

GJGS060026562022 	Admitted	11	10	2022
	Decided on	23	10	2024
	Duration	Days	Months	Years

In the Court of H.M.Parmar Addi. Civil. Judge, Kodinar.

RCS. (Ele.) No.	331	2022
Exhibit No.	23	

Plaintiff :- Paschim Gujarat Vij Company Ltd.,
Supplying electricity having head office situated
at Rajkot, Circle Office at Amreli, and Sub Division-1
office at Kodinar.

Versus

Defendant :- LEGAL HAIRS OF NARANBHAI LAKHAMANBHAI RATHOD,
1.1:VAJUBHAI NARANBHAI RATHOD
1.2:BHIKHABHAI NARANBHAI RATHOD
Age: Adult, Occupation: Agricultural,
R/O : Panadar,
Ta: Kodinar, Dist. Gir Somnath.
Consumer Number: 84771/00082/4

Appearance :- For Plaintiff – M.J.Kubavat.- Advocate
For Defendant - Not present

J U D G E M E N T

1: The present suit has been instituted for the recovery of total amount of **Rs. 44,851.47** ps. towards electricity theft along with interest @ 24 %and cost.

2 : As per the plaint brief fact of plaintiff's case is such that, the plaintiff is a company, having head office at Rajkot, is engaged in supplying & distributing electricity on commercial basis to its customers. The defendant is residing at the aforementioned address. The checking squad of plaintiff co. visited at defendant's place on dtd. **03/12/2021** and found that defendant had taken direct electric connection from the electric line and was found to be indulged in consuming the electricity for **Domestic purpose**, by employing unauthorized and illegal means. Thereby he consumed **3296 watt** of electricity and committed theft of electricity. The checking squad prepared a power theft bill for **Rs. 38,087.39** Ps., and arrears amount Rs. **2615.71** Ps. and delay payment charges for **Rs. 4148.37 Ps** total bill for **Rs. 44,851.47** Ps. And the same was issued to the defendant but he failed and neglected to make the payment of the same, hence, the present suit has been filed.

3 : The defendant was duly served with the summons-notice vide **Ex.06** but the defendant has neither remained present in-person during the proceeding of the suit nor did he appear through his advocate and has not even filed his reply against the plaint. Therefore, this suit was ordered to be proceeded *ex-parte* against the present defendant.

4. To decide this case on merits, issues have been framed vide Exbt. -07 and thereafter this case was placed on the stage of evidence of plaintiff.

5 : The plaintiff company has adduced the following pieces of evidence in support of its case.

Oral pieces of evidence

1.	Ex. -08	Testimony of plaintiff
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Docu. pieces of evidence

1.	Ex.- 09 to Ex.-21	Documents which comprises : Annexure -4, Inspection report of the spot, Theft bill - calculation sheet, Ledger of defendant's account, Office copy of the theft bill, Supplementary Theft Bill, Office copy of legal notice issued to the defendant to recover bill amount, R.A.P.D. Slip, RPAD Returned envelope containing legal notice, Original Performa -12, a certified copy Sanction order etc.
2.	Ex. – 22	Closing Pursish.

6 : On the plaintiff side, ld. advocate has advanced oral arguments in support of their case and the gist of which is such that, despite of duly served with the notice, the defendant has not cared to remain present and neither contested the present case nor adduced any evidence. Moreover, the plaintiff co. has duly proved all the facts asserted in the plaint with the

help of oral as well as documentary evidence and thereby prayed to allow the present suit as per their prayer in the plaint

7 : To adjudicate the present suit on merits, the following issues have been framed :

1. Whether the plaintiff proves that the defendant has committed theft of electricity of the alleged amount?
2. Whether the plaintiff is entitled to get interest ? if yes, at what rate?
3. Whether the plaintiff is entitle to get the relief as sought for ?
4. What order and decree ?

8 : My decisions for the above said issues are as under:

1. Affirmative.
2. Affirmative, at the rate of 6 % per annum.
3. Partly Affirmative.
4. As per the final order.

9 : My reasons for the above said decisions, are as under :

REASONS

9.1 : As all the above issues are inter-related and inter-connected with each other, to avoid unnecessary repetition and for the sake of brevity, all the above issues are discussed jointly.

