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

Regular Civil Appeal No. 50 of 2024

Ex.10

Owner Of The Ganesh Ice Factory:

Naranbhai Narshibhai Khetalpar ,
Age: Adult,
R/o. Veraval road, Mangrol,
Tal. Mangrol, Dist. Junagadh.

.....APPELLANT

V/s.

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. 37/2019 dtd. 27.11.2024 by the Principal Senior Civil Judge, Keshod.

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

1. The appellant (original plaintiff), being aggrieved and dissatisfied with the judgment & decree dated 27.11.2024, passed by the Principal Senior Civil Judge, Keshod, (herein after referred to as Ld. Trial court) in Special Civil Suit No. 37/2019, 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. 37/2019.

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

The Plaintiff is the firm named 'Ganesh Ice Factory' 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 situated 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 64 Horsepower with Consumer No. 80501/55068/2. The plaintiff is using the electricity and are regularly paying the bill amount and there is no due to be paid by the plaintiff.

The Plaintiff further states that on 13/03/2012, the Plaintiff's electricity meter was removed and on 24/12/2012, 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. 24/12/2012 for Rs. 6,13,835.55/- was issued.

Based on these facts, the plaintiff has instituted the present suit on various grounds. It is contended that the bill issued by the defendant is based upon assumptions, the plaintiff has never committed electric theft and has not used any instrument to obstruct the reading of the electric meter and has not tampered with the meter. There is no history of any complaint of electric theft against the plaintiff and the plaintiff is 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. The electric meter was neither checked by Electrical Inspector. The plaintiff has 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 defendant has violated the self declared policy and principle of natural justice. Any

opportunity was not given to plaintiff 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 plaintiff 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 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 plaintiff and it may permanently close the business of the plaintiff. 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 plaintiff had asked the defendant not to install meter of L & T Company but the officers 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.

By submitting these facts, the Plaintiff has prayed to declare that the supplementary bill of Rs. 6,13,831.55, dated 24/12/2012, 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 plaintiff and the defendant is not entitled to recover the amount of the bill from the plaintiff. 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. 80501/55068/2 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 defendant and the defendant has filed its 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 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 '9496729.5' as the recording of the anomaly 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 13/03/12 and it was sent for laboratory test which took place on 24/12/12 in the presence of Naranbhai Narshibhai Khetalpar.

As per the report of L & T company the plaintiff without touching the meter and by using external means put the meter in hang condition and *in-spite* of consumption of electric energy, the same was not recorded in the electric meter and thereby the plaintiff has committed electric theft. Hence as per A.B.C.D. formula, supplementary bill for Rs. 6,13,835.55 paise was issued, which the Plaintiff paid with request to restore their connection. Thereafter, the defendant has restored the electric connection of the plaintiff. The Defendant contends that the Plaintiff is bound to pay these dues and that the present suit challenging the bill is false and should be dismissed.

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

4(A) Issues:-

1. Whether the plaintiff proves that the bill amount of Rs. 6,13,855.55 Ps. Issued by defendant company is not as per the law or it is illegal, false faulty erroneous ?

2. Whether the plaintiff proves that defendant company has unlawfully and unauthorisedly disconnected the plaintiff's suit connection ?
3. Whether the plaintiff proves that defendant company has no legal authority to recover the suit bill amount ?
4. Whether the defendant proves its counter suit as contended and averred from page No. 14 to 19 of its Exh.-11 written statement cum counter suit ?
5. Whether the plaintiff is entitled to relief as prayed by him ?
6. Whether the defendant is entitled for relief of counter suit ?
7. What Order and Decree ?

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

1. नकारमां.
2. नकारमां
3. नकारमां
4. नकारमां
5. नकारमां
6. नकारमां
7. आपरी हुकम प्माणे.

