



GJVD170003992021



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DURATION : 01 / 02 / 11
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**IN THE COURT OF ADDITIONAL JUDGE SMALL CAUSE
COURT
AT VADODARA**

SMST-S No.114/2021

~~~~~

Exh.\_\_\_\_

**PLAINTIFF:**

**MGVCL**

Mandvi, Sub Division,  
Vadodara.

**Versus**

**DEFENDANT:**

**Roshanbibi Azimmiya Shaikh**

Address at: 1568, Genda Faliya,  
Fatepura, Vadodara.

**Advocate:**

**Mr. B. M. Bhatt**, Ld. Advocate for plaintiff.

None remained present on behalf of Defendant.

Additional Judge,  
Small Cause Court, Vadodara.

**Suit Valued at Rs.80,531.93/-.**

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

1. The present plaintiff is MGVCL, Mandvi, Sub-division, Vadodara is corporate body registered under Indian Electricity Act and provides electricity services to public at large. The defendant is a consumer of plaintiff MGVCL Mandvi, Sub-division office and availed electric connection bearing Consumer No.16428/01199/9. The plaintiff submits that the bill amount of electricity consumption of Rs.71,631.57/- and delay payment of Rs.8,900.36/- totaling Rs.80,531.93/- is due from defendant. Defendant has failed to pay this electricity bill therefore plaintiff MGVCL has disconnected the electric connection on 27/02/2021. Plaintiff has sent a notice to reconnect the electricity to defendant but defendant has not paid his electricity bill. So, plaintiff has sent a legal demand notice dated 09/02/2021 through advocate but defendant failed to pay the due amount. Hence, plaintiff has filed the present case to recover Rs.71,631.57/- + Rs.8,900.36/- as fix charge, energy charge, fuel charge, electric charge and DPC totaling **Rs.80,531.93/-** with **@18%** compounding interest.

2. The summons for appearance were issued upon the defendant, which was returned served vide **Exh.5** thereafter nobody appeared on defendant's side and the matter was proceeded further. The plaintiff has filed closing pursis vide Exh.32 to close the defendant's right in the present suit.
3. Defendant has neither place any documentary nor oral evidence, and despite of repeated and ample opportunities to provide written statement and evidence as principle of "Audi Alteram Partem", she has not cared to submit the same. Hence, no evidence is on records produced towards defendant's side and she "A Jure Suo Cadaunt" (she falls from her rights).
4. To the above pleadings of plaintiff, the following issues have been framed for the determination of this case vide Exh.6 on dtd.25/08/2022:
  - 1) Whether the plaintiff proves that plaintiff is entitled to recover the suit amount from the defendant as alleged ?
  - 2) Whether the plaintiff is entitled to get interest ? If yes, at what rate ?

3) What order and decree?

## **5. RELATED PROVISIONS OF LAW**

### **(A) THE EVIDENCE ACT**

**(a) Section 3 - "Proved":** - A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

### **(b) Section 61. Proof of contents of documents:**

± The contents of documents may be proved either by primary or by secondary evidence.

**(c) Section 62. Primary evidence:** - Primary evidence means the document itself produced for the inspection of the court.

Explanation 1: - Where a document is executed in several parts, each part is primary evidence of the document:

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2: - Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of original.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Section 63. Secondary evidence: - Secondary evidence means and includes:

- (1) Certified copies given under the provisions hereinafter contained;
- (2) Copies made from the original by mechanical processes, which in themselves ensure the accuracy of the copy, and copies compared with such copies;
- (3) Copies made from or compared with the original;
- (4) Counterparts of documents as against the parties who did not execute them;
- (5) Oral accounts of the contents of a document given by some person who has himself seen it.

**(d) Section 64. Proof of documents by primary evidence:** - Documents must be proved by primary evidence except in the cases hereinafter mentioned.

**6. General Principle of Evidence in Civil Cases :-**

(a) As per the S.102 of Indian Evidence Act, the burden of proof lies on the plaintiff to produce the facts before the Court regarding his claim, upto satisfaction of the Court then after he will get decision in his favour. He has to lead such evidence as Court draws inference in his favour. He has to establish his case prima facie. Court relies on the principle of Preponderance of Probability at the time of arriving decision in civil matters.

(b) As per the provisions of Section 101 to Section 103 of the Indian Evidence the burden to prove all the issues are laid on the plaintiff. Plaintiff has produced the affidavit of chief examination of **Mr. Nileshkumar Rajaram Patel**, vide **Exh.9**, as per the provisions of under Order 18 Rule 4 of the Code of Civil Procedure. He has claimed to allow the relief as demanded in the plaint.

7. My answers to the above issues are as under:

- 1) In affirmative.
- 2) Yes, as per final order.

3) As per final order.

**8. Production of evidence by parties:**

**(A) Oral/Documentary evidence adduced by plaintiff:**

| Sr. | Particulars                                                                                                                      | Exh. |
