

Registered on:-

Decided on:-

Duration :- Y. M. Days.

In the court of the 3rd Additional District Judge, Bhavnagar at Mahuva

Spl.Civil suit (Electricity) No.12/2015
Old No. 189 /2009

Ex. _____

The Paschim Gujarat Vij Co. Ltd.,
 A company established for
 supply of electricity,
 Through Head office at Rajkot,
 Jesar Sub Division office,
 Jesar, Dist. Bhavnagar

....Plaintiff

Versus.

Vikrambhai Panchabhai Shiyal
 Age : Adult, Occupation: Agriculture
 Residing at Near Bhojanshala, Bagdana
 Ta. : Mahuva, Dist. Bhavnagar

...Defendant

Subject : Suit for recovery of Rs.37,262.49 paisa

Ld. Advocate Mr. K.V. Vaidya for the plaintiff
 Ld. advocate Mr. P. P. Desai for the defendant.

= J U D G M E N T =

1) Plaintiff has filed the present suit for recovery of Rs.37,262.49
 paisa along with the cost and interest from the defendant as prayed for
 in para-10 of the plaint

2) The brief facts of the plaintiff's case are as under :-

That the plaintiff is a Paschim Gujarat Vij Company Limited, (P.G.V.C.L. for short) established as per the section 5 of the Gujarat Electricity Supply Act before its conversion into P.G.V.C.L.

That it is the further the case of the plaintiff company that as on 14/04/2008 officers of the plaintiff company carried out surprise checking of the shop of the defendant and during surprise checking it is found that defendant was extracting electricity by hooking from the plaintiff company's L.T. line pole illegally and, therefore, the plaintiff company had issued bill of Rs. 31,578.38 paisa to the defendant and in spite of repeated request made by the plaintiff company to the defendant for the payment thereof and even after issuing of the legal notice to the defendant for the payment thereof, defendant had failed to make the payment of the bill in question and, therefore, the defendant is liable to pay the amount of including delay payment charges along with notice fee to the plaintiff company. So in all defendant is liable to pay Rs.37,262.49 paisa to the plaintiff company as stated in the plaint. But defendant has not made any payment of the said amount to the plaintiff company, hence plaintiff company is constrained to file the present suit for recovery of amount stated in the plaint along

with the cost and interest in terms of para-10 (A,B) of the plaint.

3) That in this matter though the suit summons was duly served upon the defendant, defendant has appeared through his advocate and filed his W.S. at Exh.11.

4) In his written statement defendant specifically denied all the facts and averment of plaintiff's plaint and in addition to that the defendant mostly contended that the plaintiff had filed this false suit and he is not liable to pay any amount as claimed by the plaintiff.

5) On considering the pleadings and documentary evidence of the plaintiff following issues have been raised at Exh.13 for determination of the plaintiff's suit.

1. શું વાદી પુરવાર કરે છે કે પ્રતિવાદીએ ગેરકાયદેસર વીજ વપરાશ કરી વીજ ચોરી કરેલ છે ?
2. શું વાદી માંગ્યા મુજબની વીજ ચોરીની રકમ વ્યાજ તથા ખર્ચ સહિત મેળવવા હકકદાર છે ? જો હા તો કેટલા ટકાના દરે .
3. શું હુકમ અને હુકમનામું.

5) My findings on the above issues with the reasons are as under:-

1. In the negative
2. In the negative
3. As per final order.

6) That in this matter in order to prove the suit, the plaintiff company has produced following oral as well as documentary evidence.

Oral Evidence

Deposition of Dy. Engineer of plaintiff company Mr. Menshibhai Rajabhai Kanthad at Exh.23 on affidavit.

Notes: After the filing to this affidavit this witness is not appeared before the Court for the cross examination on behalf of defendant and he has not provided opportunity to defendant for his cross examination. Therefore, the cross examination of plaintiff's witness was closed on fault of plaintiff side.

Documentary Evidence

No doubt, the plaintiff has filed total 12 documentary evidence at mark 4/1 to 4/12. But it was neither exhibited and in absence of cross examination of plaintiff witness on fault of him such documents is also not properly proved.

REASONS**8) Issues No. 1 and 2**

That in this case in order to prove the contents of the plaint Exh.1 on behalf of the plaintiff company one Menshibhai Rajabhai Kanthad, Dy. Engineer of sub Division P.G.V.C.L. Jesar has deposed on oath at Exh.23 wherein he has reiterated the facts stated in the plaint. But after the filing to this affidavit this witness is not appeared before the Court for the cross examination on behalf of defendant and he has not

provided opportunity to defendant for his cross examination. Therefore, the cross examination of plaintiff's witness was closed on fault of plaintiff side. In such a circumstances the oral evidence of this witness is not acceptable. Further the documentary evidence produced by plaintiff side is also not properly proved. In above circumstances and such documents is also not exhibited. Further the plaintiff side is failed to provide the opportunity of cross examination of his witness as regard to such all the documentary evidence also, in such a circumstances oral as well as documentary evidence produced by the plaintiff is not sufficient to establish that the defendant had committed the theft of energy as alleged in the plaint therefore, plaintiff is not entitled for such amount as they claimed in the plaint. Hence issue No.1 and 2 are decided in the negative and passed final following order.

ORDER

The present suit of the plaintiff P.G.V.C.L. is hereby dismissed.

Decree to be drawn accordingly.

Pronounced in the open Court to-day on this 22nd day of June, 2018.

Mahuva
Date : 22 -06 - 2018

(Shailesh Hiralal Patel)
3rd Additional District Judge
Bhavnagar, at Mahuva
Code : GJ00432

