

**HIGH COURT OF GUJARAT****Bench: Justice Biren Vaishnav and Ms. Justice Nisha M. Thakore****Date of Decision: 18 December 2023**

R/FIRST APPEAL NO. 2936 of 2009

**PASHCHIM GUJARAT VIJ CO. LTD****Versus****GIRNAR CEMENT PVT LTD****Legislation and Rules:**

Section 96 of the Code of Civil Procedure

Electricity Act

**Subject:**

Appeal against the judgment and decree dismissing a suit for recovery of electricity consumption charges alleging tampering of meter and theft of electricity.

**Headnotes:**

Electricity Consumption Charges Dispute – Suit by Pashchim Gujarat Vij Company Limited against Girnar Cement Pvt Ltd for recovery of Rs. 24,09,963.55 towards electricity consumption charges – Allegations of tampering of meter and theft of electricity by the defendant. [Para 2]

Meter Tampering and Electricity Theft Allegations – Electricity company's claim of meter tampering and theft based on raid findings and issuance of supplementary bills – Defendant denies allegations, asserting regular payment of bills and lack of meter tampering. [Para 2.3-2.6]

Trial Court's Findings – Dismissal of plaintiff's suit – Issues framed around electricity theft, tampering of meter seals, and legitimacy of the plaintiff's claims – All issues resolved in favor of the defendant, questioning the evidence of electricity theft and meter tampering provided by the plaintiff. [Para 2.7-2.8, 5-5.5, 6-7.1]

Appellant's Arguments and Reliance on Precedents – Appellant's contention of clear evidence of meter tampering and electricity theft – Reliance on previous decisions underscoring electricity companies' rights in cases of consumer meter tampering and theft. [Para 3-3.7]

Defendant's Defense and Trial Court's Analysis Upheld – Defendant's arguments emphasizing lack of evidence for meter tampering and electricity theft – High Court upholds Trial Court's judgment, confirming the absence of conclusive evidence against the defendant. [Para 4-4.4, 12-14]

Decision – Dismissal of the appeal by Pashchim Gujarat Vij Company Limited – Trial Court's judgment upheld due to lack of substantial evidence supporting claims of electricity theft and meter tampering. [Para 15]

Referred Cases:

- M.P.Electricity Board, Jabalpur vs. Harsh Wood Products (1996)
- M/s. Hyderabad Vanaspathi Ltd vs. A.P.State Electricity Board & Ors. (AIR 1998 SC 1715)
- Vrajlal Devjibhai Vs. GEB (First Appeal No. 2506 of 2003)
- Pro. Bhimji Dhanji Motivaras of M/s. Sagar Ice Factory vs. Paschim Gujarat Vij Company Ltd – PGVCL (First Appeal No. 3278 of 2013)
- Kiran Industries, Mehsana vs. Gujarat Electricity Board, Baroda & Anr. (A.O No. 505 of 1990 with A.O No. 165 of 1994)
- Ladhabhai Munnabhai Mangukiya vs. Gujarat Electricity Board (2003 (2) GCD 1433 Gujarat)

Representing Advocates:

Ms. Lilu K Bhaya for the Appellant(s) No. 1

Mr. Ashish M Dagli for the Defendant(s) No. 1

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**Date : 18/12/2023**

### **JUDGMENT**

- 1 This appeal under Section 96 of the Code of Civil Procedure has been filed by the Paschim Gujarat Vij Company Limited on being aggrieved by the judgement and decree dated 30.07.2007, passed by the learned 11<sup>th</sup> Additional Senior Civil Judge, Junagadh, dismissing the Special Civil Suit No. 93 of 1994 filed by the appellant (original plaintiff).

2 Facts in brief are as under:

2.1 The plaintiff filed the suit against the respondent – original defendant, M/s. Girnar Cement Private Limited for recovery of an amount of Rs.24,09,963.55 paisa, towards the consumption charges for consumption of electricity.

2.2 It was the case of the appellant – original plaintiff that the respondent was a consumer of High Tension Power and was being issued bills for consumption of power based on meter readings.

