

Received on : 27/06/2017
Registered on : 27/06/2017
Decided on : 27/03/2018

BEFORE THE HON'BLE 2nd ADDITIONAL DISTRICT COURT AT
VISAVADAR.

SPECIAL CIVIL SUIT-ELECTRICITY NO.240 of 2017

Exhibit : _____

P.G.V.C.L.,
Through: The Dy.Engineer,
P.G.V.C.L.,
Sub-division,
Bhesan.

::::::::::::Plaintiff.

Versus

Ghanshyambhai Devrajbhai Gondaliya,
Aged about: 45 years,
Occupation: Labour work, Religion:Hindu,
R/o.Chuda,Tal.Bhesan.

::::::::::::Defendant

Subject Suit for Recovery of Rs.3458-47 ps., under
: Section 154(5) of the Electricity Act,
2003.

APPEARANCES :

Mr.D.B.Raval, Learned Advocate for the plaintiff.
None on behalf of the defendant.

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

1. The plaintiff-company has filed the present suit against the defendant for recovery of Rs. 3458-47 ps., towards the Power Theft Bill along with 18% interest and costs.

2. The facts leading to this suit, in brief, are as under:-

It is the case of the plaintiff company that it is a successor company under the Electricity Act, 2003. It is further case of the plaintiff that the plaintiff company is having its head office at Rajkot and Bhesan is one of the Sub-Division and its Deputy Engineer has right to sign the plaint. It is the case of the plaintiff further, that the plaintiff company is supplying the electricity to the consumers.

2.1. It is the case of the plaintiff, further, that the present defendant is not a consumer of the plaintiff company. That the Officers of the plaintiff Company has done such sudden checking of the residence of the defendant on **05/06/2015** and it was found from that an arrangement was made by the defendant that the electricity was utilised unauthorisedly. Accordingly, it was found that the defendant had committed power theft and has tampered with the electric line of the plaintiff and therefore, the electricity theft was found being done by the defendant and accordingly, it was found that mal-practice was adopted and thereby, power theft bill was issued to the defendant.

2.2. It is the case of the plaintiff, further, that a supplementary power theft bills for **Rs.2668-80** Ps., towards the electricity theft as per the report of the Checking Officer has been given to the defendant. That the plaintiff has prayed for 18% interest as per the rules & regulations of the company. The plaintiff-company has prayed for recovery of **Rs. 2668-80** Ps. and **Rs.789-67** Ps. towards

D.P.C. and thus, in all they have prayed for Rs. **3458-47** ps. The plaintiff-company issued legal notice to the defendant on **28/11/2016**, but the defendant did not care to pay the outstanding dues and therefore, the plaintiff has filed this suit for recovery of the due amount. Filing present suit, plaintiff prays to grant relief as prayed in the present suit for recovery of the suit amount together with interest at the rate of 18% p.a., from the person and property of the defendant and prayed to pass decree in its favour.

3. On presentation of the plaint, summons was issued to the defendant. The original summons is kept at Exhibit 6 but neither the defendant nor any one on his behalf appeared before this Court and hence, it was ordered to proceed ex-parte against the defendant order passed below Exh.-1 on 11/01/2018.

4. The plaintiff-side has led the oral evidence and produced the documentary evidence as under:-

(A) Oral evidence:-

- 1) Exh 09 Affidavit-in-Chief of the plaintiff
. Himansubhai Maneklal Parmar,
Dy.Engineer of Sub-Division, Bhesan

(B) Documentary evidence.

- 1 Exh 11 Permission to file civil suit
- 2 Exh 12 Office order to file the suit
- 3 Exh 13 Proforma No.12
- 4 Exh 14 Case history
- 5 Exh 15 Ledger copy.
- 6 Exh 16 D.P.C. Calculation.

7	Exh	17	Notice
8	Exh	18	Letter to lodge police complaint.
9	Exh	19	Forwarding of Supplementary Theft Bill.
10	Exh	20	Supplementary Theft Bill.
11	Exh	21	Calculation Sheet
12	Exh	22	Cover
13	Exh	23	Acknowledgment slip
14	Exh	24	Checking Sheet No.41470
15	Exh	25	Rojkam
16	Exh	26	Gate Pass.

5. The defendant side has neither submitted any documentary evidence nor led any oral evidence. The plaintiff-side has submitted closing pursis at Exhibit 27. Heard, the arguments of Learned Advocate on behalf of the plaintiff.

6. This Court has framed the following issues at Exhibit-8 for my determination :

- 1 Whether plaintiff is entitled to recovery suit dues from defendant/s?
- 2 Whether plaintiff is entitle to recover delay payment charges with @ 1.5% interest per month?
- 5 What order and decree?

7. The following are the answers to the above issues in light of the material available on record:-

- (1) Partly in the affirmative.
- (2) Partly in the affirmative, @ 9 % p.a. from the date of filing of the suit.
- (3) As per Final Order.

