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IN THE COURT OF 6th ADDITIONAL DISTRICT JUDGE, BHAVNAGAR,

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Special Civil Suit (Electricity) No: 779 of 2018

Ex.: _____

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),

Sub Division Office: Mamsa, Ta.: Ghogha, Bhavnagar.

Versus

Defendant:

Manjibhai Kanjibhai Chauhan

R/o. Kareda, Ta.: Ghogha, Dist.: Bhavnagar.

Re:- Suit for recovery of Rs.36,108-00/- ps.

Appearance :

Advocate for the plaintiff Mr. U.H. Rana

Defendant - absent - Ex-parte.

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

1. The plaintiff PGVCL Company has filed this suit through its **Deputy Engineer, Sub-Division Office, Mamsa, Bhavnagar** against the defendant for recovery of electric theft amount of **Rs.36,108-00/-ps.** with interest **@ 18%** and cost.
2. In plaint, the plaintiff has stated that on **14/03/2016**, the Officers of the plaintiff Board carried out electric checking at premises of the defendant. At that time, the defendant was found making electric theft and using electricity by illegal means. Therefore, the electric connection of the defendant was cut off. Defendant is not consumer of plaintiff Board. Plaintiff Board has given supplementary bill along with the D.P. Charges totalling to **Rs.36,108-00/- paisa.**
3. 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, plaintiff Board has filed this suit to recover the afore-stated amount with **18%** interest and cost.
4. Notice was issued to the defendant and it was served to him but

he has neither appeared before this court nor filed any 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	Ex. No.
1.	Affidavit on behalf of applicant/plaintiff Mr. Naineshbhai Parshotambhai Sachaniya	07

(B) DOCUMENTARY EVIDENCE LED BY THE PLAINTIFF- COMPNAY

Sr. No.	Particular of Document	Ex. No.
1.	Annexure-A2	09
2.	Rojkam	10
3.	Annexure-4	11
4.	Annexure-C	12
5.	Annexure-12	13
6.	Legal Notice	14
7.	Proforma No.12	15
8.	Physical Site Verification Report	16
9.	Acknowledgment Slip	17
10.	FIR	18

6. The plaintiff filed closing pursis at **Ex. 19**.
7. Thereafter, this court has framed the following issues at **Ex.06** which are as under :-

- (1) Whether the plaintiff proves that Rs.36,108-00/- are due from the defendant towards electricity charges ?
- (2) Whether the plaintiff proves that the defendant has committed theft of electric energy?
- (3) Whether the plaintiff is entitled to get interest? If yes, at what rate?
- (4) What order and decree ?

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

- (1) In Affirmative.
- (2) In Affirmative.
- (3) Partly Affirmative.
- (4) 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 all the issues combinedly.
10. In the present suit plaintiff company has produced 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 un-challenged. 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.
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.

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 does 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.36,108-00/-ps.** to the plaintiff-company along with 7% simple interest per annum thereon from the date of filing of this suit till realisation.

3. Decree be drawn accordingly.
4. Defendant shall bear his cost and shall also bear the cost of plaintiff.

Pronounced in open Court on 31st December, 2018.

B H A V N A G A R

[Annapurna Purshottamdas Kansara]

6th ADDITIONAL DISTRICT JUDGE,

BHAVNAGAR,

DATE: 31/12/2018

CODE NO. **GJ00409**

Mr. M.M.Shaikh