

Received on :
Registered on :
Decided on :
Duration : DD-MM-YY
Exhibit :

**IN THE COURT OF 7TH ADDITIONAL DISTRICT JUDGE,
BHAVNAGAR.**

Special Civil Suit No.2037/2016.

Plaintiff :

Pashchim 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),

Ghogha Sub Division, Ghogha,

District : Bhavnagar.

Versus

Defendant :

Gordhanbhai Makodbhai Dhapa,

Adult, R/o. Village : Malanka,

Ghanshyampara,

Kanji Lavji Baraiya's shopwalo khancho,

Ta.Ghogha, Dist.: Bhavnagar.

Re: - Suit for recovery of Rs.7058.72 ps.

Appearance:

Learned Advocate Mr.D.C.Chudasama, for the plaintiff,

None for the defendant.

* * *

J U D G M E N T

01. The present suit is filed by the plaintiff, PGVCL, through its Deputy Engineer, Ghogha Sub-Division, Ghogha, Dist.Bhavnagar

against the defendant for the recovery of an amount of Rs.7058.72 ps. towards electric theft along with interest @ 18% and cost.

02. The short fact giving rise to the present suit is that the plaintiff company is a company registered under the Statute. It is the say of plaintiff-company that, it is doing business of supplying electricity and charging the amount towards the same and for carrying out their ancillary work, Zone, Division and Sub Division Offices are framed. It is further said that in regard to the present case all the power regarding administration is vested with Deputy Engineer, and he is well aware with the facts and therefore, this suit is preferred before this Court containing his signature. It is further said that plaintiff-company is doing work of producing and generating of electricity and distributing in the state of Gujarat therefore, the consumers who are in need of electricity, are required to apply in prescribed form for the connection and after due verification, on receiving charges thereof, they are allotted electric connection.
03. As per the avernments made by the plaintiff-company in plaint, on dated 23.12.2014, officers of checking squad of PGVCL went for electric checking at the residence of defendant. At the time of checking, it was found that defendant used 588 watt (2 fan of 60 watt, 3 gola of 100 watt, 1 T.V. of 150 watt, = 588 watt) electric supply illegally from electric pole by connecting direct wire, resultantly, his electric connection was disconnected. Defendant is not the consumer of plaintiff Board. At the time of checking on the spot, Checking Officer filled checking sheet and also prepared the

rojkam. FIR is also lodged against the defendant. Plaintiff Board has given a supplementary bill of Rs.5646.98 ps. alongwith D.P. charges of Rs.1411.74 ps. summing up to Rs.7058.72 ps. As defendant did not pay the due amount, a demand notice was duly served to the defendant. Even though, as he didn't pay the due amount of electric theft to the plaintiff company, the present suit is filed for the recovery of Rs.7058.72 ps. with interest and cost.

04. The defendant was duly served with the summons-notice on dated 26.09.2017 vide Ex.5. But the defendant has neither remained present in-person during the proceeding of the suit nor he appeared through his advocate. He has not even filed his reply. Therefore, this suit was ordered to be proceeded *ex-parte* against the defendant by this Court.
05. In order to prove the present suit, following oral as well as documentary evidence has been produced by the plaintiff-company :

(A) **ORAL EVIDENCE LED BY THE PLAINTIFF-COMPANY:**

Sr. No.	Particulars of document.	Exhibit No.
1.	Affidavit on behalf of applicant Mr.Sharadkumar Gordhanbhai Panchal	8

(B) **DOCUMENTARY EVIDENCE LED BY THE PLAINTIFF COMPANY :**

Sr. No.	Particulars of documents	Exhibit No.
01	Checking report.	9
02	Panch Rojkam prepared at place of incident.	10
03	Internal C.R.	11
04	Annexure-4 - Muddamal receipt	12

05	Assessment report	13
06	Supplimentary bill	14
07	Complaint regarding electric theft	15
08	FIR	16
09	Legal Notice given to the defendant for payment of due amount by plaintiff company	17
10	Proforma No.12.	18

06. The plaintiff filed closing pursis at Exh.19.
07. Heard the learned advocate for plaintiff. To adjudicate the present suit, following issues are framed by this Court at Exh.6.

:: I S S U E S ::

- (1) Whether the plaintiff proves that Rs.7058.72 ps. 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, what rate ?
- (4) What order and decree ?
08. Finding and reasons of above issues are as under :-
- (1) In the affirmative.
 - (2) In the affirmative.
 - (3) Partly in affirmative.
 - (4) As per final Order.

:: R E A S O N S ::

ISSUES NO.1 TO 3 :-

09. 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 and decide issues No.1 to 3 combinedly.
10. In the present suit plaintiff company has produced an affidavit at Ex.8 executed by Shri Sharadkumar Gordhanbhai Panchal, Deputy Engineer who is authorised by the plaintiff company. 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. On perusal of those documentary evidences, Ex.9 is Checking report, Ex.10 is Panch Rojkam prepared at place of incident, Ex.11 is internal C.R., Ex.12 is Annexure-4, Ex.13 is Assessment report, Ex.14 is supplementary bill, Ex.15 is complaint regarding electric theft, Ex.16 is FIR, Ex.17 is legal notice given to the defendant for payment of due amount by plaintiff company and Ex.18 is Proforma-12.
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 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 *exparte* and none has challenged the evidence of plaintiff, the suit of plaintiff succeed and deserves to be allowed.
13. Since the plaintiff company has claimed an amount of Rs.7058.72 ps. towards electric charges and Rs.1411.74 ps. towards DPC but for claiming the charge towards DPC, the plaintiff has not placed any evidence on record to show that plaintiff company is entitled for such delay payment charges. Plaintiff has not even shown any rule or provision under which they are entitled for DPC therefore, company is entitled to recover the amount of the bill along with the interest from the defendant.
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. 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 and 2 are given in affirmative and issue No.3 is given in partly affirmative and in regard to issue No.4, I pass the following order.

:: O R D E R ::

1. The present suit is partly allowed with cost.
2. The defendant is directed to pay Rs.5646.98 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 the open Court today, on 7th day of April, 2018.

Date : 07.04.2018.

Bhavnagar.

(Vijaysinh Abhesinh Rana)
7th Additional District Judge,
Bhavnagar.
Code No. GJ01510.

* * *

deraiya