|-----|----------------------------------------------------------------------------------------------------------------------------------|------|
|     | <b>Oral Evidence:</b>                                                                                                            |      |
| 1.  | Examination-in-chief in form of affidavit of evidence of Plaintiff - <b>Mr. Nileshkumar Rajaram Patel</b>                        | 9    |
|     | <b>Documentary Evidence:</b>                                                                                                     |      |
| 1.  | Copy of Proforma No.12                                                                                                           | 11   |
| 2.  | Copy of DPC calculation sheet                                                                                                    | 12   |
| 3.  | Copy of PDC Inspection Report                                                                                                    | 13   |
| 4.  | Copy of Leaving the service line wire and permanently shutting down the electricity connection                                   | 14   |
| 5.  | Copy of consumer master details                                                                                                  | 15   |
| 6.  | Copy of Leaving the service line wire and permanently shutting down the electricity connection                                   | 16   |
| 7.  | Copy of Ledger Account                                                                                                           | 17   |
| 8.  | Copy of complaint regarding electricity theft                                                                                    | 18   |
| 9.  | Copy of Supplementary bill for the offence of the theft of electricity registered under Section 135 of the Electricity Act, 2003 | 19   |
| 10. | Copy of Consumer Supplementary Bill                                                                                              | 20   |
| 11. | Copy of consumer supplementary bill for compounding charges                                                                      | 21   |
| 12. | Copy of assessment of supplementary bill                                                                                         | 22   |
| 13. | Copy of Single Phase Checking Report                                                                                             | 23   |

|     |                                                   |    |
|-----|---------------------------------------------------|----|
| 14. | Copy of Electricity Meter Bill                    | 24 |
| 15. | Copy of Consumer consumption details              | 25 |
| 16. | Legal notice for remaining amount by court remedy | 26 |
| 17. | Copy of RPAD report                               | 27 |
| 18. | Copy of RPAD report                               | 28 |
| 19. | Copy of Legal Notice                              | 29 |
| 20. | Copy of Postal Receipt                            | 30 |
| 21. | Copy of Postal Acknowledgment                     | 31 |

**(B) Oral/Documentary evidence adduced by defendants: NIL**

**:: REASONS ::**

9. Present plaintiff has filed this suit for recovering electric bill money sum of Rs.80,531.93/- including compounding interest. The defendant has been served with summons vide Exh.5, but she has not appeared to contest the suit. It is pertinent to note that though sufficient time and opportunity has been afforded to defendant but she failed to file her written statement and also failed to cross-examine the witness of plaintiff, and thereby, she failed to rebut the oral as well as documentary evidence adduced by the plaintiff. Not only that, the defendant also failed to adduce and produce any oral as well as documentary evidence in support of her case or denial



of plaintiff's suit. Defendant has not paid the due amount or remain present to contest the suit or rebut the evidence of plaintiff. Perusing the documents it appears that the plaintiff has succeeded to prove his case amounting to Rs.80,531.93/- amount. Therefore, the answer of Issue No.1 is given in the affirmative.

10. Looking to the entire facts and circumstances of the present case, plaintiff succeeds to prove his case, and the suit of plaintiff requires to be decreed. As far as the question of interest is concerned there is nothing on record which shows that there had been any kind of agreement between the parties for payment of interest @18% in case of default. However, looking to the general principles of regarding the grant of interest as enshrined in Section 34 of CPC, this Court is of the view that interest @6% p.a., on the aforesaid amount from the filing of the suit till its realization would serve the interest of justice. Hence, following final order towards Issue No.2 & 3 is passed in the interest of justice.

**:: ORDER ::**

- The plaintiff's suit bearing **SMST-S No.114/2021** is stands decreed.
- The plaintiff is entitled to recover amount of **Rs.80,531.93/-** from defendant with **@ 6% p.a.,**

interest from date of the suit till realization of entire decretal amount.

- Defendant to bear the costs of this Suit.
- Decree to be drawn up accordingly.

Signed and pronounced in the open Court today on this  
**21<sup>st</sup> day of October, 2022.**

**Date:21/10/2022**  
**Vadodara.**

**( J. N. Patel )**  
**Additional Judge,**  
**Small Cause Court,**  
**Vadodara.**  
**[Code No.GJ01088]**

*MM ASHIF*