

Received On : 20-07-2017
Registered On : 20-07-2017
Decided On : 09-02-2018
Duration : D - M - Y

IN THE COURT OF 10TH ADDITIONAL DISTRICT & SESSIONS
JUDGE, AHMEDABAD [RURAL] MIRZAPUR, AMEDABAD

Special Electricity Suit No. 97 of 2017

Exh. :_____

PLAINTIFF:-

Western Gujarat Electricity Co. Ltd.
Through its Dy. Engineer, Barvala Sub-Divisional
Office situate At & Post Barvala,
Taluka Barvala, District Ahmedabad.

VERSUS

DEFENDANT:-

Bhimabhai Chikabhai Makwana
Aged : Adult, Caste : Hindu
Residing At & Post khas,
Taluka Ranpur, District Ahmedabad.

=====
Appearance:-
Mr. V. C. Modi, Ld. Advocate for the Plaintiff.
The Defendant, Ex-parte.
=====

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

1. The above-named plaintiff Company has filed the present suit inter-alia, for recovery of the assessment amount being Rs.3,484/- and also an additional amount of Rs.1,254.24 Ps. being the interest on the assessed amount from 25-03-2015 till the date of filing of the present suit. In order to better appreciate controversy at hand, it would be useful to refer to the factual background concerning the present case.

2. Under the Gujarat Electricity Industries [Reorganization and Regulations] Act, 2003 [hereinafter referred to as "the Act"], Government of Gujarat had reorganized the erstwhile Gujarat Electricity Board and pursuant thereto, the said board came to be bifurcated into various regional electricity companies, which inter-alia supply and distribute electricity to customers. The present plaintiff, Western Gujarat Viji Company Ltd. is one of such limited liabilities companies established under the Act.
3. The plaintiff has its Zonal Office and under said Zonal Office, various Divisional Offices. Under the Divisional Offices, there are various Sub-Divisional Offices. One of such Divisional Office is situated at Barvala, Ahmedabad. It appears that every Sub-Divisional Office would have corresponding Dy. Engineer. It appears that the Village Khas where the present defendant stays falls within the control and administration of the aforesaid Divisional Office at Barvala. It may be worthwhile to mention that the present suit has been preferred by the Plaintiff Company through its Dy. Engineer, who has requisite authority to file the present suit as is apparent from perusal of documents.
4. Turning most specifically to the controversy at hand, it may be noted that the plaintiff company supplies and distributes electricity by way of putting electricity poles of various degrees of tension. Thus, some of the electricity lines would carry high tension voltage, whereas, others would carry not low tension electricity. It appears that a low tension electricity power line passing through the Village Khas was intercepted by the present defendant Shri Bhimabhai Makwana [hereinafter referred

to as "the defendant"] by use of electric wire/ cable. It may be noted that the defendant is not the registered customer of the plaintiff's Company. It was averred that therefore, he had no right to use electricity from the distribution network of the plaintiff Company. However, the defendant was found to be pilfering electricity from the low tension wire of plaintiff company at Village Khas using his own private electricity wire/cable. Such electricity theft came to notice on 25-03-2015, during a local inspection by the Company representatives. During the inspection, the load gauging was done and theft was confirmed and therefore, necessary paper work including Rojkam was made at the premises of the defendant. Unfortunately, the plaintiff was not present at the material time and hence, the aforesaid Rojkam was completed in his absence. In consonance and in furtherance of the Rojkam as aforesaid on 25-03-2015, a bill for an amount of Rs.3,484/- was issued unto the defendant calling upon him to pay the same alongwith the compounding charge of Rs.1,254.24 Ps. It is the case of the plaintiff company that the defendant did not respond to such bill. Therefore, the Company issued legal notice to the defendant calling upon him to pay the aforesaid amount of Rs.3,484/- plus interest from 25.03.2015 to the date of the payment. It was also mentioned in the notice that if the amount as claimed would not be paid by the defendant within a period of 10 days, the company shall be constrained to proceed with the recovery proceeding before appropriate forum at the costs of the defendant.