2.3 On 11.03.1992, a raid was carried out by the checking party and it was found that the meter boxes which had a plastic seal, were duplicate. It was further the case of the appellant – plaintiff that the dycode number on the plastic seal were different from the originals that were affixed at the time of installation and that there were signs of tampering with the meter body, inasmuch as, the screws found on the lead seal of the dycode had evidence of it being opened and tampered.

2.4 It was, therefore, the case of the Electricity Company that the respondent – original defendant was indulging in theft of power by tampering with meter, and therefore, on 15.03.2022, based on ABCD Formula, a bill was issued of Rs.15,54,141.60 paisa/- for the period from 1992 to 1994, and thereafter, an additional bill of Rs.8,55,821.95 paisa. In all, the bill was of Rs.24,09,963.55/-. The suit was filed for recovery of the said amount.

2.5 The defendant – respondent herein, filed a written statement denying the contentions raised by the original plaintiff. It was the case of the defendant that when the raid was carried out, one Shri Pandya, Manager, was

summoned and it was found that there was no tampering of the meter or replacement of dycode as alleged by the plaintiff. It is the case of the appellant – Company that the Manager was threatened, and compelled to give a statement. A panchnama was made based on a statement recorded and a statement also of the factory clerk Shri Lakhani was recorded under threat.

2.6 It was the case of the defendant that there was no tampering of the meter or removal of plastic seals or replacement of dycode numbers. Further, it was the case of the defendant that the electric meters were under lock and seal. An officer of the rank of Dy. Engineer would come every month for meter reading, would open the seal of the box, complete the reading and then readjust the meter at zero. The box of the meter was opened with the keys of which the officer was in exclusive possession, and therefore, the contention that the seal of the meter was tampered was misconceived. The defendant further submitted that they were regularly paying the bills . That a G7 Card was issued by the officers of the Electricity Board. That the defendant would record the consumption of electricity every day and the card was collected by the officers of the Electricity Company on the last date of every month. The card was regularly maintained by the defendant and no objection was recorded by the plaintiff or its officers nor the G7 Card was found to be manipulated.

2.7 Based on these rival contentions, the Trial Court, framed the following issues:

(i) Whether the plaintiff proves that it was entitled to recover the sum of Rs.24,09,963/-? The issue was answered in the negative.

(ii) Whether the plaintiff proves that on the date of the suit it was entitled to recovery of Rs.15,54,141/- with delayed payment charges @ 2.5%? The issue was answered in the negative.

(iii) Does the plaintiff prove that in light of a Regular Civil Suit No. 945 of 1993 and due to the pendency of the appeal before the Appellate Court, the

suit had to be dismissed? The issue was answered in the negative. (iv) Whether the plaintiff proves that there was theft of electricity? The issue was answered in the negative.

(v) Is the plaintiff entitled to the relief as prayed for? The issue was answered in the negative.

2.8 By Exh.167, on the basis of an application made by the defendant, additional issues were framed which were issues 4A to 4J. The issues were as under:

(1) 4A: Does the plaintiff prove that the Executive Engineer, Junagadh, is entitled to file the suit? The issue was answered in positive.

(2) 4B: Does the plaintiff prove that the plastic seals on the meter boxes and the notice of the numbers on the dycode seals remained with the plaintiff and that the seal on the meter boxes were original? The issue was answered in positive.

(3) 4C: Does the defendant prove that the suit of the plaintiff is based on surmises and conjectures? The issue was answered in positive.

(4) 4D: Does the defendant prove that the raiding party had recorded the statement of Shri Lakhani of the defendant through coercion and so also the statement of Shri Pandya? The issue was answered in affirmative.

(5) 4E: Does the defendant prove the meter is kept in a metal box between two poles and is locked and that the keys are in possession of Deputy Engineer who opens the box when he comes for reading of the meter every month? The issue was answered in positive.

(6) 4F: Does the defendant prove that every month the meter is put back at zero? The issue was answered in positive.

