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**IN THE COURT OF SPECIAL JUDGE
(SHRI N. P. CHAUDHARY) AT : AMRELI.**

SPECIAL CIVIL SUIT (ELECTRIC) NO. 235 OF 2017

Exh. _____

Plaintiff :

Paschim Gujarat Vij Company Limited,
Corporate office situated at Rajkot and its one
Division Office is situated at Amreli and its
Sub-Division office is situate at Amreli,
through its Dy. Engineer,
Amreli Town Sub-Division Office, Amreli.
Ta. : Amreli, Dist. Amreli.

V/s.

Defendant :

Bhanubhai Tapubhai Vaghela,
Age : 53 Years, Occupation : Sweeping work, Reli. : Hindu,
Residing at : Savarkundla Main Road, Valmikivas,
Opp. Dhanani Mill, Nr. Hanumanji Temple, Nr. Neem Tree, Amreli
Taluka : Amreli, District : Amreli

SUIT TO RECOVER RS. 8,053-82 Paisa.

Appearances :

Mr. H. M. Solanki, Ld. Advocate for the plaintiff company.
For the defendant : Ex-parte.

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

1. The plaintiff is the self established institution under the Indian Electricity Act and works to provide electricity for several purposes like as domestic, agricultural, industrial etc. by installing the poles as well as electrical lines on it and thereby providing the electricity to its customers in the State having its division and sub-division offices in the State and out of them one Town Sub-Division Office is situated at Amreli, the corporate office situated at Rajkot. That, the signatory of the plaint has been granted power to institute the suit from his head office. The present defendant resides at Amreli and he is not legal consumer of the plaintiff company. That, on 15-07-16, the checking squad of the plaintiff – company checked the house of the defendant in presence of woman representative of the defendant and it was found that he was committing theft of electricity illegally, directly from LT Pole passed nearby his house by connecting yellow colored service wire. Hence the said wire of 12 to 15 meter came to be seized at the spot. Thus, the defendant was found indulging in power theft and hence, checking sheet was prepared by the officer of the plaintiff - company in which woman representative of the defendant has denied to put her signature and thereafter, procedure was done according to the rules and regulation of the company. It is also submitted that the police complaint in this regard was filed under the provision of Section 135 of the Electricity Act against the defendant in Bhavnagar Police Station vide CR No. II 6893/16 dated 16-07-16. Further, as per ABCD formula, a supplementary bill was given to the defendant in respect of

power theft and also informed to pay the same in the office of plaintiff company, but the defendant has not paid any amount towards the power theft, therefore registered legal notice was issued to the defendant, which was duly served to the defendant, though the defendant has not taken care to pay the said due amount. It is further averred that till today the defendant has not paid any amount towards due amount of power theft and therefore present suit has been instituted by the plaintiff company for recovery of the amount of Rs. 7,526-93 Paise towards supplementary bill amount and Rs. 526-89 Paise towards delay payment charges, total comes to Rs.8,053-82 Paise from the present defendant with interest at the rate of 18% p.a. from the date of institution of the suit.

2. On filing of this suit, the defendant was duly served with the notice; but they were not preferred to appear before the Court even though the sufficient opportunities have been given to them accordingly, the Court has passed order to try the suit ex-parte against the defendant on 07-09-17.

3. The plaintiff company has to prove its case, examined Mr. Maheshkumar Himmatlal Kalani, Dy. Engineer, Town Sub-Division Amreli vide Exh. 25 and produced following documentary evidences vide Exh. 10 to 24 :-

Sr. No.	Particular of the document	Exhibit
01	Proforma – 12	10
02	Checking sheet	11
03	Rojkam	12

04	LFH calculation sheet	13
05	Annexure – 4	14
06	Supplementary bill u/S. 135	15
07	Annexure – 12	16
08	Letter for lodging complaint	17
09	FIR	18
10	Legal proceeding notice	19
11	Post acknowledgment	20
12	D.P.C. Calculation sheet	21
13	Legal proceeding certificate	22
14	Short history of the case	23
15	Office order	24

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

5. Considering the facts, circumstances and evidence on record, the following issues have been framed vide Exh. 6 for determination of the present suit;

- [1] Whether the plaintiff proves that the defendant has committed electricity theft as alleged ?
- [2] Whether the plaintiff is entitled to recover Rs.8,053-82 towards remaining 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 ?
6. 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 Nos. 1 & 2 :-

7. Heard Ld. Advocate Mr. H. M. Solanki for the plaintiff. He has submitted that plaintiff company has proved its case by oral and documentary evidence. All the documentary evidence are prepared in ordinary course of business of the plaintiff company. Officer of the plaintiff company 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.