5. It appears that the legal Notice was also not responded too by the defendant and hence, the plaintiff company has approached this court for recovery of the amount as

also interest of Rs.1,254.24 Ps. From 25.03.2015 till filing of the suit. It was also prayed in the suit that further interest @ 24% p.a. be awarded to the company from the date of the filing of the suit till actual realization on the amount of Rs.4,738.24 Ps. being the aggregate of Rs.3,484/- [the assessed amount] and Rs.1,254.24 Ps. [the interest till the date of filing of the suit].

6. The summons of this suit has been duly served upon the defendant, but neither the defendant nor his Advocate appeared before this court and therefore, as per order passed below Exh.1 on 01.01.2018, the present suit has been proceeded as ex-parte against the defendant.
7. In view of the suit of the plaintiff, to adjudicate the present suit, the court has framed issues vide Exh.6 as under:-

I S S U E S

1. Whether the plaintiff proves that Rs.4,738.24 Ps is due from defendant towards outstanding electricity bill ?
 2. Whether the suit is within the period of limitation?
 3. Whether the plaintiff is entitled to get relief as prayed for?
 4. What order and decree?
8. My findings to the aforesaid issues are as under;
1. In the Affirmative.
 2. In the Affirmative.
 3. Yes with interest 09% from the date of filing of the suit till realization.
 4. As per Final order.
9. The plaintiff has produced following evidences in support of his suit.

Sr. No.	EVIDENCE	Exh.
ORAL EVIDENCE		
1.	The oral deposition by Manishbhai Muljibhai Parmar, Dy. Engineer Western Gujarat Vij Company Ltd.	09
2.	Closing Pursis	13
Documentary Evidence		
1.	Report prepared on the spot.	10
2.	Electricity Bill	11
3.	Legal Notice	12

-: R E A S O N S :-

Issue Nos.1 to 3.

10. On behalf of the plaintiff Company Shri Manishbhai Muljibhai Parmar, Dy. Engineer of Western Gujarat Vij Company Ltd. has deposed by way of written examination-in-chief. Although, no reference to his authority to depose before the Court or file suit on behalf of the Company or to engage advocates etc. was adduced at the time of examination-in-chief.
11. Coming back to the affidavit of examination-in-chief [Exh.9], the said affidavit by and large proves all material averments to the suit. It categorically states that a surprise inspection at the premises of the defendant was made on 25.03.2015 and during the inspection, the defendant was found to be consumed electricity power of the plaintiff company by electric means of illegally pilfering electricity current from low tension electricity line falling through the Village Khas. It is also stated therein that the defendant was not a consumer of electricity of the plaintiff company. It was also submitted that the Company has in accordance with the prevailing rules and regulation calculated the electricity, which the defendant had pilferaged as aforesaid and the value of such theft is Rs.3,484/-. It is deposed in the affidavit that

the plaintiff had issued a bill for the aforesaid amount, but the defendant failed to make the payment of the bill. Thereafter, the plaintiff issued a legal notice to the defendant and made a demand of Rs.3,484/- alongwith the interest from the defendant. The defendant, however, didn't respond to the notice, nor made good the payment to the plaintiff. The plaintiff was therefore, constrained to file the present suit for recovery.

12. At this stage, it would be useful to refer to the decision in the case of Ramesh Chandra Ardawatiya V. Anil Panjawni, AIR 2003 SC 2508. In the said case, it has been held that necessity of proof by plaintiff of his case to the satisfaction to this court cannot be dispensed merely because, the matter proceeds ex-parte against the defendant. Thus, the court has to examine, if the plaintiff has sufficiently discharge the burden cast on him.
13. Now, in the present case, the Executive Engineer Shri Manishabhai Muljibhai Parmar has deposed as aforesaid. The Rojkam referred to in the deposition has been proved at Exh.10. The said Rojkam indicates that it was made during the surprise visit on 25.03.2015 at the premises of the defendant and was prepared by the employees of the Electricity Company. It also indicates that during the checking of the premises, it was found that the defendant was illegally consuming the electricity supply of the plaintiff company by way of use of electric wire/cable. Albeit, the electricity wire was not seized by the members of checking squad, none the less, Rojkam was made. There is nothing on record to suggest that the employees of Electricity Company had any motive to falsely implicate the defendant either in criminal proceedings or falsely initiate recovery case against the defendant. It is also