(7) 4G: Does the defendant prove that the issue that the plaintiff officers issued G7 Card every month and that whether the defendant records electricity consumption every month? The issue was answered in the affirmative.

(8) Issues 4H to 4I which concern the plaintiff that as to whether plaintiff proves that the seals in the meter were duplicate and that the meter was tampered with, were answered in the negative.

3Ms.Lilu Bhaya, learned counsel appearing for the Electricity Company, would submit as under:

3.1 That based on the evidence of the Officers of the Board, it was undisputedly proved that there was tampering of the meter, inasmuch as, the seals of the dycode numbers were tampered with and that there were scratches so as to prove manipulation which gave rise for the electricity company to issue a supplementary bill and there was therefore no reason why the suit of the plaintiff – appellant herein had to be dismissed.

3.2 Ms. Bhaya, learned counsel for the appellant would submit that evidence was recorded of the Officers of the Company which indicated that the bill was issued on the basis of a panchnama carried out which clearly indicated tampering of the meter. She would submit that the meters had a plastic sheet on which dycode was written and based on the evidence of the witness one Shri Bharat Gautamrai Majmudar at Exh. 114, it was clearly a matter of evidence which proved that as the raiding party carried out the raid, tampering was found in the dycode numbers originally installed and also the plastic seals so installed were not the same.

3.3 Ms.Bhaya, learned counsel, would further submit that the checking sheets which were produced as documentary evidence on record, clearly suggested that there was tampering of the meter and once a checking sheet had been produced indicating that there was theft of electricity, the Civil Court has no other further business to re-appreciate the evidence to the contrary.

Ms.Bhaya, learned counsel, would read out the contents of the checking sheet produced before the Trial Court at Exh.142 which indicated that the plastic seal on the meter boxes were found to be duplicate and the plastic of the body and lead seals were found duplicate. This in her submission was more than enough evidence to suggest tampering of the meter and electricity theft so as to warrant a decree in accordance with the prayers made in the suit.

3.4 Ms.Bhaya, learned counsel, would submit that the modus operandi of removing the seals and the fact that the seals were discoloured would suggest tampering of the meter. Once the checking sheet was to be believed, as the onus was shifted to prove otherwise on the defendant, the defendant had failed to do so.

3.5 Ms.Bhaya, learned Counsel, would submit that the suit was filed with the prayers based on a civil liability that had arisen. The Trial Court, while appreciating the evidence, had assessed it on the basis as if it was a criminal liability. Ms.Bhaya, learned Counsel, would submit that it is well settled by several decisions of this Court as well as the Hon'ble Supreme Court that once the consumer has been found to have tampered with the meter and committed theft, the electricity company is entitled to disconnect the electricity. In support of her submissions, she would rely on the following decisions: (I) ***M.P.Electricity Board, Jabalpur vs. Harsh Wood Products.,*** reported in ***1996 (0) AIJEL-SC 16104.***

(ii) ***M/s. Hyderabad Vanaspathi Ltd vs. A.P.State Electricity Board & Ors.,*** reported in ***AIR 1998 Supreme Court 1715.***

3.6 Ms.Bhaya, learned Counsel, would submit that mal practices have been defined and an adjudatory machinery for assessing and levying damages has

been provided in the mechanism of the Electricity Act and even on suspicion of mal practice, it is open for the electricity company to disconnect the electricity.

3.7 Ms.Bhaya, learned counsel, would also rely on a decision of this Court in the case of ***Vrajlal Devjibhai Vs. GEB.***, rendered in **First Appeal No. 2506 of 2003**, in support of her submission that when a satisfaction has been arrived at that a consumer had dishonestly abstracted energy by artificial means, ascertaining loss and fixing of compensation was a procedure prescribed and an appropriate remedy was to prefer an appeal before the Appellate Committee. In absence of any such challenge, the suit of the plaintiff ought to be decreed. Ms.Bhaya, learned Counsel, also relied on a decision in

the case of ***Pro. Bhimji Dhanji Motivaras of M/s. Sagar Ice Factory vs. Paschim Gujarat Vij Company***

