

Received on : 14/06/2018
Registered on : 14/06/2018
Decided on : 20/03/2019
Duration :
Exhibit :

**IN THE COURT OF 6TH ADDITIONAL DISTRICT JUDGE &
SPECIAL JUDGE (ELECTRICITY), BHAVNAGAR.**

Special Civil Suit (Electricity) No.2344/2018.

Plaintiff : Paschim Gujarat Vij Co. Ltd.,
Constituted under Gujarat Electricity Industries
(Reorganization & Regulation) Act, 2003
having its Head Office at Laxminagar, Rajkot
through **Mamsa Sub-Division Office,**
Taluka Ghogha, District Bhavnagar.

Versus

Defendant : Batukbhai Chothabhai Parmar
Adult, Hindu,
R/o. High-Way Road, Near Mahakali mandir
Tansa ,Tal. Ghogha, District Bhavnagar.

Re: - Suit for recovery of Rs. 17,698/00 Ps.

Appearance:

Mr.P. V. Gohil, learned Advocate for the plaintiff.
Defendant - Absent.

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J U D G M E N T

01. The plaintiff PGVCL Company has filed this suit on 14.06.2018 through its **Deputy Engineer,Mamsa Sub-Division Office, Ta.Ghogha, Dist. Bhavnagar** against the defendant for recovery of electric theft amount of **Rs. 17,698/00 Ps.** with interest @ 24% and cost.

02. In plaint, the plaintiff has stated that on **29.06.2016**, the Officers of the plaintiff Board carried out electric checking at premises of the defendant situated at **village Tansa, Tal. Ghogha, Dist. Bhavnagar**. At that time, the defendant found for making electric theft and used **120 watt** illegally by connecting wire to electric line passing through nearby his premises. Therefore, the electric connection of the defendant was cut off. Defendant is not the consumer of plaintiff Board. Plaintiff Board has given supplementary bill of **Rs.13,004/00 Ps.** with D.P. charges of **Rs.4694.00 Ps.** i.e. total **Rs. 17,698/00 Ps.**
03. For such due, plaintiff Board has sent notice to the defendant and demanded the same due amount from the defendant but, defendant has not paid the due amount. Therefore, plaintiff Board has filed this suit to recover the afore-stated amount with 24% interest and cost.
04. Notice was issued to the defendant and it was served vide **Ex.5** and the defendant appeared asked adjournment for appoint Advocate. Thereafter, empal opportunity given to the defendant remained absent and ultimately, right to file reply of the defendant came to be closed.
05. Plaintiff has produced the following oral as well as documentary evidence :-

Exhibit	Particulars
08	Affidavit of Naineshbhai Parsottambhai Sanchaniya, Deputy Engineer with plaintiff-company.

10	Copy of Calculation sheet.
11	Rojkam
12	Annexure – 4
13	Supplementary bill.
14	Forwading letter of Legal Notice.
15	Copy of Legal Notice.
16	Proforma No. 12
17	F.I.R.
18	Physical site verification Report.

Closing pursis at **Ex.19** by the learned Advocate for the plaintiff.

06. Heard learned Advocate for the plaintiff.

07. Issues are framed vide **Ex.6**, which are as under :-

- (1) Whether the plaintiff proves that **Rs.17,698/00 Ps.** are due from the defendant towards electricity charges ?
- (2) Whether the plaintiff proves that the defendant has committed theft of electric energy ?
- (3) What is the rate of interest? If plaintiff company succeed to prove its claim?
- (4) What order and decree ?

08. Finding and reasons of above issues are as under :-

- (1) In Affirmative.
- (2) In Affirmative.
- (3) At the rate of 7%.
- (4) As per final Order.

:: R E A S O N S ::

ISSUES NO.1 TO 4:

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 all the issues together.
10. In the present suit plaintiff company has produced oral as well as documentary evidence wherein the Officer/Employee of the plaintiff company has filed his affidavit too. 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 vide **Ex.4**.
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 unchallenged. 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 learned 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 ex-parte and none has challenged the evidence of plaintiff, the suit of plaintiff succeed and deserves to be allowed.
13. The State Government for the purpose of providing speedy trial constituted Special Court and the Court of the District Court is notified as Special Court. Section 154 of the Electricity Act 2003 provides the procedures and powers of the Special Court. Sub section 5 of Section 154 provides that the Special Court may determine the civil liability against a consumer or a person in terms of money for theft of energy. It is also provided in explanation to section 154 of Electricity Act- 2003 that for the purposes of section 154 "civil liability" means loss or damage incurred by the Company or licensee or the concerned persons, as the case may be, due to the commission of an offence referred to in section 135 to 139 and therefore, also incurred civil liability. Therefore, this Court being a District Court has jurisdiction to entertain and try this suit for ascertaining civil liability.
14. So far as the rate of interest is concerned, the plaintiff-company has claimed the interest at the rate of **24%** per annum. The plaintiff does not produce any supportive evidence so far as the rate of interest is concerned. The plaintiff has not submitted any contract or deed regarding rate of interest. Nor he stated any fact under which provision he is entitled to get **24%** 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 with regard to issue No. 4, I pass following order:-

:: FINAL ORDER ::

The suit is partly allowed.

Plaintiff Board is entitled to recover the due amount of electric theft bill of **Rs.17,698/00 Ps.** with 7% interest from the date of bill till its realisation.

Decree be drawn accordingly.

Defendant bear his cost and also bear the cost of the plaintiff.

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

B H A V N A G A R. DATE : 20/03/2019. <i>a.p</i>	(ANNAPURNA PURSHOTTAMDAS KANSARA), 6TH ADDL. DISTRICT JUDGE & SPECIAL JUDGE (ELECTRICITY), BHAVNAGAR. CODE NO. GJ00409
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