

Received On : 01-02-2010
Registered On : 01-02-2010
Decided On : 09-04-2018
Duration : YY-MM-DD
08 02 08

IN THE COURT OF SPECIAL JUDGE AMRELI AT :
AMRELI.

SPECIAL CIVIL SUIT (ELECTRIC) NO. 17/2010

Exh. _____

Plaintiff :

Paschim Gujarat Vij Company Limited,
Head office situated at Rajkot and
its division office at Amreli & Savar Kundla
and its one Sub-Division office is situate at
Vijapadi,
through its Dy. Engineer,
Vijapadi Sub-Division Office, VIJAPADI.

V/s.

Defendant :

Bholabhai Girdharbhai Saaliya
Adult, Occupation : Agriculture,
Residing at Chhapri,
Taluka : Savar Kunla,
District : AMRELI.

SUIT TO RECOVER RS. 29,429.99 Ps.

Appearances :

Mr. B. N. Pandya, 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 Sub-Division Office is situated at Vijapadi, the head office at Rajkot. That, the signatory of the plaint has been granted power to institute the suit from his head office. The defendant resides at **Chhapri** village of Savar Kundla Taluka and they are legal consumer of the plaintiff company vide No.88588/00164/0 That, on 04-03-2008, the checking squad of the plaintiff – company checked the house of the defendant in presence of the defendant's representative and found that the defendant was committing theft of electricity illegally, directly from L.T. Line

passed nearby his house by connecting cable wire. 10 meter cable wire also came to be seized on 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 the defendant's representative has denied to put signature and thereafter, procedure was done according to the rules and regulation of the company. 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 a legal notice No.5296 was served on 23-06-2008 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.21,577.26 Paisa towards energy charge + Rs.2,157.73 towards electric duty amount + Rs.5,695.00 Paisa towards delay payment charges, total comes to

Rs. 29,429.99 Paisa 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 in spite of sufficient opportunities, he has not chosen to remain present, hence, as per the order dated 12-01-2018 passed below Ex.1, the matter has been proceeded ex-parte against the defendant.

3. To prove it case, the plaintiff has examined Mr. Bhaveshkumar Bhikhabhai Patel, Dy. Engineer, Vijhapadi Sub-Division, Vijapadi, vide Exh. 10 and produced following documentary evidences vide Exh.13 to 24 :-

Sr. No.	Particular of the document	Exhibit
01	Proforma – 12.	13
02	Legal Proceedings Certificate	14
03	Acknowledgement of R.P.A.D.	15
04	Notice Revenue Legal.	16
05	Notice under Sec.345	17
06	ABCD Calculation sheet.	18
07	Acknowledgement of R.P.A.D.	19
08	Annexure-12.	20
09	Annexure – C.	21
10	Consumption sheet.	22

11	Electricity connection checking report	23
12	Gate pass.	24

4. At the time of recording of oral evidence of the plaintiff company, the defendant remained absent and hence, his right to adduce evidence has been 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 by me vide Exh. 8 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. 29,429.99 Ps. 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.

::: R E A S O N S :::

Issues Nos. 1 & 2 :-

7. Heard Ld. Advocate Mr. B. N. Pandya 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 version 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. Bhaveshkumar Bhikhabhai Patel, Dy. Engineer, Vijapadi Sub-Division, Vijapadi, has deposed on oath at Exh. 10 that the defendant resides at **Chhapri** village of Savar Kundla Taluka and they are legal consumer of the plaintiff company vide No.88588/00164/0 That, on 04-03-2008, the checking squad of the plaintiff - company checked the house of the defendant in presence of the defendant's representative and found that the defendant was committing theft of electricity illegally, directly from L.T. Line passed nearby his house by connecting cable wire. 10 meter cable wire also came to be seized on 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 the defendant's representative has denied to put signature and thereafter, procedure was done according to the rules and regulation of the company. 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, and, therefore, legal notice was served to the defendant, but they failed 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 Ex. 13 to 24 which were referred as above and considered the said documentary evidence, especially the checking sheet produced at Exh. 23 clearly shows that the defendant was indulging the power theft illegally. Not only that, but in the said document, the representative of the defendant has not put signature which shows that the defendant was agreed with the procedure adopted by the officers of the plaintiff – company. Looking to the proforma – 12 produced at Exh. 13 which shows that Rs. 29,429.99 Paisa is due to recover from the defendant for which the plaintiff company has served the legal notice No.5269 dated 23-06-2008 by Registered Post A.D. which is produced on record at Exh.16. The said notice has been served. Thereafter also, the defendant has not given 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 thus, the conduct of the defendant shows that as he is guilty, 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 him. In these circumstances, the pleading and oral evidence of the plaintiff company remains unchallenged. Oral evidence is supported by the documentary evidences produced at Ex.13 to 24, therefore considering oral as well as documentary evidence, it is clearly established that the defendants were found indulged in theft of electricity therefore he is bound to pay the amount of Rs.21,577.26 Paisa towards energy charge + Rs.2,157.73 towards electric duty amount + Rs.5,695.00 Paisa towards delay payment charges, total comes to Rs. 29,429.99 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 prayed for 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. 29,429.99 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. 29,429.99 Paisa [Rupees twenty nine thousand four hundred twenty nine and paise ninety nine only] from the present defendant toward 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.

Pronounced in open Court to-day on this 09th day of APRIL - 2018

Date : 09/04/2018
Place : Amreli

[Babugar Dhangar Goswami]
Special Judge,
Amreli.
GJ00684.