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IN THE COURT OF THE 9TH ADDITIONAL DISTRICT JUDGE & SPECIAL JUDGE, BHAVNAGAR

Regular Civil Suit No. 1675/2016

Exh.20

Paschim Gujarat Vij Co. Ltd.

Address : Ghogha Sub - Division Office,
Bhavnagar.

.. .. **Plaintiff**

Versus

Mathurbhai Nonghabhai Baraiya

Aged : 50 years, Occu. : Business,
Address : Lakhanka, Baraiyafali,
Dist. Bhavnagar.

.. .. **Defendant**

Appearance :

Ms. S.J.Paranjpe, Learned Advocate for the plaintiff
None for the defendant

:: JUDGMENT ::

1. The case of the plaintiff in brief is that it is a company registered under law. That earlier it was known as Gujarat Electricity Board however upon reorganisation the Gujarat Urja Vikas Nigam Ltd. and the plaintiff company came into existence. That the plaintiff company is engaged in producing and thereafter distributing electricity in the Gujarat State and for

proper administration different establishments like Circle Office, Division Office and Sub-Division Offices have been established. Accordingly plaintiff company carries out its administration and Superintendent Executive Engineer and Dy. Engineer are its officers respectively.

2. That the defendant herein has never preferred any application with the plaintiff company for availing any electricity connection, however, while checking conducted by the officials of the plaintiff company on 23.09.2014. in the house of the defendant it was found that the defendant was using electric energy illegally, and hence, a supplementary bill for Rs.2,835.00 was issued by the officials of the plaintiff company to the defendant and the defendant was also informed vide a letter that if he paid the said bill in fifteen days then no criminal proceedings would be initiated against him. However, the defendant has not made any payment till date, and therefore, the plaintiff company is compelled to file the present suit for recovering the said outstanding amount from the defendant.

3. That as per the various conditions of the Condition for Power Supply of Electricity Energy and Indian Electricity Act the defendant falls in the definition of customer. That if a person is found using electric energy for some time then the plaintiff company is entitled to count such person as consumer and are liable to recover the amount from him. That as the defendant was found in theft of electric energy he had been issued a bill for Rs.2,835.00 including the compounding charge and a notice in this respect was also issued to the defendant, however, the defendant has failed to make any payment of the outstanding amount, and therefore, the plaintiff company is entitled to recover Rs.3,923.82 from the defendant, and therefore, the present suit has been filed by the plaintiff company.

4. That despite being repeatedly being called upon to make payment of the said bill the defendant did not make any payment and therefore, legal demand notice was issued through plaintiff's Learned Advocate. That despite service thereof the defendant has not made any payment and therefore, the plaintiff has been compelled to approach this Court for recovery of the said amount being Rs.3,923.82 as well as interest at the rate of 18%.

5. Despite service of summons the defendant failed to appear on the returnable date or thereafter. In absence of Written Statement the framing of issues was dispensed with under provisions of Order XIV, Rule - 1(6) of the Code of Civil Procedure, 1908 and the suit was posted for plaintiff's evidence.

6. The Issues have been framed at Exh.6 which are as follows :

1. Whether the plaintiff proves that defendant illegally used 360 Watt electricity while checking ?
2. Whether the plaintiff is entitled to claim Rs.3,923.82 as alleged ?
3. What order and decree ?

7. My findings for the above stated issues are as under :

1. In Affirmative.
2. In Affirmative.
3. As per final order.

:: REASONS ::

8. To prove its case, the plaintiff has produced following oral and documentary evidence :

:: ORAL EVIDENCE ::

Sr.no.	Description	Exh.
1	Oral evidence of Sharadkumar Gordhanbhai Panchal	7

:: DOCUMENTARY EVIDENCE ::

Sr.no.	Description	Exh.
1	Proforma no.12	9
2	Inspection report - Annexure - A - 2	10
3	Rojkam	11
4	Assessment bill for theft u/s. 135 (50)	12
5	Notice issued to the defendant by the plaintiff company	13
6	Yadi sent to the police station by the plaintiff company for registering the complaint with respect to the theft commissioned by the defendant	14
7	Police complaint	15
8	Yadi with respect to seizure of muddamal	16
9	Notice given to the defendant by the plaintiff company	17
10	Acknowledgement receipt	18

9. Thereafter, plaintiff has closed its evidence vide pursis Exh.19 whereas, the defendant has neither appeared personally or through any advocate, and therefore, no evidence has been led by the defendant. Thereafter, Learned Advocate Ms.S.J.Paranjpe for the plaintiff has been heard.

Issue nos.1 to 3 :

10. Since the above Issues are interrelated with each other, for the sake of brevity and with a view to avoid repetition they are being discussed together.

11. The solitary witness namely Sharadkumar Gordhanbhai

Panchal, Deputy Engineer, PGVCL, Ghogha Sub - Division is examined vide Exh.7 and he has more or less reiterated the contentions of the plaintiff and therefore the same are not reproduced here, however, it would suffice to say that during the said examination he has proved documents at Exh.9 to Exh.18. Considering the fact that the defendant has neither appeared personally or through his advocate and not filed any written statement, the contentions of the plaintiff as well as the examination - in - chief have remained unchallenged, and hence, there is no reason to disbelieve the same.

12. Upon conjoint reading of the said examination - in - chief as well as the documentary evidence it is apparent that the defendant was not a consumer of the plaintiff company as contended. From the Proforma no.12 - Exh.9 and Demand notice - Exh.13 it is apparent that an amount of Rs.3,923.82 is outstanding towards illegal consumption of electricity and despite being called upon, the defendant has defaulted in making payment thereof. Therefore, the Issue nos.1 and 2 are answered in Affirmative.

13. The plaintiff has claimed interest at the rate of 18% or the rate charged by the Nationalized Banks towards the loans advanced, whichever is greater. However, the plaintiff has failed to substantiate the said claim or even stated the grounds upon which the same has been claimed. However, taking the entirety of the case alongwith the prevailing interest rates into consideration, it is desirable that the plaintiff be granted interest at the rate of 9% p.a. on the outstanding principal amount of Rs.3,923.82 from the date of suit till date of decree and further interest at the rate of 6% p.a. on the said amount of Rs.3,923.82 from date of decree till realization, and in answer to the Issue no.3 following order is passed :

:: ORDER ::

1. The plaintiff's suit is hereby partly allowed with costs.
2. The plaintiff is entitled to recover from the person and properties of the defendant outstanding principal amount of Rs.3,923.82 with interest at the rate of 9% p.a. from the date suit till date of decree and further interest at the rate of 6% p.a. on the said amount of Rs.3,923.82 from the date of decree till realization.
3. Decree be drawn accordingly.

Pronounced in the open Court on this 30th day of July, 2018.

(A.B.Bhojak)

9th Additional District Judge &
Special Judge (Electricity),
Bhavnagar.
GJ00476

Date : 30.07.2018.
Bhavnagar.

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