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**IN THE COURT OF 2ND ADDITIONAL DISTRICT JUDGE,
RAJKOT AT DHORAJI**

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Special Electric Suit No. 38/2016

Exh. : 26

Plaintiffs :-

- 1] **Paschim Gujarat Vij Co. Ltd.,**
Through Chairman Shri,
Corporate Office, **Rajkot.**
- 2] **Paschim Gujarat Vij co. Ltd.,**
Through Deputy Engineer,
Rural Sub – Division,
Bhayavadar,
Dist. Rajkot.

VERSUS

Defendant :-

Mamadbhai Jumabhai,
Muslim, Adult, Agriculture,
R/o. Padavla, Tal. Upleta,
Dist. Rajkot.

Appearance :-

- Ld. Advocate **Shri S. J. Vyas** – for the Plaintiff.
- Defendant - Absent (Ex-parte).

Subject : Suit to Recover Rs. 26,124-74.

-:: JUDGEMENT ::-

- 1] The present suit has been filed by the plaintiffs to recover Rs. 26,124-74. from the defendant.
- 2] The short fact of the suit is that the plaintiff is the company running in the name of P.G.V.C.L as per law and the person who signed the plaint is serving as Deputy engineer in the said company and thereby he has authority to file the suit against the defendant. The defendant has not been given electric connection by the plaintiff company and thereby the defendant is not customer of the plaintiff company. When the authorize and responsible officer has visited the place of the defendant, it was found that the defendant was un authorizely using the electricity and thereby committed theft of electricity. Therefore the plaintiff has issued theft bill to the defendant for amount of Rs. 23535-80, but the defendant has not paid it. So the plaintiff has also issued legal notice to the defendant to pay the amount of theft bill, which was duly served to the defendant but has not paid it. Therefore cause of action has arise to file the suit against the defendant. The suit is within time limitation. This honourable court has jurisdiction to decide the suit under section 135 of the Electricity Act. Therefore prayed to allow the suit of the plaintiff and to pass a decree in favour of the plaintiff to recover the suit amount along with interest @ 18% P.A along with the cost of the suit.

- 3] The summons of the suit has been duly served to the Defendant, but did not appeared personally or through Ld Advocate. Therefore the suit was ordered to proceed ex-parte against the defendant.
- 4] The plaintiff has adduced following oral evidence.

Sr. No.	Name of the witnesses	Ex.
1	Mr. Sureshbhai Kalabhai Chauhan Dy Engineer	7

- 5] The plaintiff has produced following documentary evidence.

Sr. No.	Description of Documents	Ex.
1	History of Case	9
2	Rojkam of Place of defendant	10
3	Meter Checking Report of defendant	11
4	Annexure 4 of the Defendant	12
5	Proforma No. 12 of the Defendant	13
6	DPC Calculation Sheet of the Defendant	14
7	Annexure 11 of the Defendant	15
8	Ledger Report of Defendant	16
9	Electricity Theft Bill given to the Defendant	17
10	Letter to the Defendant regarding Power Theft	18
11	Notice given to the Defendant	19
12	Complaint against the Defendant by Plaintiff	20
13	Letter Written to the Defendant by Plaintiff to pay the Due amount	21
14	F.I.R. against the Defendant	22
15	Copy of Reg.-Ad Notice by Advocate for PGVCL	23

16	Reg-Ad Served acknowledgement Slip	24
17	Closing of evidence purshish	25

6] The issues have been framed vide Exh.- 6 as follow.

- ૧) શું વાદી સાબીત કરે છે કે આપેલ બીલ કાયદેસરનું અને વસુલને પાત્ર છે કે કેમ જો હા તો વાદીનું કેટલું લેણું પુરવાર થાય છે ?
- ૨) શું વાદી કોઈ ડીલેપેમેન્ટ, વ્યાજ વગેરે વસુલવા હકકદાર છે અને કયા દરથી?
- ૩) શું હુકમ અને શું હુકમનામું ?

7] My reply to above issues are as follow.

- 1) In partly affirmative and as per final order.
- 2) In partly affirmative and as per final order.
- 3) As per final order.

--:: REASONS ::--

8] The Ld Advocate of the plaintiff has submitted that the plaintiff has proved by adducing oral as well as documentary evidence that the defendant has not been given electric connection by the plaintiff company. When the authorize and responsible officer of the plaintiff company visited the place of the defendant, it was found that the defendant was unauthorizedly using the electricity and thereby committed theft of electricity. Therefore the plaintiff has issued theft bill to the defendant but has not paid it. So the plaintiff has also issued legal notice to the defendant to pay the amount of theft bill, which was duly served to the defendant but has not paid it. Therefore cause of action has arise to file the suit

against the defendant. The suit is within time limitation. This honourable court has jurisdiction to decide the suit under section 135 of the Electricity act. Therefore prayed to allow the suit of the plaintiff and to pass a decree in favour of the plaintiff to recover the suit amount along with interest @ 18% P.A along with the cost of the suit.

