નથી. એ વાત ખરી નથી કે, મીટરમાં કોડના તફાવત સિવાય અન્ય કોઈ ક્ષતિ માલુમ પડેલ ન હતી. એ વાત ખરી છે કે, આંક-૬૧ વાળા તપાસણી અહેવાલમાં ગ્રાહક/ તેના પ્રતિનિધિએ "સહમત નથી" તેવું લખેલ છે. એ વાત ખરી નથી કે, હાલનો દાવો અમારી કંપનીના અધિકારીએ દાખલ કરેલ હોય તેનું સમર્થન આપવા ખોટી જુબાની આપુ છું.

Similarly, the witness of the defendant i.e. Pithabhai Ramshibhai Karangiya who has been examined vide Exh. 108, has stated in his cross-examination as under:

ચેકીંગ સમયે હું સ્થળ ઉપર ગયેલો હતો. લેબોરેટરીમાં હું મીટર લઈને ગયેલો હતો. અમારે કઈ તારીખે લેબોરેટરીમાં ચેકીંગ માટે જવાનું છે તેની તારીખ વાદીને લેખિતમા આપવામાં આવે છે. વાદીને લેબોરેટરીમાં હાજર

રહેવા માટે લેખિતમા નોટીસ કરેલ હોય તેનો લેખિત પુરાવો આ કામે રજુ કરેલ હોય કે કેમ તે મારા ધ્યાનમાં નથી. એ વાત ખરી છે કે, અમો સ્થળ ઉપર ચેકીંગ માટે ગયેલા ત્યારે પાવરચોરી થઈ શકે તેવી બાહ્ય ડીવાઈઝ કે સાધન સ્થળ ઉપરથી મળી આવેલ ન હતું. એ વાત ખરી છે કે, અમો લેબોરેટરીમાં ચેકીંગ માટે ગયેલા ત્યારે આપુ કોઈ બાહ્ય ડીવાઈઝ સાથે લઈને ગયા ન હતાં કે લેબોરેટરીમાં પણ આપુ કોઈ ડીવાઈઝ મળી આવેલ ન હતું. 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, મીટર ટેસ્ટીંગ લેબોરેટરી અમારી કોં.ની માલીકીની છે અને તેમા અમારી કુશું.ના અધિકારીઓ ફરજ બજાવે છે અને તે જ મીટર ટેસ્ટ કરે છે અને અભિપ્રાય પણ અમારી કુશું. ના અધિકારી આપે છે. એ વાત ખરી છે કે, આ મીટર ઈલેક્ટ્રીકલ ઈન્સ્પેક્ટરને ટેસ્ટીંગ માટે રીફર કરવામાં આવેલ નથી. એ વાત ખરી છે કે, આ મીટર અમારે ત્યાં લેબોરેટરીમાં ટેસ્ટ થયા બાદ અન્ય કોઈ લેબોરેટરીમાં ટેસ્ટ કરવામાં આવેલ નથી. આ મીટર એલ એન્ડ ટી કાં. નું હતું. એ વાત ખરી છે કે આ મીટરમાં જે કોડ આવેલ છે તે એલ એન્ડ ટી કાં. 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, આ જોડાણ આપવામાં આવેલ હતું તે ફીડરમાંથી પાવર લોસ આવતો હતો. એ વાત ખરી છે કે, મીટર ટેસ્ટ કરવામાં મે કોઈ કામગીરી કરેલ ન હતી. લેબોરેટરીમાં વિડિયોગ્રાફી કરવામાં આવેલ હતી. તે વિડિયોગ્રાફીનું રેકર્ડ આ દાવાના કામે રજુ કરેલ છે કે કેમ

સવાલ :- તે મને ખબર નથી. તમોએ તમારી સરતપાસમાં જણાવેલ એરર કોડ તમારી કાં. ના તા.૦૯/૦૨/૧૦ ના પરિપતમાં દર્શાવેલ નથી ?

જવાબ :- આ પતની અંદર મારી સરતપાસમા જણાવેલ એરર કોડ એકદમ બેહેબેહો સરખો બતાવેલ નથી પરંતુ એનોમલીમાં એ પછીના અમુક

સ્થાને ટી, એક્સ, ડી, ટી આવતુ હોય તો બાહ્ય ઈલકેટીકનો ઉપયોગ મીટરની એનોમલી હેંગ કરવામાં થયેલ હોય તેવુ પતમાં દર્શાવેલ છે.

