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**In the court of the 4th Additional District Judge, Bhavnagar
at Mahuva**

Spl.Civil suit (Electricity) No. 371 of 2016

Ex. _____

The Paschim Gujarat Vij Co. Ltd.,
 A company established for
 supply of electricity,
 Through Head office at Rajkot,
 Rural-1 Town Sub Division office, Mahuva
 Dist. Bhavnagar

....Plaintiff

Versus.

Maganbhai Bhayabhai Ladumor
 Age : Adult, Occupation : Agriculture
 Residing at Sardika,
 Ta.: Mahuva. Dist. Bhavnagar

...Defendant

Subject : Suit for recovery of Rs.47,221.00 paisa

Ld. Advocate Mr. K. V. Vaidya for the plaintiff
 Ld. Advocate Mr. G. G. Ahir for the defendant

= J U D G M E N T =

The brief facts of the present suit are as under:-

- (1) As per the plaint,
 - The plaintiff is the company specially established for the supply of electricity.
 - The defendant has not applied for electricity connection

and there is no relation between plaintiff and defendant as a licensee and consumer.

- On the surprise checking of officers of plaintiff company at defendant's field connection on dtd. 16/09/2015 it was found that the defendant had unauthorizedly connected his electric equipments of his field along with the electric wire and through such wire the defendant had use such electric supply and committed theft of electricity energy of plaintiff company as alleged in the plaint.

- The plaintiff company had also issued the disputed electricity bill of Rs. 40,028.10 paisa for such theft of energy but the defendant is failed to pay such bill amount.

- The defendant is bound to pay such amount of bill of Rs. 40,028.10 paisa and delay payment charges, notice fees etc. and therefore, plaintiff has filed present suit against the defendant for recovery of total amount of Rs.47,221.00 paisa from the defendant.

2. Brief facts of Written Statement of defendant

- The summons of present suit was duly served upon the defendant and defendant has filed his written statement at Exh.12.

- As per written statement filed by the defendant,

- The defendant at first denied all the allegations made by the plaintiff in his plaint against him as regard to so called checking, theft of energy and legality of such bill etc. and in addition to that denial the defendant also mostly contended that,

- If representative of plaintiff company had carried out surprise

electricity checking then plaintiff is obliged to produce documentary evidence obtained from Gram panchayat that the place belongs to the defendant.

- Defendant has in its reply contended that plaintiff company is required to prove the commission of theft of electricity by him. Further more he has contended that the officers of plaintiff company has misused their powers and they have involved him on the say of another people. Plaintiff company has not carried out surprise checking at his village. Plaintiff company ha no cause of action to file present suit against him. Therefore, this suit is deserves to be dismissed.

(3) Issues

On the basis of pleadings the following issues are framed at Exh.13.

- 1 Whether plaintiff proved that the defendant had committed theft of ele. energy and plaintiff entitled to recover rupees 47,221/- from the defendant ?
- 2 Whether the defendant proves that the bill dated 17-09-2015 issued for rupees 40,028.10 is not legal and valid ?
- 3 Whether the plaintiff is entitled to get interest ? If yes at what rate ?
- 4 What order and decree ?

(4) My findings thereon are as under :-

1. In the affirmative
2. In the affirmative
3. In the affirmative, as per final order
4. As per final order and decree

(5) Evidence came on record :-

The plaintiff has filed this suit to recover the amount of Rs. 47,221/- therefore, to prove the suit claim the plaintiff has

produced following evidence :-

Oral evidence :

- Exh. 14 Deposition of witness Mr. Hareshbhai Gandabhai
Dulera on affidavit.
- Exh. 29 Deposition of plaintiff Nileshbhai Khushalbai
Patel on affidavit.

Documentary evidence :

- Ex. 19 True copy of proforma-12
- Ex. 20 True copy of checking sheet prepared at the
place of theft.
- Ex. 21 True copy of rojkam prepared at the place of
theft.
- Ex. 22 True copy of annexure-4
- Ex. 23 True copy of supplementary bill with
forwarding letter.
- Ex. 24 True copy of letter by PGVCL to GUVNL
police station to lodge criminal complaint
against defendant
- Ex. 25 True copy of notice issued by advocate of
plaintiff company to the defendant
- Ex. 26 A payment receipt of Post Dept.
- Ex. 27 A postal acknowledgment.
- Ex. 31 Closing pursis.

