



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 1673 of 1996

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DEVAN M. DESAI

=====

| | | |
|------------------------|-----|----|
| Approved for Reporting | Yes | No |
| | | |

=====

EXECUTIVE ENGINEER G.E.B.(NOW PASHCHIM GUJARAT VIJ
COMPANY LTD) & ORS.

Versus

MULRAJ ICE FACTORY, PROPRIETOR HARIHARPRASAD ZAVERILAL &
ORS.

=====

Appearance:

MS LILU K BHAYA(1705) for the Appellant(s) No. 1,2,3

DECEASED LITIGANT THROUGH LEGAL HEIRS/ REPRESENTATIVES
for the Defendant(s) No. 1

MR PM LAKHANI(1326) for the Defendant(s) No. 1.1,1.2,1.3

MRS R P LAKHANI(3811) for the Defendant(s) No. 1.1,1.2,1.3

=====

CORAM:HONOURABLE MR. JUSTICE DEVAN M. DESAI

Date : 21/01/2026

ORAL JUDGMENT

1. This appeal is preferred by the appellants – original defendants under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as `the Code`) challenging the judgment and decree dated 22.01.1996 (for short, `the impugned judgment`) passed by the learned Additional Civil Judge (SD), Gondal in Special Civil Suit No. 57 of 1995.



2. Heard learned advocate Ms. Lilu Bhaya for the appellants and learned advocate Mr. P. M. Lakhani for the respondents.

Perused the record.

3. The facts in brief of the case are as under:

3.1 The plaintiffs – respondents herein, filed a suit for cancellation of bill dated 23.03.1995 amounting to Rs.2,17,857.58 paisa and a subsequent revised bill dated 05.05.1995 for an amount of Rs.10,07,976.80 paisa coupled with a relief of permanent injunction restraining defendants from disconnecting electric supply. The suit was resisted by the defendants by filing written statement at Exhibit – 28.

3.2 Following issues were framed by learned Trial Court at Exhibit – 36.

“1. Whether plaintiff proves that impugned bill dated 23.09.1995 is false, arbitrary and not recoverable from the plaintiff?

2. Whether the defendants have issued two bills. If yes, on which of the bill defendants rely?

2-A. Whether revised bill dated 05.05.1995 of Rs.10,07,976.80 ps. is legal, valid and recoverable?

2-B. Whether the defendants prove that the Court fee is insufficient?

3. Whether the defendants prove that plaintiff had



tempered with electric meter and committed theft of power?

4. Whether the plaintiff is entitled to get declaration and permanent injunction as prayed for?

5. Whether the defendants G.E.B. prove that plaintiff is liable to pay sum of Rs.10,07,976.80 ps. of bill dated 05.05.1995?

6. What order, what decree?"

3.3 Plaintiff examined himself at Exhibit – 39. The defendant examined its witnesses at Exhibit – 81 and 86. After considering the evidence, learned Trial Court decreed the suit in favour of the plaintiff and further directed the defendants to return the amount deposited by the plaintiff with interest at the rate of 12% per annum.

3.4 Being aggrieved and dissatisfied with the impugned judgment, the defendants – appellants have filed the present appeal.

4. Learned advocate for the appellants contended that appellants – defendants have supplied electric connection and the consumer No.33201000086 was allotted to the respondents. On 10.03.1995, a checking squad of the defendants had checked electric meter. As per Rules, the meter was sent for laboratory



testing and as per testing report, that on opening the meter, green substance was visible. Upon such report, the defendant authority was satisfied that the plaintiff is involved in a theft of energy. It is submitted that it is a clear case of theft of electric power by tampering with the meter and the plaintiff was dishonestly abstracting energy which would amount to a theft being committed by the consumer within the meaning of IPC. It is further submitted that initially the bill was issued on 23.03.1995 for an amount of Rs.2,17,857.58 paisa. As the defendants found some mistake in the calculation in connection load, a revised bill dated 05.05.1995 for an amount of Rs.10,07,976.80 paisa came to be issued pending the suit. The first bill came to be cancelled by the appellants - defendants upon issuance of the revised bill.

4.1. Learned advocate for the appellants has relied upon Section 33B of the Indian Electricity Act (for short, hereinafter referred to as 'the Act'). It is also contended that the plaintiff was found dishonestly using of electric energy and, therefore, the consumer has committed a theft within the meaning of IPC. The existence of artificial means for this abstraction is *prima facie* evidence for such dishonest consumption of energy. The laboratory report is a vital



peace of evidence against which the plaintiff has never raised any objection and, therefore, the case of theft of energy is proved beyond any doubt. In the oral deposition of the witness of defendants recorded at Exhibit – 76, who was part of the checking squad has stated the module of finding a case of theft of energy. Said witness has also supported the laboratory report in his deposition. Except above, no other submissions were canvassed by learned advocate for the appellants.

