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Duration : Y M D

**IN THE COURT OF SPECIAL JUDGE (SHRI J. R. SHAH)
AT : AMRELI.**

SPECIAL CIVIL (ELECTRIC) SUIT NO. 243 OF 2016

Exh. _____

Plaintiff :

Paschim Gujarat Vij Company Limited
Head Office at Race course Vadodara and its
Sub-Division Office situated at Amreli & Savarkundla through its;
Dy. Engineer,
Paschim Gujarat Vij Company Limited
Amreli town Sub-division,
Amreli.

V/s.

Defendant :

Bholanath Mojnath Nathji
Aged about 52 years, Occup. : Labour
Residing at : Sarvarkundla road bye-pass, Opp. GUJCO Mill
Dindayal quarter, Nr. the house of Bharatbhai Keshubhai
Amreli.

SUIT TO RECOVER RS.2,536-06 PAISE

Appearances :

Mr. H. M. Solanki, L.A. for the plaintiff.
The defendant served, though absent.

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

1. The plaintiff has instituted the suit for recovery of Rs.2,536-06 paise against the defendant.
2. Brief facts relevant for disposal of the suit are that the plaintiff is a corporation constituted under Indian Electricity Act and use to supply electricity to the consumers and the consumers are bound to pay the bills of electricity according to use of electricity. The defendant is residing at village Amreli and is doing labour work and he is not the consumer of the plaintiff. Officer of the plaintiff used to check periodically electric connection to avoid unauthorized use and to prevent a theft of the electricity and during such checking on 08-09-14 by the officers of the plaintiff - company, it is found that the defendant was indulging theft of electricity directly from electric pole; thereby he was indulging the power theft and hence, checking sheet was prepared by the officer of the plaintiff - company in which the defendant's representative has denied to sign it and thereafter, procedure was done according to rules and regulation. It is also submitted that criminal complaint was also filed against the defendant for committing the theft of electricity and also as per ABCD formula, a bill of theft of electricity was issued and sent to the defendant which he has not paid and, therefore, legal notice was issued to the defendant, but he fails to tender the amount, therefore present suit has been instituted by the plaintiff for recovery the amount from the defendant with interest at the rate of 18% p.a., from the date of institution of the suit.
3. The defendant was duly served with the notice; but he preferred not to appear before the Court even though the sufficient opportunity has been given to him and hence, the right to file the written statement

was closed and the matter was ordered to be proceeded ex parte.

4. The plaintiff has to prove his case; examined Mr. Maheshkumar Himatlal Kalani, Dy. Engineer vide Exh. 09 and produced following documentary evidence at Exhs. 13 to 26:

Sr.No.	Particular of the document	Exhibit
1	Proforma – 12	13
2	Rojkam	14
3	Inspection report	15
4	ABCD calculation sheet	16
5	Annexure – 4	17
6	Supplementary bill	18
7	Annexure 12	19
8	Letter for lodging the complain	20
9	Notice for legal procedure	21
10	RPAD envelope	22
11	DPC calculation sheet	23
12	Certificate for legal procedure	24
13	Short history of the case	25
14	Office order	26

5. At the time of recording of oral evidence of the plaintiff, the defendant did not appear and has not cross-examined the witness of the plaintiff and hence, his right to adduce evidence was closed. In these circumstances, there is no evidence on record on behalf of the defendant.

6. Following issues have been raised at Exh.08 for determination of present suit;

[1] Whether plaintiff-company proves that the defendant has committed electricity theft as alleged ?

- [2] Whether the plaintiff is entitled to recover Rs.2,536-06 paise towards dues of power theft from the defendant ?
- [3] Whether the plaintiff is entitled to recover 18% p.a., interest as prayed for ?
- [4] Whether the plaintiff is entitled to get the relief as prayed for ?
- [5] What final order & decree ?

7. My findings on the above issues are as follows :

- [1] In affirmative.
- [2] In affirmative.
- [3] Partly in affirmative.
- [4] Partly in affirmative.
- [5] As per final order.

::: REASONS :::

Issues No.1 & 2.

