

|                    |    |    |      |
|--------------------|----|----|------|
| Suit instituted on | 24 | 07 | 2019 |
| Registered on      | 24 | 07 | 2019 |
| Decided on         | 01 | 04 | 2022 |
| Duration           | Y. | M. | D.   |
|                    | 02 | 08 | 08   |

**Exh. No.19**

**IN THE COURT OF ADDITIONAL JUDGE,  
SMALL CAUSES COURT, AT RAJKOT**

**Small Civil suit no. 362/2019**  
**SPECIAL CIVIL SUIT (ELECTRICITY)**  
**No. 22 of 2017 (Old Case number)**

**Plaintiff :-**

**Paschim Gujarat Vij Company Ltd.**

Through : its Deputy Engineer,

**Madhapar Sub. Division**

**R A J K O T.**

**VERSUS**

**Defendant :-**

**Veljibhai Laxmanbhai Makwana.**

**Address :**

Opp. of Anandpar Primary School No.3,

Rangeela, Panchvati Park,

Kuvadva Road, Navagam,

**Ta./Dist.: Rajkot.**

**Sub :- Suit for recovery of an amount of Rs.9,838.31ps.**

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**Appearance :-**

**Mr. J. M. Magdani** Learned Advocate for the plaintiff.

The suit proceeded against the defendant as **an exparte.**

**∴ J U D G E M E N T ∴**

1. First of all, it is necessary to mention here that as per order of Hon'ble District Court No. Ins/328/2019 under the provisions of Electricity Act 2003 and u/s 24 of C.P.C., and accordingly, this suit has been numbered as Small Civil Suit as mentioned above.

2. The short facts giving rise to this suit are that the plaintiff is a company incorporated under The Gujarat Electricity Industries (Reorganization and Regulation) Act, 2003 having its circle office at Rajkot and a subdivision at **Madhapar**, Rajkot. The plaintiff is engaged in the activities of generating, selling etc. the electricity power.

3. That the defendant is a **Non consumer** of the plaintiff. The defendant had not obtained electricity connection and committed power theft. The officers of plaintiff inspected the premises of defendant whereupon above said illegal activities of the defendant were detected. The defendant has committed power theft for which the plaintiff had issued supplementary bill. The defendant has not made payment of said amount, hence, the plaintiff served demand notice to the defendant. However, defendant failed to make the payment of aforesaid amount, hence, the plaintiff has filed this suit for recovery of aforesaid amount with interest thereon at the rate of **12%** per annum and costs of the suit.

4. The summons of the suit has been issued which has been duly served to the defendant vide **Ex.7 through public notice in news paper dated 04/12/2021** and in response to the same, the defendant was not remained present before the court thereafter, an ex-parte order passed below plaint Exh. 1 on **06/01/2022** under Order-IX, Sub-Rule (1) of Rule-6 of the C.P.C.

5. In support of this suit , the plaintiff has produced oral as well as documentary evidence.

#### **ORAL EVIDENCE**

| No. | Name of Witness                                                            | Exh. No. |
|-----|----------------------------------------------------------------------------|----------|
| 1   | An affidavit of the plaintiff's witness <b>Mr. Viral Ramanbhai Panchal</b> | 09       |

#### **DOCUMENTARY EVIDENCE**

| No. | Details of documents         | Exh. No. |
|-----|------------------------------|----------|
| 1   | Proforma No.12               | 10       |
| 2   | Office Note                  | 11       |
| 3   | Ledger Copy                  | 12       |
| 4   | Legal Notice                 | 13       |
| 5   | Annexure 12                  | 14       |
| 6   | Single Phase Checking report | 15       |
| 7   | Annexure 11                  | 16       |
| 8   | Annexure 4                   | 17       |
| 9   | Rojkam                       | 18       |

6. In this suit, the following issues have been framed at Ex. 08.

|   |                                                                                                                                                                                                         |
|---|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Whether the plaintiff proves that the defendant has committed theft of electric energy and plaintiff is entitled to recover <b>Rs. 9,838.31ps.</b> from the defendant as claimed by supplementary bill? |
|---|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|   |                                                                       |
|---|-----------------------------------------------------------------------|
| 2 | Whether plaintiff is entitled for the interest? If yes, at what rate? |
| 3 | Whether plaintiff proves that suit is within time limit?              |
| 4 | What order and decree?                                                |

**7.** My findings of issues for determination are as under.

|   |                                 |
|---|---------------------------------|
| 1 | In the Partly affirmative..     |
| 2 | In the partly affirmative @ 6%. |
| 3 | In the Affirmative.             |
| 4 | As per final order.             |

**8.** I have heard the arguments of the Learned Advocate for the plaintiff. The defendant did not choose to remain present during the trial of the suit. My reasons for findings of the issues are discussed hereinafter.