5. Per contra, learned advocate for the respondents has supported the impugned judgment and decree and contended that the defendants have not led any evidence to establish that the plaintiff was engaged in wrongful consumption / abstraction electric energy. The first bill dated 23.03.1995 (Exhibit – 56) was issued on the basis of the report which was prepared after checking squad visited the factory premises of the plaintiff on 10.03.1995. Admittedly, in the checking report, the squad did not find any irregularity or tampering with the meter. The laboratory report (Exhibit – 54) is based upon presumptions and assumptions. On assumption that a plastic strip can be inserted in gap between the meter cover and the glass, it was alleged by defendants that



plaintiff is involved in the commission of an offense under Section 33B of the Act. It is further submitted that pending the suit, revised bill dated 05.05.1995 for an amount of Rs.10,07,976.80 paisa came to be issued by cancelling the first bill of Rs.2,17,857.58 paisa.

6. It is also contended that in the evidence as well as in the written statement, that there is no explanation with regard to issuance of the supplementary bill dated 05.05.1995. It is, therefore, submitted that in absence of any evidence, the learned Trial Court has rightly cancelled the supplementary bill and decreed the suit. The witness of the defendants, whose evidence is recorded at Exhibit – 81 and 86 was only a member of a checking squad who claimed to be present on the date of checking at the plaintiff's factory. Defendants have not examined any witness to prove the laboratory testing report and has also not been able to establish that the plaintiff is indulged in abstracting electric energy as contemplated under Section 33B of the Act. Except above, no other submissions were canvassed by learned advocate for the respondents.



7. I have considered the submissions canvassed by the learned advocates for the respective parties and perused the Record and Proceedings.

8. It is an undisputed fact which culls out from the record that the defendants have supplied electric connection to plaintiff and checking squad visited plaintiff's factory on 10.03.1995 and on inspection, no illegality or irregularity was found, however, for further checking of the meter, the meter was sent to laboratory. In the testing report, it is mentioned that some green color foreign material was found between the meter gap and the glass and from the other part of the meter, it was found that a plastic strip can be inserted inside the gap. On such finding, defendants came to a conclusion that it is the case of theft of energy and disconnected electric connection of plaintiff's factory. A bill for an amount of Rs.2,17,857.58 paisa came to be issued for the recovery of electric power. Undisputedly, pending the suit, on 05.05.1995, defendants issued a supplementary bill of Rs.10,07,976.80 paisa by cancelling the first bill. Thereafter, plaintiff amended the plaint and inserted the prayer for cancellation of supplementary bill.



9. Learned advocate for the appellants contended that the supplementary bill dated 05.05.1995 was issued on noticing a fact that there was an error in adopting a load factor 'C'. Instead of 1 load factor, defendants adopted a 0.1 load factor. However, this explanation is missing in the written statement as well as in the oral deposition of the witness whose evidence is recorded at Exhibit – 81 and 86. The written statement could have been amended after issuing supplementary bill. The defendants have not been able to establish by any evidence; oral or documentary, so as to explain the mistake which is in the calculation of load factor. The burden is upon the appellants to indicate such mistake in calculation of load factor. Witness of appellants has not even explained such mistake being committed while issuing first bill.

10. Defendants' assertion is that the plaintiffs have dishonestly used electric energy. Such positive assertion has to be proved by the defendants and not negatively proved by the plaintiffs. The evidence on record is not sufficient to hold that the plaintiffs have been indulged into usage of electric energy dishonestly. The laboratory report (Exhibit – 54), except finding that a plastic strip can be inserted in the gap between meter cover and glass, nothing



else has been recorded. The other part of the meter was found okay. No other convincing findings are found in the laboratory testing report. The defendants have also not examined the person who had conducted testing of the meter and prepared a report, Exhibit – 54. Only on report that a plastic strip can be inserted in the gap between meter cover and glass is not sufficient to establish that consumer was involved in the activity of theft of electric energy. Moreover, the checking squad did not observe any tampering with the meter or meter cover during first checking at the factory of plaintiff. In the report against a column “whether foreign part is found”, the reply is “negative”. The first bill was cancelled by appellants pending suit therefore recovery under first bill does not arise at all. Supplementary bill was issued pending suit without any explanation and the reason which has been canvassed by learned advocate for the appellants is also not a justifiable explanation on the part of the appellants.

11. Considering the evidence on record, the learned Trial Court found that the plaintiff has been able to establish its case and, therefore, decreed the suit. The findings recorded by learned Trial Court and the conclusion arrived at are based upon the evidence



and as I do not find any reason to interfere with the findings arrived at by the learned Trial Court, the appeal stands dismissed. Record & Proceedings be sent back to the concerned Court / Tribunal forthwith. Interim Relief, if any, stands vacated forthwith. No order as to costs.

12. It is made clear that the observations made herein above are in peculiar set of facts and may not be taken as precedent.

MUSKAN

(D. M. DESAI,J)