



Sp.C.S. No.:378/2018

Received on	:	21/10/2018
Registered on	:	30/03/2016
Decided on	:	05/02/2019
Duration	:	DD/MM/YY ____/____/____
Exhibit	:	

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**IN THE COURT OF ADDITIONAL DISTRICT JUDGE &
SPECIAL JUDGE (ELECTRICITY), AT BOTAD**

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Special Civil Suit (Electricity) No: 378 of 2018
(Old No. 566/2016)

Plaintiff :

Paschim Gujarat Vij Co. Ltd. (PGVCL)

it is constituted under

Gujarat Electricity Industries

(Re-Organization and Regulations) Act, 2003 and its

registered head office is situated at Laxminagar, Rajkot

Through its Deputy Engineer (O & M),

Division Office Botad

Sub Division Office, Botad Rural,

Botad

VERSUS

Defendant:

Ghanshyambhai Samjibhai Abaniya

Age: Adult, Religion: Hindu, Occu.: Farming,

R/o. Tajpar,

Tal./Dist.: Botad

Re:- **Suit for recovery of Rs.2,861.18 paisa.**

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Ld. Advocate Mr. A.S.Kherani for the plaintiff.

Defendant - absent - Ex-parte.

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

1. The plaintiff PGVCL Company has filed this suit through its **Deputy Engineer, Division Office, Botad, Sub-Division Office, Botad Rural** against the defendant for recovery of electric theft amount of **Rs.2,861.18 paisa** with interest **@ 18%** and cost.
2. The short fact giving rise to the present suit is that the plaintiff company is a company registered under the Statute. It is the say of plaintiff-company that, it is doing business of supplying electricity and charging the amount towards the same and for carrying out their ancillary work, zone, division and sub division offices are framed. It is further said that in regard to the present case all the power regarding administration is vested with Deputy Engineer, and he is well aware with the facts and therefore, this suit is preferred before this Court containing his signature. It is further said that plaintiff-company is doing business in the state of Gujarat therefore, the consumers who are in need of electricity, are required to apply in prescribed form for the connection and after due verification, on receiving charges thereof, they are allotted electric connection.
3. As per the averments made by the plaintiff-company in plaint, on dated 23/03/2015, officers of checking squad of PGVCL went for electric checking at the residence of defendant. At the time of checking, it was found that defendant was using 250 watt (1 fan (60 watt), 2 CFL (40 watt) and 1 TV (150 watt)) electric supply illegally from electric pole by connecting direct wire, resultantly, his electric connection was

disconnected. At the time of checking on the spot, Checking Officer filled checking sheet and also prepared the rojkam. Complaint is also lodged against the defendant. Defendant is non-consumer of plaintiff Board and has also not given any application to plaintiff Board for connection. Thereafter, plaintiff Board has given a supplementary bill of Rs.2,487.98 paisa. For such due, plaintiff Board has sent notice to the defendant and demanded the same due amount from the defendant but, defendant has not paid the due amount. Therefore, the present suit is filed for the recovery of Rs.2,487.98 paisa plus DPC amount of Rs.373.20 paisa totaling to **Rs.2,861.18 paisa** with interest and cost.

4. The defendant was duly served with the summons-notice but the defendant has neither remained present in-person during the proceeding of the suit nor he appeared through his advocate. Though ample opportunities have been provided to him, he has not filed his reply. Hence, it was ordered by this court to proceed ex-parte against the defendant, simultaneously, his right to file reply was also closed.
5. In order to prove the present suit, following oral as well as documentary evidences have been produced by the plaintiff-company:-

(A) ORAL EVIDENCE LED BY THE PLAINTIFF- COMPANY:

Sr. No	Particulars of document.	Exh.
1.	Affidavit on behalf of applicant/plaintiff Mr.Mahendrabhai Shankarlal Rav	7

(B) DOCUMENTARY EVIDENCE LED BY THE PLAINTIFF- COMPANY

Sr. No	Particular of document	Exh.
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1.	Checking Sheet	8
2.	Rojkam	9
3.	Annexure – 4.	10
4.	Assessment Sheet.	11
5.	Letter to defendant for Supplementary bill.	12
6.	Letter to the PI, Bhavnagar for filing complaint.	13
7.	Copy of FIR.	14
8.	Proforma No.12	15

6. The plaintiff has filed closing pursis at **Ex. 16**.

7. This court has framed the following issues at **Ex.6**, which are as under :-

- (1) Whether the plaintiff company proves that the defendant has pilferage the electricity from the electric line of the plaintiff Board ?
- (2) Whether the plaintiff company proves that they are entitled to recover the amount as prayed for ?
- (3) Whether this court has jurisdiction to entertain this suit ?
- (4) Whether the plaintiff is entitled to get interest on due amount ? if yes, at what rate ?
- (5) What order and decree ?