સમગ્ર ગુજરાત રાજ્યમાં ગુજરાત સરકારે પાવર ડીસ્ટ્રીબ્યુટ કરવા માટે કુલ ૪ વિભાગો પાડેલ છે. પી.જી.વી.સી.એલ. સિવાય બીજી કો. માં પણ આ જ પ્ર કારના નિયમો હોય કે કેમ તે મે બીજી કાં. માં નોકરી ન કરેલ હોવાથી કહી શકુ નહીં. એ વાત ખરી છે કે, અમે સ્થળ ઉપર ગયેલા ત્યારે મીટરની બાહ્ય પરિસ્થિતિમાં કોઈ ફેરફાર કરેલ હોય તેવુ જણાય આવેલ ન હતું. એ વાત ખરી નથી કે, મીટર ખોલેલ ત્યારે લેબોરેટરીમાં મીટરની આંતરિક પરિસ્થિતિમાં કોઈ ફેરફાર જોવા મળેલ ન હતો. એ વાત ખરી છે કે, લેબોરેટરીમા મીટર સાથેના સીલ તપાસમાં આવેલા તે બરોબર માલુમ પડેલા. એ વાત ખરી છે કે, મીટરનો પોલારીટી ટેસ્ટ કરવામાં આવેલ તે પણ બરોબર માલુમ પડેલો. એ વાત ખરી નથી કે, આ જે બીલ આપવામા આવેલ તે તા.૦૯-૨-૨૦૧૦ ના પરીપતના આધારે આપવામાં આવેલ. આ બીલ મે ઈસ્યુ કરેલુ. અમોએ આ બીલ તા. ૨૯-૦૩-૨૦૧૦ ના રોજ ચેકીંગ કરેલુ તેના આધારે આપેલુ. આ બીલ આપતા પહેલા ગ્રાહકને પ્રોવીઝનલ બીલ આપી સુનવણી માટે નોટીસ આપેલ હોય તેવુ બનેલ ન હતુ. એ વાત ખરી છે કે, સીધેસીધુ ફાઈનલ બીલ આપી દેવામાં આવેલુ. એ વાત ખરી નથી કે, ગ્રાહકના મીટરવાળા ફીડરમાં ખુબ મોટો વિજલોસ આવતો હોવાથી આ ગ્રાહક સામે ખોટી હકિકતવાળા દસ્તાવેજો ઉભા કરી મેં ઓફીસમાં રજુ કરેલા છે. એ વાત ખરી છે કે, આ ગ્રાહક સામે મે ફોજદારી ફરીયાદ દાખલ કરેલી છે અને તેમા મારી જુબાની થયેલ કે કેમ તે મને યાદ નથી. હાલ મને યાદ નથી કે, મે તા.૨૬-૨-૧૮ ના રોજ સ્પે.કોર્ટમાં જુબાની આપેલ કે કેમ. એ વાત ખરી છે કે, મીટરની માલીકી અમારી કુકું.ની હોય છે.

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. 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. 106, 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 plaintiff has 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 these 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. 106, 60, 61. The document produced vide Exh. 106 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. 61, there is mentioning of anomaly as “ A000XDT0000000”. Thus the anomaly found at the time of preparing checking sheet is not TXDT but was

AϕϕϕXDTϕϕϕϕϕ000. Same facts comes on record in the Rojkam produced vide Exh.-60.

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 plaintiff has 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, it is contended that the plaintiff has been acquitted in the criminal case filed under sec. 135 of the Electricity Act. The appellant has 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 Vidyt 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 plaintiff has been acquitted in criminal case, the same is not sufficient to exonerate plaintiff 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 appellant, is against the appellant. As such plaintiff 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 defendant 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. 2 Purshotam Keshavbhai Khorava has been examined vide Exh. 25 and he has stated

આ કામના વાદી મારા પત્ની થાય. હું મારા પત્નિના પાવર ઓફ એટની તરીકે જુલાની આપુ છું. એ વાત ખરી છે કે, હાલ જે પરમવિર આઈસ

