

Suit instituted on	17	01	2022
Registered on	17	01	2022
Decided on	27	03	2023
Duration	Y.	M.	D.
	01	02	10

Exh. No. 24

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

Small Civil Suit No. 51/2022

Plaintiff

Paschim Gujarat Vij. Company Ltd.

Through its engineers,

Aji Industries, sub division,

R A J K O T

V E R S U S

Defendants :-

Ushaben Krishnan Nayar

C/o. Sama Vasimbhai Basir

Address :

"Mumtaj", Anmol park - C, Block no. 2,

Anmol park street no. 1 corner,

Right side from the stairs of K.D.M. Hotel,

Pol no. 6/2353, **R A J K O T**.

Sub:-Suit for recovery of an amount of Rs.79,629.49/-ps.

Appearance:-

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. 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 **Aji Industries**, Rajkot. The plaintiff is engaged in the activities of generating, selling etc. the electricity power. The defendant was consuming electricity by obtaining electric connection vide consumer number **82005/14578/5** as mentioned in the suit.

2. That the defendant is also a **consumer** of the plaintiff. The defendant had obtained electricity connection and committed power theft. The officers of plaintiff inspected the premises of defendant whereupon above said illegal activities of the defendant was 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 **1.5%** per month and costs of the suit.

3. The summons of the suit was been issued to the Defendants which was been duly served to the defendants no. 1 vide **Exh. 7** The defendant no.1 did not remained present before the court thereafter, an ex-parte order passed below plaint Exh.1 on **27/02/2023** under Order-IX, Sub-Rule (1) of Rule-6 of the C.P.C.

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

ORAL EVIDENCE

No.	Name of Witness	Exh. No.
1	An affidavit of the plaintiff's witness Mr. Prafulbhai Gopalbhai Lathiya	9

DOCUMENTARY EVIDENCE

No	Details of documents	Exh. No.
1	Proforma 12	10
2	Office note	11
3	Ledger copy	12
4	Meter replacement rojkam	13
5	Gatepass	14
6	Reconnection of electricity connection	15
7	Order to defused electricity power	16
8	Letter for supplementary bill as per last assessment	17
9	Legal notice	18
10	Reg. A.D. acknowledgement	19
11	Supplementary bill u/s.126	20
12	Chargeble unit calculation	21
13	Reg. A.D. acknowledgement	22
14	Single phase checking report	23

5. The following issues have been framed at **Ex. 8** for determination of the suit.

1	Whether the plaintiff proves that the defendant has committed theft of electric energy and plaintiff is entitled to recover Rs.79,629.49/- from the defendant claimed by supplementary bill ?
2	Whether the plaintiff is entitled for the interest? If yes, at what rate?
3	Whether plaintiff proves that suit is within the limit?
4	What order and decree?

6. My findings on the above issues are as under.

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

7. I have heard the arguments of the Learned Advocate for the plaintiff and he has argued on the pleadings as well as oral and documentary evidence produced by the plaintiff. Mainly, he has argued that the defendant is a consumer of the plaintiff and the defendant has not paid the amount of electricity bill and the defendant is become found due to sum of **Rs.79,629.49/-ps.** and he has requested to allow the plaintiff's suit.

8. 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. Prafulbhai Gopalbhai Lathiya** at Exh. **9** 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 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.79,629.49/-ps.** from the defendant together with interest thereon at the rate of **1.5%** per month and costs of the suit.

10. In this suit, the plaintiff P. G. V. C. L. has produced the documentary evidence at **Ex. 10 to 23**. The plaintiff P. G. C. V. L. has stated that the defendant is become found due to the sum of **Rs.79,629.49/-ps.** and in this regard, the plaintiff P. G. C. V. L has produced **Proforma No. 12** vide **Ex.10**. That after service of said notice to the defendant, the due amount has not been paid by the defendant till today and, therefore, the present suit instituted for recovery of the amount from the defendant as prayed for. 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.11,321.89/- ps.** Thus, plaintiff has proved that the defendant is become found due to the sum of **Rs.68,307.60/-ps.** In view of above, the plaintiff is entitled to recover **Rs.68,307.60/-ps.** from the defendant and accordingly, I give my finding on **issue No. 1** in the "**Partly Affirmative**".

Issues No. 2

11. The plaintiff has claimed interest on the suit amount at the rate of **1.5%** per month, but no agreement and not claim the **1.5%** 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

12. The suit of the plaintiff is within the period of limitation of three years. The premises of the defendant was inspected on **15/12/2020** and this suit is filed on **17/01/2022**, 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

13. 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 in the interest of justice, I pass the following final order towards issue no. 4 .

∴ ORDER ∴

- (1) The plaintiff's suit is hereby partly allowed.
- (2) The defendant is hereby ordered to pay **Rs. 68,307.60/-ps.**
(Rupees Sixty Eight Thousand Three Hundred Seven and Sixty paise only) along with interest at the rate of **6%** p.a. from the date of the filing 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, if any.
- (4) Decree be drawn accordingly.

Order signed and pronounced in the open court today on this **27th** day in the month **March – 2023.**

Date: 27/03/2023
Place : Rajkot

(Nitinchandra N. Dave)
Additional Judge,
Small Cause Court,
Rajkot.
UID - GJ01069