matter of record that although the Rojkam was made at the premises of the defendant and subsequently, a bill for the amount of Rs.3,484/- was issued against the defendant and thereafter, a legal notice was also issued against the defendant, the defendant did not make any submission against the electricity company. From the examination of aforesaid document, it appears that the claim of Rs.3,484/- was made towards the theft of electricity i.e. the value of electricity theft. Furthermore, the record indicates that the proceedings were ordered to be proceeded ex-parte against the defendant in terms of order below Exh.1. Thus, it is clear that the defendant never appeared, much less, cross-examined the witness of the plaintiff or challenge the document produced by the plaintiff.

14. In view of the foregoing discussion, this court is satisfied that the plaintiff is entitled to recover the amount of Rs.3,484/- from the defendant as well as an amount for the sum of Rs.1,254.24 Ps. being the interest on the aforesaid amount for the period from 25.03.2015 till the filing of the suit. Therefore, this court answers Issue No.1 & 2 in the Affirmative.
15. In so far as the issue concerning interest is concerned, the plaintiff Co. has not adduced any document indicating the rate of interest applicable on the further interest i.e. the interest from the date of filing of the suit till its disposal. Therefore, the rate of interest should not awarded as per plaintiff demanded at the rate of 24% but it can be allowed in terms of Section 34 of the Code of Civil Procedure. Thus, the plaintiff is entitled to get interest at the rate on which the banks advance the loans.

Although, there is no proof adduced by plaintiff company towards the rate on which the bank advanced loans, this court in the larger interest of justice deem fit appropriate to hold that the interest @ of 09% p.a. be awarded and hence, the rate of interest is decided accordingly and the said issue answered in terms appearing herein-before. Therefore, the court decides Issue No.1 in the affirmative and Issue No.3 as partly in Affirmative, while awarding 09% interest in place of 24% interest from the date of filing the suit till realization.

16. So far as the issue of Limitation is concerned, the cause of action arisen when the defendant started committing theft of electricity and also on 25.03.2015, when such theft came to be discovered. Thereafter, it again arose when a bill date 25.03.2015 was issued on defendant calling on him to pay Rs.3,484/- towards assessed towards illegal unauthorized consumption of electricity. It again arose, when a legal notice came to be issued demanding the payment of principal plus an interest for the delayed period of payment. The Limitation Period for such suit is 03 years and counting from 25.03.2015, the suit having been filed in 2017 and notice having been issued, the suit is within the Limitation. Hence, issue of limitation is decided in the affirmative.
17. In view of forgoing, this court passes the following final order in the interest of justice;

-: O R D E R :-

- * The plaintiff's suit is hereby allowed.
- * The plaintiff Company shall be entitled to recover an aggregate amount for the sum of Rs.4,738.24 Ps. being a sum of Rs.3,484/- [assessed towards the value of theft perpetrated by the defendant] and Rs.1,254.24 Ps. [being the amount calculated by applying the interest rate of 12% p.a. on the aforesaid assessed amount of theft] from 25.03.2015 to 20.07.2017.
- * The plaintiff will be entitled to a further interest on Rs.3,484/- at the rate of 09% p.a. from the date of filing of suit till realization.
- * The defendant shall pay the costs of the suit to the plaintiff.
- * Decree be drawn accordingly.

The order is pronounced in the open Court on this 09th day of February, 2018 under my hand and seal.

Date: 09-02-2018
Place: Ahmedabad.

[Rahul P.S. Raghav]
10th Additional District Judge,
Ahmedabad (R) at Mirzapur.
UIC No.GJ 01508.

Navnit, PA