8. 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 Himmatlal Kalani, Dy. Engineer, Town Sub-Division Amreli has

deposed on oath at Exh. 25 that the defendant is residing at Amreli and he is not legal consumer of the plaintiff – company. That the officer of the plaintiff company used to check electric connection periodically to avoid unauthorized use and to prevent theft of electricity and during such checking on 15-07-16 by the officers of the plaintiff – company in the house of defendant in presence of woman representative of the defendant, it is found that he was committing theft of electricity illegally, directly from LT Pole passed nearby his house by connecting yellow colored service wire. Hence the said wire of 12 to 15 meter came to be seized at the spot. Thus, the defendant was found indulging in power theft and hence, checking sheet was prepared by the officer of the plaintiff - company in which defendant has denied to put his signature and thereafter, procedure was done according to the rules and regulation of the company. He has also deposed on oath that the police complaint was also filed under the provision of Section 135 of the Electricity Act and thereafter 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 said amount of power theft.

9. In support of this oral version the witness of the plaintiff company has produced documentary evidence at Exhs. 10 to 24 which were referred as above and considered the said documentary evidence, especially the checking sheet produced at Exh. 11 clearly shows that the defendant was indulging the power theft illegally. Not only that, but in the said document, woman representative of the defendant has denied to put her signature which shows that she was agreed with the

procedure adopted by the officers of the plaintiff – company. Looking to the proforma – 12 produced at Exh. 10 which shows that Rs.8,053-82 Paisa is due to recover from the defendant for which the plaintiff company has served the legal notice No. 7771 dated 07-12-16 which is produced on record at Exh. 19, which was duly served to the defendant, though the defendant has not paid any heed to pay the due amount, which shows that the defendant has indirectly admitted the procedure and he has indirectly admitted that he was found indulging the power theft illegally and, therefore, such a notice in registered cover has been sent by the plaintiff and therefore, the conduct of the defendant shows that as he is in guilty even though he has not given the co-operation to the plaintiff company. 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 company is quite legal and proper in the eyes of law. Moreover, the defendant has not tried to remain present before the Court though the notice was served upon them. In these circumstances, the pleading and oral evidence of the plaintiff company remains unchallenged. Oral evidence is supported by the documentary evidences produced at Exhs. 10 to 24, therefore considering oral as well as documentary evidence, it is clearly established that the defendant was found indulged in theft of electricity therefore he is bound to pay the amount of Rs. 7,526-93 Paisa towards supplementary bill amount + Rs. 526-89 Paisa towards delay payment charges; total comes to Rs.8,053-82 Paisa, hence I reply issue Nos. 1 & 2 in affirmative accordingly.

Issues Nos. 3 & 4 :-

10. So far as interest is concerned, the plaintiff has asked 18% interest on the due amount from the date of filing of the suit till its realization from the defendant, but there is no specific contract between the parties as to the rate of interest. In the special circumstances and in absence of any specific contract regarding rate of running interest, the rate on which moneys are lent or advanced by the Nationalized Bank can be awarded and at present looking to the rate of interest of Nationalized Bank, if the direction would be given to pay 9% interest p.a. on the suit dues, it would be just, reasonable and proper, and therefore, the plaintiff is entitled to recover Rs.8,053-82 Paisa 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 partly in affirmative accordingly.

Issues No. 5 :-

11. As discussed herein above, the plaintiff company has succeeded to prove issue Nos. 1 to 4 and hence, for the issue No. 5 following final order is passed in the interest of justice.

::: O R D E R :::

1. The present suit is hereby allowed.
2. The plaintiff - company is entitled to recover Rs.8,053-82 Paisa [Rupees Eight Thousand Fifty Three and Eighty Two Paisa only] from the present defendant towards suit bill with interest at the rate of 9% p.a. from the date of filing of the suit till its realization.

3. Parties shall bear their own costs.
4. Decree be drawn accordingly.

Signed and pronounced in open Court to-day on this **30th** day of **January, 2018.**

Place : Amreli.
Date : 30-01-2018

[N. P. CHAUDHARY]
Special Judge (Electricity)
Amreli
GJ00374