-: REASONS :-

Issue Nos. 1 to 3 :

8. Above issues are interconnected and inter linked with each other and findings of one issue depends upon another and to avoid frequent repetition of the facts; I have decided to discuss the above issues together by common discussion and reasoning for the sake of convenience.

9. To prove the suit, the plaintiff has submitted oral evidence of **Himansubhai Maneklal Parmar**, the Dy.Engineer of the plaintiff-company, in form of affidavit at Exh.-9. He has stated the facts as per the plaint at Exhibit 1. Therefore, to avoid repetition, the same is not reproduced here. Further, the witness has produced the documentary evidence identifying the signatures and contents. The witness has not been cross examined by the defendant-side as the defendant remained absent.

10. The plaintiff-side has produced documentary evidence at Exhibits 11 to 26 in support of their case. The defendant-side has not produced any documentary evidence nor led any oral evidence on record.

11. It is crystal clear that the officers of the plaintiff-company went for checking at the residential place of the defendant at Village : **Chuda**, Taluka Bhesan of Junagadh District. It is the case of the plaintiff, further, that the present defendant has unauthorisedly taken direct electric

connection from the electric line of the plaintiff for the residential purpose. That the plaintiff is making sudden installation checking of legal as well as illegal connections. That the Officers of the plaintiff Company has done such sudden checking of the Residential place of direct connection of the defendant on **05.6.2015** and found that the defendant has committed power theft and, therefore, the electricity theft was found being done by the defendant and a detailed rojkam and checking report were prepared at the place.

12. On perusal of the Office order at Ex. **12**, Case history of consumer at Ex. **14**, and the Supplementary Bill at Ex. **20** and other details, it prima facie appears that the defendant has obtained direct electric connection for residential purpose from the plaintiff company and the plaintiff has shown Rs. **2668.80** Ps. for power theft and Rs. **789.67 ps.** **towards the D.P.C.** Charges. Therefore, the **total amount of Rs.3458.47 ps,** are due as per the Ledger against the defendant from the plaintiff. Therefore, it is crystal clear that the amount due is within the period of limitation and that is why the plaintiff is entitled to recover the said suit amount from the defendant.

13. Moreover, the plaintiff has not submitted any documentary or oral evidence that can support to prove the conditions regarding D.P.C. charges laid down during the agreement between the plaintiff and

the defendant and that is why the plaintiff is not entitled to claim D.P.C. charges of Rs. **789.67 ps.**, as per ledger. For D.P.C. charges, the plaintiff has failed to bring sufficient evidence and that is why, I do not find it fit to grant any relief regarding the D.P.C. charges. Therefore the plaintiff is entitled to get the due amount excluding D.P.C. i.e. Rs. **2668.80 ps.** Above evidence of the plaintiff has not been challenged by the defendant by way of producing any documentary evidence and there is no reason to disbelieve the plaintiff. Considering the entire oral as well as documentary evidence as a whole, the defendant has neither appeared before this Court nor produced any rebuttal, contrary, cogent and convincing defending evidence on record. The plaintiff has also not been cross-examined by the defendant. Under these circumstances, as discussed above, I have no hesitation to conclude that the plaintiff-Company is entitled to recover an amount of Rs. **2668.80 ps.**, from the defendant as legal and valid dues. Therefore, I am of the view that the plaintiff Company has successfully proved its dues as stated in the suit. Hence, I answer Issue No.1 partly in the affirmative.

14. On perusal of entire record, it transpires that there is no agreement of interest between the plaintiff and the defendant. In light of the Section 34 of C.P.C., if there is no agreement of interest between the parties, the Court can pass order for prevailing rate of interest. In this case the

defendant is not refunding the outstanding amount to the plaintiff; the defendant is liable to pay interest and there is no agreement between the parties too, in these circumstances, in the interest of justice, prevailing interest can be granted. Considering the principle laid down by the Hon'ble Apex Court of India regarding interest charges, prevailing rate of interest i.e. 9 % per annum may be granted from the date of filing of the suit till the realization of the decretal amount. Hence, I answer issue No.2 partly in the affirmative accordingly and award interest at the rate of 9% p.a. on the decretal amount from the date of the suit till its realization.

15. ISSUE NO.3:-

Considering all the above facts and circumstances of the case and evidence on record, the plaintiff is partly entitled for the relief as stated above and hence, I pass the following order in the interest of justice:-

: O R D E R :-

The plaintiff's suit is partly allowed.

The plaintiff is entitled to recover Rs. **2668.80 Ps. (Rupees Two Thousand Six Hundred Sixty Eight and Eighty paise only)** alongwith interest at the rate of 9% per annum from the date of filing of the suit till actual realization of the amount from the defendant.

The defendant to pay the costs of the suit to the plaintiff and bear his own.

Decree to be drawn accordingly.

Signed & Pronounced in the open court today on this 27th day of March, 2018.

Date : **27.03.2018** (Mr.BHARAT JAMNADAS GANATRA)
Place : VISAVADAR 2nd ADDL.DISTRICT JUDGE,
VISAVADAR
GJ00509