

(1) *Sp.Civil Suit (Electricity) No.883 of 2017*

Filed on	:	22/11/2017
Registered on	:	22/11/2017
Decided on	:	05/02/2019
Duration	:	Y:01 M:02 D:14
EX.	:	23

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE,
AT : JAMNAGAR.**

Special Civil Suit (Ele.) No. 883 of 2017

Paschim Gujarat Vij Company Limited,
Through : Deputy Engineer,
Nagarsim, Sub-Division,
Jamnagar.

... .. Plaintiff

V E R S U S

Sarfaraz Abdul Husen Sama,
R/o. Sanam Society, near Division,
Kalavad Road,
Jamnagar.

... .. Defendant

=====

Subject :- Suit to recover Rs.2,16,490.37 ps with interest.

=====

APPERANCE :-

Learned Advocate J.K.Vasoya for the Plaintiff.
Exparte for defendant.

=====

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

(1) The brief facts of this suit are as under ;

The short facts giving rise to this suit are that the plaintiff is a company incorporated under the provision of The Gujarat Electricity Industries (Reorganization and Regulation) Act, 2003. The plaintiff is

(2) *Sp.Civil Suit (Electricity) No.883 of 2017*

engaged in the activities of supplying the electricity to their consumer as per rules of plaintiff company and having its Sub Division office at Nagarsim and its administration by Deputy Engineer of plaintiff and have right to file sue. According to plaintiff, on 07/12/2015 the authorized Officers of plaintiff's Company went on the premises being used for residential purpose by defendant and checked the electric appliances and power supply. It is found on checking that defendant was not registered consumer of plaintiff company and it appears that defendant was dishonestly and illegally consumed the energy-electricity from the service line pole of plaintiff and caught red-handed. Hence, supplementary theft bill was issued and other procedural forms were also filled-up at the premises of defendant. The notice was issued to defendant, but defendant didn't care to pay theft amount of Rs.2,16,490.37ps for illegally consumption of electricity of the plaintiff. Hence, to recover the suit amount alongiwith interest @ 18%, the plaintiff Company has filed present suit, and prayed to decree the same.

(2) The Notice was duly served upon the defendant (Exhibit 5) but defendant didn't turn to the Court. Hence, case is proceeded exparte against the defendant. Heard, the learned advocate Miss Vasoya for the plaintiff.

(3) For determination of this suit, this Court has framed the following issues vide Ex.6 .

Sr.No.	I S S U E
1	શું વાદી પુરવાર કરે છે કે, આ કામના પ્રતિવાદી વાદી કંપનીના કાયદેસરના

(3) *Sp.Civil Suit (Electricity) No.883 of 2017*

	ઘર વપરાશના વિજ ગ્રાહક ન હોવા છતાં તા. ૦૭/૧૨/૨૦૧૫ ના રોજ વાદી કંપનીના જવાબદાર અધિકારીઓ ધ્વારા પ્રતિવાદીને ત્યાં ચેકીંગ કરતાં વિજ ચોરી કરતા માલુમ પડેલ. જેથી આ કામના પ્રતિવાદીની હાજરીમાં તપાસણી અહેવાલ તથા રોજકામ કરવામા આવેલ અને ત્યારબાદ આ કામના પ્રતિવાદીને આપેલ પાવર ચોરીનું બીલ રૂા.૨,૧૬,૪૯૦.૩૭ પૈસા વાદી કંપની પ્રતિવાદી પાસેથી મેળવવા હકકદાર છે?
2	શું વાદી પુરવાર કરે છે કે, વાદી કંપની પ્રતિવાદીને આપેલ પુરવણી બીલની રકમ ઉપર પ્રતિવાદી પાસેથી વ્યાજ મેળવવા હકકદાર છે? જો હા તો વાર્ષિક કેટલા દરે?
3	શું હુકમ અને હુકમનામું ?

(4) My findings on the above issues are as under.

Sr.No.	FINDINGS
1	In affirmative
2	Partly in affirmative.
3	As per final order.

(5) To prove the fact of this suit, the plaintiff has submitted following oral as well as documentary evidences on record.