8. Heard L.A. Mr. H. M. Solanki for the plaintiff. He has submitted that plaintiff has proved his case by oral and documentary evidence. All the documentary evidence are prepared in ordinary course of business of the plaintiff. Officer of the plaintiff has no enmity with the defendant, therefore, his versions on oath can be relied on. No one remained present on behalf of the defendant to contest the present suit, therefore suit be decreed.

9. To find out substance in submission of learned advocate for the plaintiff, I think it proper to consider oral as well as documentary evidence adduced by the plaintiff. Plaintiff's witness Mr. Maheshkumar Himatlal Kalani has deposed on oath at Exh. 09 that the defendant is residing at village Amreli and is doing labour work and he is not the consumer of the plaintiff. Officer of the plaintiff used to check periodically electric connection to avoid unauthorized use and to prevent a theft of the electricity and during such checking on 08-09-14 by the officers of the plaintiff - company, it is found that the defendant was indulging theft of electricity directly from electric pole; thereby he was indulging the power theft and hence, checking sheet was prepared by the officer of the plaintiff - company in which the defendant's representative has denied to sign it and thereafter, procedure was done according to rules and regulation. It is also submitted that criminal complaint was also filed against the defendant for committing the theft of electricity and also as per ABCD formula, a bill of theft of electricity was issued and sent to the defendant which he has not paid and, therefore, legal notice was issued to the defendant, but he fails to tender the amount.

10. In support of this oral version the witness of the plaintiff has produced documentary evidence at Exh.13 to 26 which were referred as above and considered the said documentary evidence, inspection report produced at Exh. 13 clearly show that the defendant was indulging the power theft illegally. Not only that, but the defendant has denied to make the signature upon the procedure adopted by the plaintiff - company. Looking to the ABCD calculation sheet of Exh. 16 the

amount of Rs. 2178-56 paise is also required to be recovered from the defendant, for which the plaintiff has served the legal notice dated 16-06-16; but the defendant has not paid any heed to it which shows that the defendant has indirectly admitted the procedure and he has indirectly admitted that he was found indulging the power theft illegally. Under the circumstances, the conduct of the defendant show that as he is in guilty even though he has not given the co-operation to the plaintiff and, therefore, the plaintiff has no way except to do the procedure for recovery of the suit bill amount from the defendant. Thus, considering above all the oral as well as documentary evidence on record, it is found that the defendant has committed the power theft and thus, the procedure adopted by the plaintiff is quite legal and proper in the eye of law. Moreover, the defendant has not tried to cross-examine the plaintiff's witness for refuting the documentary evidence produced by the plaintiff. Not only that, but he has not taken care to further engage the advocate for defending his case which clearly shows that indirectly the defendant has admitted the facts of the present case. In these circumstances, the pleading and oral evidence of the plaintiff remained unchallenged. Oral evidence is supported by the documentary evidence produced at Exhs. 13 to 26, therefore considering oral as well as documentary evidence, it is clearly established that the defendant was found indulged in theft of electricity and hence, the plaintiff is entitled to recover Rs.2,536-06 paise, hence I reply Issues No. 1 & 2 in affirmative and accordingly.

Issue No.3 & 4.

11. So far as interest is concerned, the plaintiff has asked 18% interest on the due amount, but nothing on record which proves that

the rate of interest is contractual rate of interest and hence, I think it proper to award 9% interest on the due amount and, therefore, the plaintiff is entitled to recover Rs.2,536-06 paise with interest at the rate of 9% p.a., from the date of institution of the suit till its realization hence, I reply Issue Nos. 3 and 4 in affirmative accordingly.

Issue No.5.

12. As discussed herein above, the plaintiff has succeeded to prove Issue Nos. 1 to 4 and hence, following final order is passed in the interest of justice.

::: O R D E R :::

[1] The suit is allowed.

[2] The plaintiff is entitled to recover Rs.2,536-06 paise [Rupees Two thousand five hundred thirty six and six paise only] from the defendant towards suit bill with interest @ of 9% p.a., from the date of institution of the suit till its realization.

[3] Parties should bear their own costs.

[4] Decree be drawn accordingly.

Pronounced in open Court today on **27th December, 2018.**

Place : Amreli.

Date : 27-12-2018

[**Jitendra Rameshchandra Shah**]

Special Judge &
Principal District Judge, Amreli
Code No. GJ01044