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 plaintiff Naranbhai Narshibhai Khetalpal.	27
2	Plaintiff's application to reconnect his electric connection (Xerox)	28
3	Supplementary Bill (Xerox)	29
4	Application for re-connection of electric meter (Xerox)	41
5	The amount deposited by the Plaintiff via Cheque No. 045568.	42
6	Charges paid via Cheque No. 045568.	43
7	Reply given by defendant regarding application of plaintiff dated 30/04/2013.	44
8	Cheque sent via Registered A.D.	45
9	Registered A.D. Acknowledgment slip.	46
	Judgment of Sp. Ele. Case No. 51/2017 (True copy)	83

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

Sr. No.	Particulars	Exhibit No.
1	Affidavit of witness Naranbhai Pithiya.	53
2	Affidavit of witness Prakashkumar Devjibhai Hirpara.	71
3	Original Site Inspection Report (Place Rojkam)	30

4	Original Lab Inspection Report (Old Removed Meter)	31
5	Meter reading sheet.	32
6	Meter seal checking report.	33
7	Meter Lab Inspection Report.	34
8	Billing report of L & T Company.	35
9	Calculation Sheet(three page).	36
10	Power theft bill amount.	37
11	Bill send to the plaintiff along with letter.	38
12	Copy of F.I.R.	39
13	Approval order of Executive Engineer for defending suit.	69

- 6.** The trial court has dismissed the suit on 27.11.2024 whereby it has passed following operative order:

::– આખરી 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 respondent 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 trial 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 his grounds raised in memo of appeal and has prayed to reverse the lower court's judgment, and grant him 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 provide them electric connection and upon his application, they have been provided electric connection by the defendant with consumer number 80501/55068/2 and it is L.L. Industrial type 64 horsepower electricity connection.

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 has committed theft and what are evidences to prove those facts.

The case of the defendant is that when there is anomaly condition with '9496729.5' 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 '9496729.5', 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 Maldebhai Naranbhai Pithiya who has been examined vide Exh. 53 has stated as under:

એ વાત ખરી છે કે, આંક-૧૧ વાળો જવાબ મે રજૂ કરેલ છે. એ વાતની મને ખબર નથી કે. આ જવાબ રજૂ કરતા મે મારા ઉપરી અધિકારીની મંજરી લીધેલ કે કેમ? આ દાવાના કામે આવી કોઈ મંજૂરી રજૂ કરેલ નથી. એ વાત ખરી છે કે, જે મીટર ચેક કરવામાં આવેલ હતુ તે એલ.એન્ડ ટી. કું.નું હતું. એ વાત ખરી છે કે, મે જેટલા મીટર ચેક કરેલ હતા તેમાં જે કોડ આવેલ હતો તે એલ. એન્ડ ટી. કાં.ના મીટર હતા. એ વાત ખરી છે કે, વાદીની સામે ફોજદારી કેસ નં. ૫૧/૨૦૧૭ થી દાખલ કરવામાં આવેલ હતો. એ વાત ખરી છે કે, તે કેસમાં પણ મે જુબાની આપેલ હતી. એ વાતની મને ખબર નથી કે, તે ફોજદારી કેસનું શું પરિણામ આવેલ છે. એ વાત ખરી છે કે, જે વખતે ચેકીંગ કરેલ તે વખતે આસપાસના વિસ્તારમાં વિજ લોસ આવતો હતો. મીટર ઉતારેલ તે વખતે સ્થળ ઉપર ગયેલ હતો. એ વાત ખરી છે કે, મીટર ચેકીંગ વખતે કોઈ બાહ્ય ખામી જોવામાં આવેલ ન હતી. એ વાત ખરી છે કે, મને આંક-૩૦, ૩૧, ૩૩ અને આંક-૩૪ વાળા દસ્તાવેજ બતાવવામાં આવે છે તે જોઈ જણાવું છું કે, તેમાં કોડ સિવાય આંતરીક કે બાહ્ય કોઈ ફોલ્ટ જોવામાં આવેલ ન હતો. આ મીટરને મીટર ટેસ્ટીંગ માટે મીટર ઈન્સ્પેક્ટર પાસે મોકલવામાં આવેલ નથી. એ વાત ખરી છે કે, આ મીટર લેબોરેટરીમાં મોકલવામાં આવેલ તેમાં અમારી કંપનીના જ કર્મચારી જ કાયમી ફરજ બજાવતા હોય છે. એ વાત ખરી છે કે, આ ટેસ્ટીંગ લેબોરેટરીની માલિકી પણ અમારી કંપનીની

