

Suit instituted on	24	07	2019
Registered on	24	07	2019
Decided on	03	12	2019
Duration	Y.	M.	D.
	00	04	09

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

Small suit No. 494/2019.
SPECIAL CIVIL SUIT (ELECTRICITY)
No. 82 of 2019 (Old Case number)

Exh. No. 21

Plaintiff :-

Paschim Gujarat Vij Company Ltd.

Through : it's Deputy Engineer,

Bedinaka , Sub Division,

Rajkot.

VERSUS

Defendant :-

Alibhai Piparbhai Belim

Address:-

Naklankpara stret no. 10,

Rukhadiya colony,

B/h. Aanganvadi center,

Nr. Smasan, **Rajkot.**

Sub :- Suit for recovery of an amount of Rs. 19,968-65 ps.

Appearance :-

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

Suit is proceeded against the defendant as an **Ex-parte** though summons duly served to the defendant.

-:: 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 **Bedinaka, 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 2 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 defendant though duly served has not appeared and has not contested the case in any manner.

5. In this suit, the following issues have been framed at **Ex.06**.

1	Whether the plaintiff proves that the defendant has committed theft of electric energy and plaintiff is entitled to recover Rs. 19,968-65 ps. 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?

6. 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.

REASONS

ISSUES No. 1 to 4 ::-

7. The plaintiff has filed the affidavit of examination-in-chief of one **Mr. Rashikbhai Bhurabhai Poshiya** at **Ex. 07** wherein he has deposed on oath the facts narrated in plaint Exh. 01. 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. 19,968-65 ps.** from the defendant together with interest thereon at the rate of **12%** per annum and costs of the suit.

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

9. In support of aforesaid oral evidence, the plaintiff has produced the following documentary evidence.

DOCUMENTARY EVIDENCE

No.	Details of documents	Exh.No.
1	Copy of proforma No.12	8
2	Copy of office note	9
3	Copy of Ledger copy	10
4	Copy of Legal notice	11
5	Copy of Supplementary bill	12
6	Copy of F.I. R.	13
7	Copy of consumption detail of last 12 months	14
8	Copy of single phase checking report	15
9	Copy of Annexure -4	16
10	Copy of rojkam	17
11	Copy of complaint of theft	18

10. 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.

11. 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 entitled for delay payment charges of **Rs. 6,197-17 ps.** Thus, plaintiff has proved that the defendant is become found due to the sum of **Rs. 13771-48 ps.** In view of above, the plaintiff is entitled to recover **Rs. 13771-48 ps.** from the defendant and accordingly, I give my

finding on issue No. 1 in the "**Partly Affirmative**".

12. 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 issued 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**".

13. The suit of the plaintiff is within the period of limitation of three years. The premises of the defendant was inspected on **09-12-2016** and this suit is filed on **11/06/2019**, 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**".

14. In view of aforesaid discussion, I hold that the plaintiff has proved its case. The issues No.1 to 4 are decided accordingly and following final order is passed.

:-: O R D E R :-:

1. The suit of the plaintiff is partly allowed. The defendant do pay the sum of **Rs. 13,771 - 48 ps.** to the plaintiff with an interest thereon at the rate of **6%** per annum from the date of suit till realization together with proportionate costs of the suit.
2. Decree to be drawn accordingly.

Order signed and pronounced in the open court on this **03rd** day in the month of December -2019.

Date : 03/12/2019

Place : Rajkot

(Chandrakant Nathubhai Desai)

Additional Judge,
Small Cause Court,
Rajkot.

UID - GJ00995