- 9] The summons of the suit has been duly served to the Defendant, but did not appeared personally or through Ld Advocate. Therefore the suit was ordered to proceed ex-parte against the defendant. Therefore, from the attitude and the behavior of the defendant, it appears that he is not interested in defending the suit and he admits the pleading and allegation stated in the plaint and he has nothing to say about it. Even order VIII rule 10 of C. P. C. provides that “where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the court, as the case may be, the court shall pronounce judgment against him, or make such order in relation to the suit as it think fit and on the pronouncement of such judgment a decree shall be drawn up.” Therefore even it is not required to frame issues and evidence be adduced by the plaintiff. Whereas in the present suit the defendant was given sufficient opportunity to defend the suit. But the defendant has choose not to defend the suit or adduce any evidence. Therefore when the plaintiff has proved its case / pleading and allegation by adducing oral as well as documentary evidence and the defendant has not adduced any evidence, the plaintiff has proved that the issued theft

bill is legal one and it is also entitled to recover suit amount along with interest as per final order.

- 10] Further more, according to Ledger Copy of the defendant vide Exh.- 18, the plaintiff has demanded Rs. 23,535.80 from the defendant by way of principal amount and then calculation of delay payment charge was carried out by the plaintiff which comes to Rs.2588=94 and accordingly, the plaintiff has filed this suit and claimed Rs. 26,124-74. including delay payment charges. But from the perusal of calculation sheet of delay payment charges produced vide Exh.-18, it appears that the plaintiff has charged 15% per annum on the due principal amount towards delay payment charges, but the plaintiff has not produced agreement to show that plaintiff is entitled to charge delay payment charges at the rate of 15% per annum Generally considering the cardinal principle of evidence act “A Plaintiff cannot obviously advantage himself by the weakness of the defence”. The plaintiff's case must stand or fall upon the evidence adduced by him. The issue must be proved by the party who states the affirmative and not by the party who states a negative. Therefore, considering the cardinal principle even though no evidence has been adduced by the defendant, it was obligatory on the part of the plaintiff to prove that he is entitled to get delay payment charges at the rate of 15% by adducing some cogent reliable evidence but plaintiff has not adduced any evidence in this respect. So he is failed to prove that he is entitled to get delay payment charges at the rate of 15%.

Contention that no evidence has been adduce by the defendant cannot be sustained considering the cardinal principle at plaintiff cannot obviously advantage himself by the weakness of the defence. Plaintiff has to stand on his own legs to prove the facts asserted by him. Even at present the rate of interest has fallen down to a considerable rate of 7% P.A by the nationalized Bank. Therefore in this Court is of the opinion that plaintiff is not entitled to get delay payment charges at the rate of 15% and therefore he is not entitled to recover Rs. 26,124-74. from the defendant, but considering the records and documentary evidence submitted the plaintiff is entitled to recover Rs. 23,535.80 from the defendant by way of principal amount. So, my reply for point No.1 is accordingly partly in the affirmative.

- 11] So far as prayer for interest is concerned, the plaintiff has claimed the interest at the rate of 18% per annum, but no any agreement is produced by the plaintiff to show that there is a contract between the plaintiff and the defendant to charge the interest at particular rate on the principal amount or due amount. Even at present the rate of interest has fallen down to a considerable rate of 7% P.A by the nationalized Bank. Therefore, taking the judicial notice of the prevailing rate of interest of Nationalized Banks, if 9% interest per annum on the said amount is awarded then it will be just and fair interest rate under Section-34 of the Code of Civil Procedure.
- 12] In the light of the above discussions, it is held that plaintiff is entitled to recover sum of Rs. 23,535.80. along with interest at the

rate of 9% per annum thereon from the date of filing of this suit till its realization from the defendant. So, my reply for point No.2 is accordingly in the partly affirmative and for point No.3, following final order is passed in the interest of justice.

ORDER

- The plaintiff's suit is hereby partly allowed with cost.
- The defendant is hereby ordered to pay Rs. 23,535.80 (Rupees Twnty Three Thousand Five hundred Thirty Five and Eighty Paise Only) to the plaintiff together with interest at the rate of 9% per annum from the date of filing of this suit till realization of this amount from his all types of moveable and immovable properties.
- Defendant do bare his own cost and also bare the cost of the plaintiff.
- Decree to be drawn accordingly.

Pronounced today on this 9th day of July, 2018 in the open Court at Dhoraji.

Date : 09/07/2018
Place : Dhoraji

(Hemantkumar Arvindray Dave)
Code No. GJ0385
2nd Additional Sessions Judge,
Rajkot at Dhoraji.