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Decided on : 30/11/2021

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**IN THE COURT OF 2nd ADDITIONAL DISTRICT JUDGE,
MAHISAGAR AT LUNAWADA.**

SPECIAL (Elec.) SUIT No.78/2021

Exh. :

Deputy Engineer,
M.G.V.C.L.
H/o. Racecourse Road, Vadodara.

Having address at: Sub-division No.1,
At Po.- Santrampur,
Dist.- Mahisagar.

V E R S U S

Defendant:-

Shanabhai Motibhai Khant,
Aged: Adult,
Having address at: Panchmuva,
Ta. Santrampur,
Dist.- Mahisagar.

Appearance :-

Ld. APP **Shri R. R. Dave** for the plaintiff.
Ex-parte against the defendant.

: J U D G M E N T :

- (1)** Brief facts of the plaintiff case are that the plaintiff company is carried out the business of electricity distribution (administration and maintenance) Madhy Gujarat Vij-Company Limited (MGVCL) is registered under the Companies Act and its corporate office is situated at Baroda. In the subordination of company, the local office situated at sub-division No.1 Sanatrampur, Dist.-Mahisagar. The defendant is residing at village:

- (1) Bamanwada, Savalina Muvada, Tal. Lunawada, Dist.- Mahisagar and it comes within the jurisdiction of plaintiff company. Defendant is not the consumer of plaintiff company. The authorized officers of the company checked and inspected the electricity connection as well as electricity lines in the village:- Bamanwada, Savalina Muvada, Tal. Lunawada on dated 26.11.2018. The defendant had connected private electricity wire with the electricity lines of plaintiff company, said electricity lines of plaintiff company have been used for power consumption by way of dishonest manner for the purpose of the domestic work. Defendant has connected his private wire with low tension electricity line of plaintiff company. According to the Annexure-A-2 illegal wire connection has been directly joined by the defendant with the private wire through joining anchor (langar) and thereby domestic electricity load consumed for domestic purpose and consumed 00.746 KW/HP electricity and committed an act of theft. It came to the notice of the inspection team of the company in pursuant to that the officers of the company has conducted procedure under the provisions of the Electricity Act and completed entire procedure of inspection and ultimately filed the complaint in proper jurisdictional police station. Plaintiff has sent a letter to the defendant for the illegal act of electricity theft and according to the prescribed procedure under Electricity Act, plaintiff company has sent a forwarding letter along with electricity theft bill, compounding bill as well as calculation proforma and the plaintiff was given an opportunity to pay the outstanding amount of electricity theft act, defendant was failed to pay the Rs.10,786.69 paisa, as a result, the defendant is liable to pay delay payment charge as per the rules, regulations and by-laws of the company, eventually, the company has sent the legal demand notice dated 04.01.2020 to the defendant through RPAD, legal notice was duly served dated 11.01.2020 despite the defendant has not paid the sum of Rs.12,781.49 paisa to the office of the plaintiff company. Defendant has not given any reply to the plaintiff company. At this juncture, plaintiff company has filed the suit to recover the money sum of Rs.13,116.65 paisa according to the delay

charges. Plaintiff has sought the relief to recover the money of Rs. 13,116.65 paisa along with 24% rate of interest from the defendant.

(2) Summons was duly served to the defendant but defendant has not filed any written statement before the Court, neither the defendant nor his pleader come before this Court for proceed the matter. Therefore, the Court has constrained to pass the ex-parte order to proceed the matter and the Court has framed the issue under Order 14 of the CPC following issues has been framed by the Court:-

(3) The oral as well as documentary list produced before this Court:

Sr. No.	Particulars	Exh.
1.	Affidavit of plaintiff	Exh.09
2.	Inquiry report at Annexure-A-2	Exh.17
3.	Forwarding letter at Annexure-G	Exh.18
4.	Annexure-C	Exh.19
5.	Letter of Police complaint	Exh.20
6.	F.I.R.	Exh.21
7.	Assessment Report	Exh.22
8.	Legal notice through Advocate	Exh.23
9.	Receipt of RPAD	Exh.24
10.	Receipt of RPAD received	Exh.25

(4) **Points for determination:-**

- (1) Whether the plaintiff proves that defendant is a consumer of MGVCL?
- (2) Whether the plaintiff proves that the plaintiff's suit is not barred by law of limitation?
- (3) Whether the plaintiff proves that despite non-consumer, defendant has theft the electricity?
- (4) Whether the plaintiff proves that defendant has consumed the electricity by way of unauthorized way, as why he is liable to pay the

electricity consumption bill and plaintiff is entitled to recovery the same?

- (5) Whether the plaintiff proves that MGVCCL is entitled to recover the money along with rate of interest @ 24% P.A.?
 - (6) What order and decree?
- (5) My findings on the above points are as under with the reasons mentioned herein under.
- (1) In affirmative.
 - (2) In affirmative.
 - (3) In affirmative.
 - (4) In affirmative.
 - (5) In affirmative.
 - (6) As per final order.