જ હોય છે. આંક-૩૭ વાળું બિલ મે તૈયાર કરેલ છે. એ વાત ખરી છે કે, આ કામના વાદીને આ એક જ બિલ આપવામાં આવેલ છે. એ વાત ખરી છે કે, આ કામે કોઈ પ્રોવિઝનલ બીલ તૈયાર કરેલ નથી, સીધુ ફાઈનલ બીલ જ તૈયાર કરેલ છે. એ વાત ખરી છે કે, વાદી અમારી કંપનીના કાયદેસરના ગ્રાહક છે. એ વાત ખરી છે કે, માત્ર એલ.એન્ડ ટી. કુાંના સર્ક્યુલરના આધારે અને અનુમાનના આધારે આ બિલ આપવામાં આવેલ છે. એ વાત ખરી છે કે, સ્થળ ઉપરથી કોઈ બાહ્ય ઈલેક્ટ્રીક સાધન મળી આવેલ ન હતું. એ વાત ખરી છે કે, અત્યાર સુધી પણ આ કામના વાદી પાસેથી આવુ કોઈ સાધન મળી આવેલ નથી. એ વાત ખરી નથી કે, આ કામના રજું કરવામાં આવેલ તમામ દસ્તાવેજો ઓફિસે બેસી તૈયાર કરી પાછળથી ગ્રાહકની સહી કરાવવામાં આવેલ છે. એ વાત ખરી નથી કે, ગ્રાહકે વાંધા સાથે સહી કરેલ હોવા છતા મીટર ઈલેક્ટ્રીક ઈન્સપેક્ટરને રીફર કરેલ નથી.

Similarly, the witness of the defendant i.e. Prakashkumar Devjibhai Hirpara, who has been examined vide Exh. 71, has stated in his cross-examination as under:

એકજી. એન્જી. અમારી કંપનીના નિયમ મુજબ રીપીયા બે લાખ સુધીનો દાવો દાખલ કરી શકે અને પ્રતિવાદી તરીકે હોય તો તેનો બચાવ કરી શકે. આંક-૬૯ની અસલ પ્રત અમારા વકીલશ્રી પાસે છે. સહી કરનાર માંગરોળ ડીવીઝનમાં સને ૨૦૨૦ થી સન ૨૦૨૨ સુધી ફરજ બજાવતા હતા પરંતુ તેની ચોક્કસ તારીખ યાદ નથી.

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.

The true copy of letter dtd. 09/02/2010 issued by Chief Engineer, PGVCL Corporate Office, Rajkot is available on record of the trial court. However, this document is not given exhibit. This document is produced by the defendant and the appellant has not disputed this letter. Under the circumstances, the contents of this letter dated 09/02/2010 are taken into consideration while deciding this appeal. From this document, it transpires that the anomaly is appearing only in meters manufactured by L & T company.

So far as the contention of appellant 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 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. 30, 31, 34 and letter dated 09/02/2010 issued by the Chief Engineer, Rajkot. In the letter of the Chief Engineer (Tech), PGVCL, Rajkot, dated 09/02/2010 there is mentioning of :-

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

- 1.xxxxx*
- 2. Value like 949672.95 appears in any of the cumulative energy register (Forward or reverse KW, KVA, KVARh-lag or KVARh-lead) in L & T Meters.*
- 3. Meter records anomaly and “TXDT” appears in the anomaly string (L & T make meters).”*

However, in Lab report produced vide **Exh. 34**, there is mentioning that the anomaly parameters found at the time of Lab testing as CF KWh=9496729.5. While in the

Rojkam produced vide Exh. 30, and in Checking sheet produced vide Exh. 31 specific error code is not mentioned. While in the meter seal checking report produced vide Exh. 33 the code 9496729.5 is mentioned.

