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Exh. :2

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

SPECIAL (Elec.) SUIT No. 221/ 2017

Plaintiff :-

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

Having address at: Sub-division No.2
At Po.: Lunawada,
District: Mahisagar.

V E R S U S

Defendant:-

Bhemabhai Khutabhai Pagi,
Aged: Adult,
Having address at: Jalkukdi,
Ta.: Khanpur.
District: Mahisagar.

Appearance :-

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

: J U D G E 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.2 Lunawada, Dist.: Mahisagar. The defendant is residing at village: Jalkukdi, Taluka: Khanpur, District: Mahisagar and it is came within the jurisdiction of plaintiff company. Defendant is not the consumer of plaintiff company. The authorized officers of the company had checked and inspected the electricity connection as well as electricity lines in the village: Jalkukdi on dated 04.01.2016. The defendant had connected private electricity wire with the electricity lines of defendant passed near the house of defendant premises, said electricity lines of plaintiff company has been consumed by the way of dishonest manner for the purpose of the domestic use. Defendant has connected his 8 meter private yellow colour 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 the agricultural purpose and consumed 746 k/w. electricity and committed an act of theft. It was 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 has given the opportunity to pay the outstanding amount of electricity theft act, defendant was failed to pay the Rs.29,495.40 paise, 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 on dated 17.12.2016, legal notice was duly served dated 21.12.2016 despite the defendant has not paid the some of Rs.34,362.41 paise 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. 34,362.41 paise according to the delay charges. Plaintiff has sought the relief to recover the money of Rs. 34,362.41 paise 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./Mark
1.	Affidavit of plaintiff	Exh.6
2.	Inquiry report at Annexure-A-2	Mark-7/1
3.	Forwarding letter at Annexure-G	Mark-7/2
4.	Supplementary bill of theft of electricity	Mark-7/3
5.	Calculation sheet at Annexure-C	Mark-7/4
6.	Receipt of forwarding letter	Mark-7/5
7.	Letter of complain	Mark-7/6
8.	Assesment ledger statement	Mark-7/7
9.	Legal notice through advocate	Mark-7/8
10.	Receipt of legal notice	Marh-7/9
11,	Receipt of legal notice received	Mark-7/10

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 MGVCL 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 - Vipulkumar Narvarbhai Mitalia who is ex-officio respondent person of plaintiff company has deposed at Exh.6 and the fact of the plaintiff suit has categorically mentioned in his deposition. Looking to the statement of non-consumer defendant it transpires that on dated 04.01.2016 in the village of Mora non-consumer Bhemabhai Khatubhai Pagi has introduced him and the officers of electricity company have inspected spot and according to the picture and map mentioned in Exh.9, low tension line of plaintiff company's passed near the rear side of 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.30,495.40 paise, but, said bill was not paid by the defendant. On perusing the Exh.10, supplementary bill of non-consumer of the details as to non-consumed electricity inspection conducted by the plaintiff company on dated 31.03.2016 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.11, the detail bill as to direct theft. On perusing Exh.12 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

time of checking. the code of denoted in the assessment of supplementary bill at Exh.12 total connected load found at the time of checking was 746 k/w. and units of electricity recorded by meter reading during assessment period the previous reading date was 31.03.2015. On the date of current reading which mentioned as 31.03.2016. 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 659 units and the chargeable period was taken for the unit was 366 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 bears their signature in the documents at Exh.12. Considering the documentary evidences, at Exh.9, 10, 11 and 12 shows that whatever procedure conducted by the checking team is up to mark no infirmity found and whatever procedure adopted and calculation mentioned in the documents are just and proper defendant was 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 registered AD passed on perusing the legal demand notice at Exh.14, the registered Post AD at Exh.15 and 16 shows that RPAD notice was duly served despite the defendant has not paid the money of supplementary bill.

- 7.** Discussed hereinabove, the plaintiff has proved that the defendant is not a consumer of MGVCL and the examination-in-chief at Exh.6 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 04.01.2016. Suit filed by the plaintiff company on dated 13.04.2017, in the limitation period to file the present suit are 3 years and the plaintiff has filed the suit within the period of 3 years and therefore, plaintiff suit is not barred by limitation. According to the discussion hereinabove, 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 20% 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 is 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 order:-

: ORDER :

- (1). Plaintiff suit is hereby allowed.
- (2). Defendant to pay amount of Rs.34,804.57 with the running interest @6% from the date of filing of the present suit i.e.13/04/2017 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 June, 2018.

Date : 30/06/2018.
Lunawada.

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