(6) **Evidence of defendant :-**

The defendant has filed following evidence :-

Oral evidence :

- Exh. 34 Deposition of defendant Mr. Maganbhai
Bhayabhai Ladumor on affidavit.

Documentary evidence :

- Exh. 35. Closing pursis produced by defendant.

(7) During the course of arguments Ld. advocate for the defendant has argued that plaintiff has filed present suit against the defendant showing him as a non consumer of electricity. Plaintiff is required to prove the suit amount and to prove their pleadings. Plaintiff company has produced checking sheet vide Exh. 20. Plaintiff has not produced ownership documents of defendant and they also not contended in their plaint. Defendant is required to be served with demand notice. Notice is not served to the defendant because postal acknowledgment does not bear defendant's signature. Plaintiff is not aware of checking proceedings. He has merely filed present suit on the basis of documents which are available in the office. As per the plaintiff's deposition Maganbhai Bhayabhai was present at the time of checking. As per the plaint house is shown as a place of theft, whereas in the rojkam agriculturl field is shown. Checking proceedings is doubtful. Plaintiff company has examined Mr. Hareshbhai Gandabhai Dulera vide Exh. 14. As per his deposition in para-3 defendant was present. Whereas as per the plaint Mr. Bhavanbhai Bhayabhai was Present. During his cross examination he has admitted that he has not filed present suit before the Court. When any legal action is required to be initiated then permission is required to be obtained by an official of the plaintiff company. What is evidentiary value of deposition to prove debt of defendant. As per his deposition Mr. Maganbhai was present. His admitting difference in the name in plaint and deposition. He has also admitted that he has not produced any document of irrigation facility. Ownership of land document is required to be produced by the plaintiff company. He has also argued that defendant has examined himself vide Exh. 35. As per the contention of defendant plaintiff is unable to

prove that defendant has committed theft of electricity and documents which are produced by the plaintiff company is not duly proved and so plaintiff's suit is required to be dismissed.

(8) **Reasons for finding on above issues:-**

Reason for Issues No. 1 and 2

- So far as reasons for above findings on issue No.1 & 2 are concerned an officer of plaintiff company Hareshbai Gandabhai Delara has examined himself vide Exh. 14. In his affidavit he has contended that he is working as a Deputy Engineer in PGVCL company, Mahuva Rural-1. On 16/09/2015 officers of plaintiff Vij company has carried out surprise electricity checking at plaintiff's agricultural field. At that time defendant was extracting electricity from 10 KVA T.C. installed in his neighbour Nathabhai Bhayabhai' agricultural field. Defendant had used black color electric wire from that T.C. and he had been using electricity illegally to run his motor pump in a well. When checking was carried out Maganbhai Bhayabhai Ladumor has present but he has declined to sign checking sheet and panch rojkam. So plaintiff company had issued power theft of Rs. 40,028.10 paisa on 17/09/2015 to defendant. But defendant had not paid the amount so plaintiff had issued legal notice through their advocate. Even after the service of notice defendant had not paid electricity theft bill amount. So plaintiff was constrained to file present suit.

- Ld. advocate for the defendant had cross examined plaintiff's witness. In his cross examination he has stated that it is true that he has not carried out electricity checking at defendant's place. He has also said that he has not filed present suit. He has said that he has filed present affidavit in support of his suit after studying documents available in

the office. During his cross examination he has said that it is true that to file examination in chief affidavit he has obtained permission from Executive Engineer. Further more he has said that when the suit amount is less than Rs.50,000/- he has not to obtain any permission. He has also denied that it is not true that when any person is found indulging in theft of electricity three months electricity bill as per the ABCD formula is required to be issued. He has also admitted that in the checking sheet or plaint at which place electricity checking is carried out is not mentioned.

- To prove his suit plaintiff has examined Nileshbhai Khushalbhai Patel vide Exh. 29. In his affidavit he has stated that he had filed the suit against defendant on dtd. 16/9/2015 officers of plaintiff Vij company has carried out surprise electricity checking at plaintiff's agricultural field. At that time defendant was extracting electricity from 10 KVA T.C. installed in his neighbour Nathabhai Bhayabhai' agricultural field. Defendant had used black color electric wire from that T.C. and he had been using electricity illegally to run his motor pump in a well. When checking was carried out Maganbhai Bhayabhai Ladumor has present but he has declined to sign checking sheet and panch rojkam. So plaintiff company had issued power theft of Rs. 40,028.10 paisa on 17/09/2015 to defendant. But defendant had not paid the amount so plaintiff had issued legal notice through their advocate. Even after the service of notice defendant had not paid electricity theft bill amount.