REASONS

Issue Nos.1 to 5 :-

- (6) All the issues are connected, therefore, the discussion made herein together. The plaintiff has submitted the affidavit of examination-in-chief under Order 18 Rule 4 of the CPC and on behalf of the plaintiff company in charge of Deputy Engineer– RAMANBHAI BAPUJIBHAI MALIVAD who is ex-officio authorized person of plaintiff company has deposed at Exh.9 and the fact of the plaintiff suit has categorically mentioned in his deposition. Looking to the statement of authorized person of plaintiff company, it transpires that on dated 26.11.2018 in the village:-Bamanwada, Savalina Muvada,, Tal. Lunawada, Parmar Rajubhai Juvanbhai is the non-consumer of plaintiff company and the officers of electricity company have inspected spot and according to the picture and map mentioned in Exh.17, low tension line of plaintiff company passed near the residential premises of defendant and attached an anchor at the second end of wire connected the domestic load. Defendant has committed the direct electricity theft and private wire seized on the spot, it shows that the officers of the company has conducted the inspection. Non-consumer defendant bears his signature, defendant has

not challenged procedure has been conducted by the plaintiff. Statement recorded by the inspection team of plaintiff company has not challenged by defendant. Schedule-G supplementary bill has sent by the plaintiff company to the non-consumer defendant under Section 135 of the Electricity Act, 2003 and supplementary bill along with compounding charge was Rs.11,532.69 paisa but, said bill was not paid by the defendant. On perusing the Exh.19, supplementary bill of non-consumer of the details as to non-consumed electricity inspection conducted by the plaintiff company on dated 26.11.2018 is categorically denoted 7 days time has been given to pay the outstanding amount of direct theft bill, but it is not paid by the defendant. On perusing the Exh.19, the detail bill as to direct theft. On perusing Exh.19 it is Annexure-C and assessment of supplementary bill for the case detected under Section 135 of the Indian Electricity Act. A category of consumer is mentioned as low tension, tariff of connected load found at the Bamanwada, Savalina Muvada, time of checking. The code denoted in the assessment of supplementary bill at Exh.19 total connected load found at the time of checking was 00.746 KW/HP and 1062 units of electricity recorded by meter reading during assessment period the previous reading date was 26.11.2017. On the date of current reading which mentioned as 26.11.2018. The formula for the adopted for assessing unit during the chargeable period, and given during the inspection kilowatt load factor as well as number of period which is considered total assessed units. As per A, B, C, D formula was 1062 units and the chargeable period was taken for the unit was 365 days and eventually connecting entire procedure inspection team as probable calculation of supplementary bill concerned of (1) chargeable unit assessed (2) numbers of times at which penalty rate applied, (3) fixed charges, (4) amount of energy charges, (5) minimum charges, (6) fuel charges. Thereafter, calculating total and adding compounding charges and thereafter the total amount of bill mentioned and deputy superintendent A/C, deputy engineer and three persons bear their signature in the documents at Exh.17. Considering the documentary evidences, at Exh.17,18,19,20,21,23,24 and 25 show that whatever procedure conducted by the checking team is up to

exhibit, no infirmity found and whatever procedure adopted and calculation mentioned in the documents are just and proper. Defendant not stepped into witness box and said procedure bill has not challenged or contested and in pursuant to that FIR registered against the defendant under Section 135 of Indian Electricity Act, 2003 and for the recovery of bill, the notice sent to the defendant it was duly served by the RPAD passed on perusing the legal demand notice at Exh.23, shows that RPAD notice was duly served despite the defendant has not paid the money of supplementary bill.

- (7) Discussed herein above, the plaintiff has proved that the defendant is not a consumer of MGVCL and the examination-in-chief at Exh.9 is corroborated by the documentary evidences. The plaintiff has filed the present suit under Article 113 of the Indian Limitation Act and the suit filed by the plaintiff for recovery of outstanding amount of bill from non-consumer. The plaintiff has checked at the premises on 26.11.2018. The plaintiff has filed the suit within the period of 3 years and therefore, plaintiff's suit is not barred by limitation. According to the discussion herein above, the plaintiff has proved the documentary as well as oral evidences that the defendant was not consumer and being his status, he has no right to connect the private wire with low tension connection load of plaintiff company and the such type of case is come within the purview of theft of electricity and it is absolutely mal-practice and direct theft and therefore he is liable to pay the amount of consumed electricity plaintiff is entitled to recover the said amount.
- (8) As far as the rate of interest is concerned, plaintiff has sought rate of interest on the outstanding amount 24% per annum, but, the said rate is a cruel and not proper because nowadays, period of globalization across the world and our country as adopted development of globalization in pursuant to that the Reserve Bank of India has reduced the rate of interest and all the banking institutions and commercial institutions have reduced the rate of interest in the lent money as well as deposited money. However, of course, in the commercial transaction rate of interest is fixed as 6% according to the provisions of CPC, but, herein this case, suit being a non-consumer whatever

act and mal-practice done by the defendant as commission of direct electricity theft is concerned. The relation and act between the plaintiff and defendant are not come within the purview, commercial transaction but it is the duty of the Court to impose the rate of interest in reasonable manner therefore 6% rate of interest is just and proper. Hence, points No.1 to 5 in affirmative.

Point No.6

- (9) To prove the case by plaintiff it is essential or condition precedent for the plaintiff to prove the following 3 ingredients simultaneously (i) plea, (ii) proof and (iii) prove. Plea of suit proved by the plaintiff with the support of cogent and clinching documentary evidence and defendant has not cross-examined by the plaintiff. Looking to the foregoing discussion, for point No.6, I pass the following final order.

: O R D E R :

- (1) Plaintiff suit is hereby allowed.
- (2) Defendant to pay amount of Rs.44,008.00/- paisa with the running interest @ 6% from the date of filing of the present suit i.e 13/09/2021 till the realization.
- (3) Defendant to pay the cost to the plaintiff.
- (4) Decree be drawn accordingly.

Pronounced in open court today on this 30th day of November, 2021.

Date : 30-11-2021.
Lunawada.

(Naresh Girikant Dave)
2nd Additional District Judge,
Mahisagar at Lunawada.
[GJ00467]