ફેક્ટરી નામે બીઝનેશ ચાલે છે તે ફેક્ટરી અગાઉ માધવ આઈસ ફેક્ટરીના નામે ચાલતી હતી. પરમવિર ફેક્ટરી ટોલેક વર્ષથી ચાલે છે. એ વાત ખરી નથી કે, અગાઉ માધવ આઈસ ફેક્ટરી ચાલતી હતી તેમાં અમો તથા સુભાષભાઈ જેઠાભાઈ ચૌહાણ ભાગીદાર હતા. માધવ આઈસ ફેક્ટરીમાં અગાઉ સુભાષભાઈ જેઠાભાઈ ચૌહાણ અને અન્ય બે ભાગીદારો કામ કરતા હતા. એ વાત ખરી નથી કે, માધવ આઈસ ફેક્ટરીમાં હું વહીવટકર્તા તરીકે કામ કરતો હતો. એ વાત ખરી નથી કે, માધવ આઈસ ફેક્ટરીને પ્રતિવાદી કંપની ધ્વારા તા.૨૯/૩/૨૦૧૦ ના રોજ ચેકીંગ થયું ત્યારે હું હાજર હતો. એ વાત ખરી છે કે, માધવ આઈસ ફેક્ટરીને તા.૨૯/૩/૨૦૧૦ ના રોજ ચેકીંગ થયું તેના અનુસંધાને પાવર ચોરીનું બીલ આપવામાં આવેલ. એ વાત ખરી નથી કે, માધવ આઈસ રકમ કે, જે તા.૨૯/૩/૨૦૧૦ ના ચેકીંગના ફેક્ટરીને આપવામાં આવેલ બીલની અનુસંધાને બીલ આપવામાં આવેલ તે અમોએ પરમ વિર આઈસ ફેક્ટરીના નામે બીઝનેશ ચલાવવા ફેક્ટરી ખરીદ કરેલ ત્યારે અમોએ ભરેલ. એ વાત ખરી છે કે, માધવ આઈસ ફેક્ટરીના નામે જે વિજ કનેક્શન હતું તે પરમવિર આઈસ ફેક્ટરીના નામે ટ્રાન્સફર કરવા માટે અમોએ અરજી આપેલી. આંક-૪૭ નો દસ્તાવેજ અમોને બતાવવામાં આવે છે અને તેમાં સુભાષભાઈ ચૌહાણની તથા મારી સહી છે તેમજ અન્ય બે સાક્ષીઓની સહીઓ છે. એ વાત ખરી છે કે, આંક-૪૭ વાળા બાહેંધરીખત ઉપર પાના નં.૨ ના પેરા-૩ ઉપર એવું લખી આપેલ છે કે "અમોને હજી સુધી કંઈક વિજ ચોરીનું પુરવણી બીલ મળેલ નથી પરંતુ એફ.આઈ.આર.માં લખેલ રૂ.૪,૦૭, ૬૨૨-૮૦ એટલે કે, ૧૦૦, ૨૬૫ ડીપોઝીટ કરી આપવા તૈયાર છીએ અને વિનંતી કરીએ છીએ કે, ભવિષ્યમાં આ અંગે કોઈ પણ કોર્ટ કેસ થશે ત્યારે બન્ને પક્ષોના સર્વ હકો અબાધિત રાખી અમારૂં વિજ જોડાણ તાત્કાલીક ચાલુ કરી આપવા વિનંતી કરીએ છીએ.

Thus, the plaintiff no. 2 Purshotam Keshavbhai Khorava who has been examined vide Exh. 25, has stated that plaintiff has not committed any electric theft. However, the initial burden to prove the facts constituting electric theft lies upon the person asserting fact and not upon the person denying it and when, as discussed herein-above, the defendant has failed to prove that the plaintiff has 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 defendant has 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:

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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 appellant with regard to jurisdiction of civil court is not tenable under law.

18. It is contended by the appellants that the defendants had cited 11 Judgments but those judgments were not dealt with by the trial court. After going through the judgment of the trial court, it appears that the trial court has not appropriately dealt with the judgments relied upon by the defendants. I am of the view that each judgment of the defendant was required to have been dealt with by the trial court.

19. 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 plaintiff.

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 even 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.

20. 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 to 3 and 5 is in Affirmative and my finding to issue no. 4 is in Negative.
21. 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.

22. 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. 47/2019 on dtd. 20.11.2024 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.
4. It is held that the defendant is not entitled to recover the amount mentioned in Supplementary bill/revised Supplementary bill, dated 29/03/2010 & 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 27<sup>th</sup> day of March, 2026.

Date : 27/03/2026.

Place : Keshod.

#PK

**[SANJAY DHURUVAKUMAR PANDEY]**

2<sup>nd</sup> Additional District Judge, Junagadh at  
Keshod.

[UIC No. GJ00579 ]