## **REASONS**

### **Issues No. 1**

**9.** The plaintiff has filed the affidavit of examination-in-chief of one **Mr. Viral Ramanbhai Panchal** at Exh. **09** wherein he has deposed on oath the facts narrated in plaint Exh.1. He is employee of the plaintiff and is conversant with the facts of the case. He has deposed on oath that the defendant is not a consumer of the plaintiff and has committed power theft by illegally abstracting the electricity energy directly from the line of plaintiff passing near the place of the defendant by applying artificial means. The plaintiff accordingly issued supplementary bill to the defendant and demanded the amount from the defendant, but the defendant did not pay the said amount, hence, plaintiff issued demand notice and demanded the sum as mentioned therein from the defendant. This

notice is duly served to defendant, however, the defendant did not pay the amount, hence, the plaintiff has filed this suit to recover **Rs. 9,838.31 ps.** from the defendant together with interest thereon at the rate of **12%** per annum and costs of the suit.

**10.** The above version of plaintiff's witness on oath has not been challenged by defendant in any way.

**11.** I have gone through the above oral and documentary evidence. On perusal of the oral and documentary evidence, it is proved that the defendant is not a consumer of plaintiff and he had directly abstracted electric energy from electricity line of plaintiff passing near the place of the defendant by applying artificial means by way of wire and thereby had committed power theft.

**12.** The assessment of the amount for such illegal and unauthorized use of electricity of plaintiff by the defendant is produced by plaintiff which shows that the bill for the amount mentioned therein was issued by plaintiff to defendant and the same was served to defendant. The defendant has not appeared before the court and has not disputed the truthfulness of aforesaid bill. The evidence of the plaintiff is remained unchallenged as the defendant did not choose to remain present in the suit. The plaintiff P. G. V. C. L. has proved the facts of it's suit claim by producing oral as well as documentary evidence as discussed above and there is no reason to disbelieve the same in absence of any kind of evidence from the defendant's side and accordingly. but looking to

the evidence produced by the plaintiff there is no any specific averment regarding the charging of delay payment charges. Therefore, I am of the opinion for that plaintiff is not entitles for delay payment charges of **Rs.2,045.59ps**. Thus, plaintiff has proved that the defendant is become found due to the sum of **Rs. 7,792.72 ps**. In view of above, the plaintiff is entitled to recover **Rs. 7,792.72 ps**. from the defendant and accordingly, I give my finding on **issue No. 1** in the "**Partly Affirmative**".

### **Issues No. 2**

**13.** The plaintiff has claimed interest on the suit amount at the rate of **12%** per annum, but no agreement and not claim the **12%** interest in the notice issues by the plaintiff. There for according to legal position prevailing on the subject and as per the section 34 of CPC the plaintiff is entitled for interest of the said amount at the rate of **6%** per annum. There for plaintiff would be entitled to get the interest at the rate of **6%** per annum of the plaint amount. hence the above discussion the answer of the **issues No. 2** is "**Partly Affirmative**".

### **Issues No. 3**

**14.** The suit of the plaintiff is within the period of limitation of three years. The premises of the defendant was inspected on **18/12/2014** and this suit is filed on **09/01/2017**, which is apparently within the statutory period of limitation of three years as prescribed in the Limitation Act. Hence, the suit of the plaintiff is

apparently within the period of limitation of three years. Hence the above discussion the answer of the **issues No.3** is “**Affirmative**”.

#### **Issues No. 4**

**15.** In view of aforesaid discussion and considering the arguments advanced by Ld. Advocate for the plaintiff, the plaintiff has proved to the facts of issue no.1 to 3, therefore plaintiff is entitled to get the relief as per his plaint with above discussion. hence I pass the following final order towards **issue no. 4** .

#### **:-: O R D E R :-:**

- (1) The plaintiff's suit is hereby partly allowed .
- (2) The defendant is hereby ordered to pay **Rs. 7,792.72ps.** (Rupees Seven Thousand Seven Hundred Ninety Two and Seventy Two paise only ) along with interest at the rate of 6% p.a. from the date of the filling of this suit till its realization to the plaintiff.
- (3) The defendant is ordered to pay the costs of the suit to the plaintiff and to bear his own cost.
- (4) Decree to be drawn accordingly.

Order signed and pronounced in the open court on this **01<sup>st</sup>** day in the month of **April** -2022.

Date : 01/04/2022

Place : **Rajkot**

(**Chandrakant Nathubhai Desai**)

**UID - GJ00995**

Additional Judge,  
Small Cause Court,  
Rajkot.