Thus, there is difference in this figure found in the meter of the plaintiff from the figure mentioned in the letter dated 09/02/2010 issued by the Rajkot Office i.e. there is difference in the placement of decimal between the numbers. More particularly, as per letter dated 09/02/2010 issued by the Rajkot Office, the anomaly can be said only if '949672.95' is displayed but in the plaintiff's meter at the time of the meter seal checking report (Exh. 33) and the Lab testing report (Exh. 34) the anomaly was found as '9496729.5'. Thus, there is clearly difference in both the figures as the decimal is placed at different places. Hence the findings in the lab testing report and in the meter seal checking report is not covered under the anomalies mentioned in the letter dated 09/02/2010 issued by the Rajkot Office and hence, the claim of the defendant is not supported by letter dated 09/02/2010 issued by the Rajkot Office. Any other document to prove that the figure displaying in the meter of the plaintiff is covered under theft, has not been produced by the defendant.

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, 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, the appellant has submitted that he has 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 appellant has 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 appellant, is against the appellant himself. As such appellant 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 sub-section (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.

Similarly, the Plaintiff i.e. Naranbhai Narshibhai Khetalpar, who has been examined vide Exh. 27, has stated in his cross-examination as under:

હું ગણેશ આઈસ ફેક્ટરીના નામથી માંગરોળમાં ધંધો કરુ છું. તા.૧૩/૦૩/૧૨ ના રોજ અમારા વીજ કનેક્શનુ ચેકીંગ કરવામાં આવેલ. મને માર્ક-૧૪/૨ થી ૧૪/૭ બતાવવામાં આવે છે સદરહુ દસ્તાવેજો મારી ફેક્ટરીમાં થયેલ ચેકીંગના દસ્તાવેજો છે જે મારી હાજરીમાં થયેલા જે અનુક્રમે રજુ દા.આંક-૩૦ થી ૩૫. મને માર્ક-૧૪/૮ થી ૧૪/૧૦ ની ખરી નકલ બતાવવામાં આવે છે સદરહુ દસ્તાવેજો પાવરચોરીના બીલની ગણતરીપત્રક, બીલ તેમજ તેની સાથેના ફોરવર્ડીંગ પત્રોની ખરી નકલો છે સદરહુ દસ્તાવેજો અસલ અમોને મોકલવામાં આવેલ જે અનુક્રમે રજુ દા.આંક-૩૬ થી ૩૮. એ વાત ખરી છે કે મારી સામે ફોજદારી ફરીયાદ દાખલ કરવામાં આવેલ છે જેની એફઆઈઆર માર્ક-૧૪/૧૨ થી રજુ છે જે રજુ દા. આંક-૩૯.

અમો વીજચોરી કરતા પકડાયાની વાત ખોટી છે. એ વાત ખરી નથી કે અમોને આપવામાં આવેલ બીલ કંપનીના નીચમ મુજબ આપવામાં આવેલ છે. એ વાત ખરી છે કે અમારુ વીજ કનેક્શન હાલ ચાલુ છે. એ વાત ખરી નથી કે આ વીજ કનેક્શન ચાલુ રાખવા અમોએ બીલ ભરી આપેલ. એ વાત ખરી નથી કે ખોટો દાવો કરી ખોટી જુબાની આપુ છું.

Thus the plaintiff Naranbhai Narshibhai Khetalpar has been examined vide Exh. 27, and has stated that he has 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 plaintiff has committed electric theft, then the evidence of the plaintiff need not be dealt with in details.

Further the appellant has raised dispute that if complaint is registered u/s. 135 of the Electricity Act, then civil suit is not maintainable. The appellant 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:

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

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

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 whether 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 appellant is 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 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 plaintiff has 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, 2 and 3 is in Affirmative and my finding to issue no. 4 & 6 is in Negative and as far as issue No. 5 is concerned my answers is 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. 37/2019 dtd. 27.11.2024 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 dated 24/12/2012, 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 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 17th day of April, 2026.

Date : 17/04/2026.
Place : Keshod.
#PK

[SANJAY DHRUVAKUMAR PANDEY]
2nd Additional District Judge, Junagadh
at Keshod.
[UIC No. GJ00579]