- Plaintiff witness Mr. Nileshbhai was cross examined by defendant's advocate. During his cross examination he has stated that he has filed present suit on the basis of record available with the office. It is true

that he is not aware of electricity checking task. Thus both the deponents of plaintiff company were not present at the time of surprise checking. It is pertinent to note that to prove surprise electricity checking at defendant's agricultural field plaintiff has produced true copy of checking sheet vide Exh.20 and rojkam prepared at the place of theft vide Exh. 21. Ld. advocate for the defendant has strongly objected while giving exhibits to above documents. He has contended that both the documents are true copy. Original documents have not been produced before the Court nor plaintiff company has duly compared those original documents while filing above suit.

- Above documents are produced by plaintiff company from their office record. It is the case of plaintiff company that at the time of surprise checking defendant was present and in his presence electricity checking was carried out. But he has declined to sign those documents. Now looking to the Exh. 20 plaintiff company's electricity checking officer has made an endorsement that defendant has declined to sign checking sheet. When such documents are prepared by PGVCL company's officer in their regular course of office duty it cannot be believed that they have not prepared those documents. So contents of the documents are duly proved.

- In the present suit defendant has also examined himself on oath vide Exh. 34. In his affidavit he has stated that plaintiff company has filed false suit against him because as per the Ex.21 rojkam prepared at the spot by electricity checking staff one Bhavnabhai Bhayabhai Ladumor was present and when asked he has said that agricultural field belongs to Maganbhai Bhayabhai. So as per the contention of the defendant on mere say of Bhavanbhai Bhayabhai plaintiff company has file suit

against him. As per the examination in chief vide Exh.34 defendant has admitted that some electricity checking was carried out and at the time of preparing checking sheet person who was present declined to sign checking sheet. But as per the contention of plaintiff Mr. Bhavanbhai Bhayabhai Ladumor was present and due to his say plaintiff company has filed false suit against him. Thus when defendant admits that person who was present declined to sign checking sheet and as per the Exh.21 rojkam Mr. Bhavanbhai Bhayabhai Ladumor was present but due to his say they have filed false suit against him. When Mr. Bhavanbhai Bhayabhai Ladumor was present he has declined to sign checking sheet but he has replied to the members of checking squad about the ownership of land of present defendant. So, Mr. Bhavanbhai Bhayabhai's version cannot be dis believed and when checking staff has prepared exh. 21 rojkam at the place of theft and in that rojkam name of present defendant is emerged as a person having a ownerhsip of agricultural land where illegal electricity connection had been joined. Thus defendant's defence is not acceptable and plaintiff company is able to prove that defendant has committed theft of electricity energy.

- As discussed above defendant is liable to pay electricity theft amount bill to the plaintiff company with interest. Plaintiff has urged to grant 24% interest on above amount. But it is very harsh and excessive. At the same time plaintiff is a commercial organization and its main function is to supply electricity to the consumers. So 9% interest per annum if allowed would meet ends of justice. Defendant had committed fault in paying electricity amount to the plaintiff company so plaintiff company is also entitled to get cost of the suit from the

defendant. Therefore, issue No.1 and 2 are decided in the negative.

9 Reasons Issue No.3

- As discussed in this judgment plaintiff is able to prove that he is entitled to get suit amount from the defenant along with the cost and interest at the rate of 9% per annum. **Therefore, this Court passes following final order.**

ORDER

- The plaintiff's suit is hereby allowed with costs.
- Plaintiff company is entitled to recover Rs.47,221/- (Rupees Forty Seven Thousand Two Hundred Twenty One only) with 9% interest per annum from the date of filing of the suit till its realization from the defendant.
- Plaintiff is entitled to get above amount from the person and property of the defendant.
- Defendant do pay cost of the suit to the plaintiff company.
- Decree be drawn accordingly.
- Pronounced in the open Court to-day on this 15th day of February, 2019.

Mahuva
Date : 15-02-2019

(Jayeshkumar Thakorlal Shah)
4th Additional District Judge
Bhavnagar, at Mahuva
Code : GJ00506