

<u>SPECIAL CIVIL SUIT NO.01/2017</u>	
RECEIVED ON	
REGISTERED ON	
DECIDED ON	
DURATION	DYS-MTS-YRS

**IN THE COURT OF THE 2nd ADDITIONAL DISTRICT
JUDGE DAHOD, AT LIMKHEDA**

SPECIAL CIVIL SUIT NO.01/2017

EXH. _____

DEPUTY EXECUTIVE ENGINEER
AGE - ADULT
OCCUPATION - SERVICE
HAVING OFFICE AT M.G.V.C.L.
SUB-DIVISION, SANTROAD,

.....PLAINTIFF

VERSUS

BABUBHAI VIRSINGBHAI BHMAT
AGE - ADULT
OCCUPATION - AGRICULTURE
RESIDENT OF VALAGOTA,
TAL.LIMKHEDA, DIST.DAHOD

.....DEFENDANT

REGULAR SUIT FOR RECOVERY OF RS.16,543/-

SHRI P.J.JAIN
LEARNED ADVOCATE FOR PLAINTIFF

DEFENDANT SERVED AND ABSENT

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

(1) The present plaintiff is the corporate body under the provisions of the Gujarat Electricity Corporation Ltd. and Gujarat Electricity Industries (Reorganization) & Regulation (Act-2003) and the plaintiff is providing the electric energy to its consumer and the plaintiff is managing the sub-division of the plaintiff at Santroad, district Dahod. According to the case of the plaintiff that the defendant was not the consumer of the plaintiff during the checking on dtd. 28.01.2016. Defendant was using direct service line from the LT line and he is using the electricity unauthorizedly and officer of the plaintiff has found out the theft carried out by the defendant and during the search plaintiff has recovered service wire from the defendant premises and plaintiff has prepared the checking-sheet in presence of the defendant and also prepared the rojkam and report and as per the approved formula plaintiff has issued the bill of Rs.14,148.63ps including the compounding charge with bill as received by the defendant. Even though defendant has not paid the bill amount. So, plaintiff has issued the notice to the defendant to pay the said due amount. Even though defendant has not paid the said due amount to the plaintiff. Therefore, plaintiff has filed the criminal complaint against the defendant at Gotri Police Station at Vadodara. Therefore, plaintiff has to constrained to file the present suit against the defendant to recover of the said due amount of Rs.16,543/- with the interest at the rate of 15% per month. It is the case of the plaintiff that this Court has jurisdiction to try the present suit.

(2) The summons was issued to the defendant and same was also served upon the defendant. But defendant has not remained present before the Court, so Court has ex-parte order against the defendant. So, this matter is proceed as an ex-parte against the defendant.

(3) I have heard the learned advocate Mr.P.J.Jain, for the plaintiff, I have also perused the records and proceedings and also perused the documentary evidence produced on records and I have also perused the provisions of law.

(4) The following issues are framed to decide the present suit.

- (1) Whether the plaintiff proves that there is due amount of Rs.16,543/- from defendant ?
- (2) Whether the plaintiff company is entitled to get the interest on due amount ? If yes, at what rate and from when ?
- (3) Whether the plaintiff is entitled to get the relief as prayed for ?
- (4) What order and decree ?

(5) My findings on the above issues are as under :-

- (1) In the affirmative.
- (2) In the affirmative at 9 % p.a. from the date of the suit till realization.
- (3) In the affirmative.

(4) As per final order

ISSUE NOS. 1 TO 4

(6) Issue Nos. 1 to 4 are connected with each other and in order to avoid repetition of facts, discussion as well as the submissions, both the issues are required to be decided jointly. Hence they are decided jointly.