9.2.1 : To prove their case, the plaintiff co. has examined his employee as witness vide exbt. **No.08**, who, in his examination-in-chief of testimony, has categorically testified that fact asserted in the plaint and gist of the same is such that “the checking squad of plaintiff co. visited at defendant's place on **dttd. 03/12/2021** and found that defendant had taken direct electric connection from the electric line and was found to be indulged in consuming the electricity for Domestic purpose, by employing unauthorized and illegal means. Though he was not the consumer, was found to be dishonestly using, consuming and abstracting the electric energy. Thereby he consumed **3296 watt** of electricity and committed theft of electricity. The checking squad prepared a power theft bill for **RS. 38,087.39 Ps.** and arrears amount Rs. **2615.71 Ps.** and delay payment charges for **Rs.4148.37 Ps** total bill for **Rs. 44,851.47 Ps.** and the same was issued to the defendant but he failed and neglected to make the payment of the same, hence, the present suit is filed.”

9.2.2 : By this deposition he has confirmed and corroborated all the facts asserted in the plaint. Moreover, the documentary evidence adduced by the plaintiff company has reasonably corroborated the facts narrated in the testimony of the witness and thereby substantiated the claim made. Moreover, in absence of any written statement on defendant side, the facts asserted in the plaint remains unchallenged and nothing contradictory to the facts and evidence of the plaintiff, has appeared on record. Therefore, there appears no reason to disbelieve plaintiff's case as well as evidence.

9.2.3 : On perusal of the ocular and documentary evidence produced by the plaintiff company, the plaintiff side has succeeded to prove that the defendant has committed theft of electricity by employing illegal and

unauthorised means as alleged and so he is liable to pay electricity bill charged for the theft for **Rs.38,087.39 ps.** with interest to the plaintiff company and so my decision towards issue no. 1 is ***“Affirmative”***.

9.3 : So far as the rate of interest is concerned, the plaintiff-company has claimed the interest at the rate of 24% per annum, on the amount sought to be recovered. The plaintiff does not produce any supportive evidence so far as the rate of interest and there appears no specific contract for interest between the parties. Moreover, it has also not been pointed out that under which provision the plaintiff is entitled to get interest so claimed. In the light of the ratio laid down by the Hon. Apex Court, the rate of interest should be awarded as per the prevailing rate of interest at present. Hence, it would be just, proper and reasonable if 6 % simple interest per annum is allowed.

9.4 The plaintiff company has claimed an amount for **Rs. 2615.71 ps.** Towards arrears but plaintiff's has not produced any documentary evidence to show that this arrears is of which period and about how much unit. Thus I believe that plaintiff's has not proved this fact so he can not recover the arrears amount.

9.5 : The plaintiff company has claimed an amount for **Rs.4148.37 ps.** Towards DPC. This court is of the view that there is no automatic entitlement to recover such DPC charge from the defendant. The plaintiff has not adduced any evidence to substantiate entitlement to such delay payment charges from the defendant and has not even shown any rule or provision under which they are entitled for DPC. Therefore, in the light of above discussion, this court comes to a conclusion that company is not entitled to recover the amount of DPC.

9.6 : Therefore, in view of the above discussion, plaintiff company is entitled to recover the theft bill amount of **Rs. 38,087.39 Ps.** with simple interest at the rate of **6 % p.a.** from the date of filing of the suit till the realization of the suit amount from the defendant but not entitled to recover DPC charges and arrears amount. Hence, in the light of above discussion, my decisions towards issues **no. 2** is “Affirmative”. And issues no. 3 is “partly Affirmative” . Hence, the present suit deserves to be allowed partly and for the issue **No. 4**, following final order is, hereby, passed.

ORDER

1. The present suit is partly allowed with cost.
2. The defendant is directed to pay **Rs. 38,087.39 ps.** to the plaintiff-company along with 6% simple interest per annum there upon from the date of filing of this suit till realization thereof.
3. Defendant shall bear his own cost and shall also bear the cost of plaintiff.
4. Decree be drawn accordingly.

Read & Pronounced today in open court.

Place:-Kodinar

(Hemorsinh Manubhai Parmar)
GJ01276

Date :23/10/2024.

Addi. Civil. Judge,
Kodinar.