7. My Finding of above issues are as under :-

- (1) In Affirmative.
- (2) In Affirmative.
- (3) In Affirmative.
- (4) Partly Affirmative.
- (5) As per final order.

:: REASONS ::

9. Since all the above issues are inter-related and inter-connected with each other therefore, to avoid unnecessary repetition and for the sake of brevity, I think it proper to discuss and decide the issues No. 1 & 2 together.
10. In the present suit, plaintiff company has produced aforementioned oral as well as documentary evidence wherein the Officer/Employee of the plaintiff company has filed his affidavit too. The deponent has mentioned all the facts of the suit and in support thereof the deponent has referred documentary evidences produced along with the list at **Ex.4.**
11. The record shows that the defendant was duly served with the notice but neither the defendant has filed his defence nor he has appeared and cross-examined the plaintiff and therefore, the averments made by the deponent in his affidavit on behalf of plaintiff company remains unchallenged. There is nothing on record to show that the defendant has bothered to give any reply to the notice given by plaintiff company. Even after filing of the present suit the defendant had neither appeared personally nor through his learned advocate. Hence, as per the provision of law, when the averments of plaintiff are not challenged by the defendant, the same becomes uncontested and there is no reason to discard the evidence of plaintiff.
12. Therefore, in view of the above proposition of law since the present suit is ex-parte and none has challenged the evidence of plaintiff, the suit of

plaintiff succeed and deserves to be allowed.

ISSUE NO. 3

13. The State Government for the purpose of providing speedy trial constituted Special Court and the Court of the District Court is notified as Special Court. Section 154 of the Electricity Act 2003 provides the procedures and powers of the Special Court. Sub section 5 of Section 154 provides that the Special Court may determine the civil liability against a consumer or a person in terms of money for theft of energy. It is also provided in explanation to section 154 of Electricity Act- 2003 that for the purposes of section 154 "civil liability" means loss or damage incurred by the Company or licensee or the concerned persons, as the case may be, due to the commission of an offence referred to in section 135 to 139 and therefore, also incurred civil liability. Therefore, this Court being a District Court has jurisdiction to entertain and try this suit for ascertaining civil liability.

ISSUE No. 4

14. So far as the rate of interest is concerned, the plaintiff-company has claimed the interest at the rate of **18%** per annum. The plaintiff has not produce any supportive evidence so far as the rate of interest is concerned. The plaintiff has not submitted any contract or deed regarding rate of interest. Nor he stated any fact under which provision he is entitled to get **18%** interest. Looking to the ratio laid down by the Hon'ble Apex Court, the rate of interest is given as per the present rate of interest. Looking to the present trend of interest, it would be just, proper and reasonable if 7% simple interest per annum may be allowed.

15. In view of the facts and circumstances, the suit of the plaintiff succeeds and therefore, answer to issue No. 1 to 3 are given in affirmative and issue No. 4 is given in partly affirmative and with regard to issue No. 5, I pass following order:—

: O R D E R ::

1. The present suit is partly allowed with cost.
2. The defendant is directed to pay **Rs.2,861.18 paisa** to the plaintiff-company along with 7% simple interest per annum thereon from the date of filing of this suit till realization.
3. Decree be drawn accordingly.
4. Defendant shall bear his cost and shall also bear the cost of plaintiff.

Pronounced in open Court on 5th February, 2019.

PLACE: BOTAD
DATE: 05/02/2019

(**UPENDRA MAHASHANKER BHATT**)
ADDITIONAL DISTRICT JUDGE &
SPECIAL JUDGE (ELECTRICITY),
CODE NO. **GJ00589**