(7) The present plaintiff is a corporate body under the provisions of the Gujarat Electricity Corporation Ltd. And Gujarat Electricity Industries (Reorganization) & Regulation (Act-2003) and the plaintiff is distributing the electric energy to its consumer. It is the case of the plaintiff that plaintiff has found out the theft within a territory of Dahod district. During the search defendant is using electricity without taking electric connection. So, defendant is not consumer of the plaintiff company. On dtd.28.01.2016, plaintiff has found out the theft of the electricity from various places on that day defendant was taking unauthorised electric connection from the LT line near his house and defendant is not the consumer of the plaintiff company even though he is directly taking electricity from the LT line. So, plaintiff has prepared Rojakam and consumer sheet in presence of the defendant. Consumer-sheet produced vide Exh.12. Considering the Exh.12 consumer-sheet it is clearly stated that defendant is not the consumer and he was using direct LT line connection taking direct connection from the LT line on his house and that report prepared in presence of the defendant. Then-after, plaintiff has given theft bill to the defendant, that bill is produced vide Exh.13.

That bill received by the defendant, even though defendant has not taken care to pay the said bill amount. Plaintiff has also produced assessment of supplementary bill for the case ----- under Section 135 of the Electricity Act and calculation carried out by the plaintiff company as per the ABCD formula and as per the said assessment, defendant is liable to pay the amount of Rs.14,148.63ps. from the defendant, then-after plaintiff has also issued the notice to the defendant and that notice has also produced vide Exh.15 and defendant has received the said notice. Deputy Executive Engineer Mr. Kirtikumar Shankerbhai Patel has given his deposition vide Exh. 9 and in his chief-examination he has categorically stated that details carried out by the officer of the plaintiff. Plaintiff has also produced the theft bill, rojkam, consumer-sheet and report on record. As per the chief-examination of the plaintiff he is performing his duty in the plaintiff company as Dy. Executive Engineer, in the sub-division of Santroad, Dist.Dahod and he has stated that he has aware about this matter. He has stated that defendant has taken service line from the LT. line without consumer and defendant has found out the theft from the direct LT line therefore, there is an error of amount of Rs.14,148.63ps and defendant is responsible and liable to pay the said amount to the plaintiff. He has further stated that inspite of repeated demand to the defendant, defendant has not paid any due amount and therefore, plaintiff has given notice to the defendant. Even though, defendant has not taken care to give reply the notice or pay the amount.

(8) After the service of the summons to the defendant, defendant has not taken care to remain present in the Court,

therefore this matter is proceed as an exparte against the defendant. So, whatever documents produced by the defendant is correct in eye of law and defendant has not taken care to deny the such document. So, at this juncture there is no any valid reason before this Court to dis-believe the say of the plaintiff which is also corroborative by the documentary evidence and hence I held that plaintiff is successfully proved its case against the defendant. Therefore, plaintiff is entitled to get from the defendant and defendant is liable to pay the said amount.

(9) Plaintiff has also prayed for the interest at the rate of 18 % per annum but as per the provisions of law the the said rate of interest is very high and therefore, the plaintiff is not entitled to get the said rate of interest and there is no agreement between the parties regarding the interest and so as per my view it will be just and proper to grant the interest at the rate of 9% per annum and hence I hold that the plaintiff is entitled to recover an amount of Rs.14,611/- with the running interest at rate of 9% per annum from the date of the suit till its realisation with the cost.

(10) Plaintiff has filed this suit on 13.04.2017 before the Principal District Judge, Dahod and plaintiff has carried out checking on 28.01.2016 of the defendant's hosue. So plaintiff has filed the suit within 3 years. So, this suit is within the limitation. Hence, I pass the following final order that shall meet the end of justice.

:- ORDER :-

(1) Plaintiff's suit is partly allowed.

- (2) The plaintiff company is entitled to recover an amount of Rs.16,543/- (Rupees Sixteen Thousand Five Hundred Forty Three Only) with the running interest at the rate of 9% per annum from the date of the suit till the realization from the defendant.
- (3) The defendant do bear his costs of this suit along with the costs of the plaintiff.
- (4) Decree be drawn accordingly.

Pronounced in the open Court, today on this **20th** Day of **April, 2019.**

Dt. 20/04/2019
Place : Dahod

(Nilesh Krishnalal Parikh)
2nd Additional District Judge
Dahod, At. Limkheda
(Code -GJ00429)