ORAL EVIDENCE :-

Sr.No.	PARTICULARS	Ex.
1	Affidavit of evidence by Deputy Engineer of plaintiff company Mr.Nirav Harshadkumar Shah	8

DOCUMENTARY EVIDENCE :-

Sr.No.	PARTICULARS	Ex.
1	Copy of letter for permission to file sue.	10
2	Copy of letter of approval for filing Sue.	11
3	Copy of Proforma No.12	12
4	Copy of brief note	13

(4) *Sp.Civil Suit (Electricity) No.883 of 2017*

5	Copy of Certificate	14
6	Copy of legal notice	15
7	Copy of letter to lodge complaint	16
8	Copy of notice of theft supplementary bill	17
9	Copy of annexure 11	18
10	Copy of supplementary theft bill	19
11	Copy of gate pass	20
12	Copy of annexure 4	21
13	Copy of Rojkam.	22
14	Copy of checking sheet/inspection report	23
15	Copy of site visit report	24

(6) Plaintiff has not produced further evidence and filed closing pursis vide Ex.25

-:: R E A S O N S ::-

Issue Nos. 1 to 2 :-

(7) Aforesaid issues are inter connected to each other, so, to avoid repetition of the facts, I discuss and decide above issues together.

Ld. Advocate Miss Vasoya for the plaintiff Company has submitted that the defendant is not registered consumer of the plaintiff Company. On 07/12/2015 a checking has been carried out by the officials of the plaintiff Company and during the checking, it is found that defendant was illegally using the electricity from the electric service line. Therefore, the officials of the plaintiff Company has carried out the Theft Rojkam & Cheking sheet vide Ex.22 & 23 respectively and they have prepared supplementary theft bill vide Ex.19 for the amount of Rs.1,71,799.08 ps which has been forwarded

(5) *Sp.Civil Suit (Electricity) No.883 of 2017*

to the defendant, but the defendant did not care and not paid the same. Miss Vasoya has further submitted that as per Ex.22 the theft report (Rojkam) which was drawn by the officials of the plaintiff Company, wherein it is clearly mentioned that defendant has illegally taken electric connection from the electric pole. Therefore, the defendant has committed the theft of the electricity of the plaintiff Company, as he is not legally consumer of the plaintiff Company. She has further argued that to recover the suit amount, the plaintiff company has issued legal notice vide Ex.15 to the defendant. However, the defendant has not paid the dues to the plaintiff Company. Therefore to recover the suit amount along with the interest @ 18%. the plaintiff has filed this present suit against the defendant and prayed to decree this suit.

(8) The witness Mr. Nirav Harshadkumar Shah, who is Deputy Engineer of Plaintiff Company has filed the affidavit vide Ex.8 wherein he supported the facts of plaint and deposed that suit amount of Rs.2,16,490.37 is due from the defendant. On the other hand the defendant did not care to appear before the Court and to take legal defense under Order 8 of the Civil Procedure Code. Hence, in the absence of any defense from the defendant's side, the Court has no option to accept the supporting affidavit of plaintiff at Ex.8 alongwith documentary evidences at Exh. 10 to 24 as true, legal and trustworthy. So far as concerned rate of interest on dues, there is no contract or agreement between the parties with respect to interest on dues. Hence, in absence of any document, plaintiff is not entitled to get interest on dues. But, taking into consideration of Section 34 of the Civil

(6) *Sp.Civil Suit (Electricity) No.883 of 2017*

Procedure Code, it would be legal just and proper to allow 6% interest on the principal amount of theft bill, therefore, in view of the above discussion, the plaintiff is entitled to recover the supplementary amount of theft bill along with other charges of Rs.1,71,799.08 (Except DPC) with interest @ 6% p.a. from the defendant from the date of filing of suit till the realization. Hence, in view of my above discussion, I answer issue Nos. 1 to 2 accordingly and for issue No.3 following order is passed.

::: O R D E R :::

- (1) The suit is partly allowed with cost.
- (2) Defendant is hereby ordered to pay principal amount of **Rs.1,71,799.08 ps** (Rupees One Lac Seventy One Thousand Seven Hundred Ninety Nine and Eight paise only) alongwith **6%** interest p.a. from the date of filing of the suit till the realization of decree to the plaintiff.
- (3) Decree be drawn accordingly.

Pronounced in the open Court today on this 05th day of Feb. 2019.

Date: 05/02/2019

Place : Jamnagar

Pdt

(D.M.Vyas)

Code No. GJ00326,
Principal District Judge,
Jamnagar.