***Ltd – PGVCL.***, rendered in **First Appeal No. 3278 of**

**2013**, dated 28.03.2014. She would submit that the Division Bench of this Court had dismissed the appeal of the appellant-consumer. The Division Bench, interpreting the provisions of the Electricity Act and the decision of the Appellate Committee which had confirmed the findings thereof, opined that the proper remedy was by way of an appeal and once the order of theft of the Appellate Authority had attained finality, the Civil Court has jurisdiction to consider the suit with respect to the supplementary bill which the Civil Court should consider and the suit questioning the legality of the bill was plausible and once it was proved that there was a theft of electricity, the electricity company was entitled to recover the amount of supplementary bill by filing a suit.

4 Mr.Ashish Dagli, learned counsel appearing for the respondent – original defendant would defend the decree and the judgement which dismissed the



suit of the appellant. Mr.Dagli, learned counsel, would take the Court through the plaint and the amended plaint to submit that the contention of the plaintiff that the order of the Appellate Committee was in context of a separate consumer number which was HT 21036 whereas the suit was connected with consumer number 3258. Mr.Dagli, learned counsel, would take the Court through the response filed vide application at Exh.54 in which it was specifically pointed out by the defendant that the suit was misconceived.

4.1 Mr.Dagli, learned counsel, would take the Court through the written statement filed by the defendant where it was specifically denied that there was theft. That the raiding party had come to the premises of the respondent – defendant. That the electricity connection was disconnected without notice and panchnama was drawn after taking statements under coercion of the Manager Mr.Pandya and that of one Mr.Lakhani. That the officers of the company had no information of the dycode seals. That the Dy.Executive Engineer and an officer, equivalent thereto would visit the premises every month, open the seal, lock with the keys which were in exclusive possession of the Electricity Company, do the meter reading, lock the meter board, and therefore, the contention that the defendant had tampered with the seals was not proved.

4.2 Mr.Dagli, learned counsel, would further submit that the contention of the plaintiff that there was theft of electricity was misconceived and that the bill that was issued on the basis of the ABCD Formula was also incorrect. Mr.Dagli, learned counsel, would take us through the amended issues which were framed from 4A to 4G which indicated that based on the amended issues, the Trial Court had come to the conclusion that the defendant had proved on the basis of the crossexamination of the witnesses of the electricity company itself that there was no theft of electricity, that there was no

tampering of the meter, that the suit was filed on the basis of surmises and conjectures, that every month the meter reading was carried out by the officer in the rank of Dy. Engineer and the keys to the meter were in his custody, and therefore, there was no opportunity or an occasion for the defendant to tamper with the seals. That the G7 card which were recorded every day and which were in the custody of the defendant would then be handed over to the officers of the electricity company every month and the Trial Court had rightly observed that these documents were in the possession of the company, which the company had withheld, and therefore, the findings of the Trial Court, especially on issues 4A to G, which were read by the learned counsel could not be faulted.

4.3 Mr.Dagli, learned counsel, would place reliance on the decision of the Division Bench of this Court rendered in First Appeal No. 836 of 2001 dated 10.12.2014 in respect of the same parties which, on assessing the evidence came to the conclusion that the meter was not tampered with or was running slow, the First Appeal of the Board was dismissed. He also relied on the decision of the Division Bench rendered in ***First Appeal No. 69 of 2011***, in the case of ***Paschim Gujarat Vij Co. Ltd vs. Samat Thariya Gadhavi Ramesh Kankhara.***

4.4 Mr.Dagli, learned counsel, would also rely on a decision of the Division Bench in the case of ***Kiran Industries, Mehsana vs. Gujarat Electricity Board, Baroda & Anr.***, rendered in ***A.O No. 505 of 1990 with A.O No. 165 of 1994.***, which had held that the suit questioning the legality and validity of the bill of the electricity company was not barred in light of condition No.34 and merely because an Appellate authority was not available, the consumer was not disentitled to file a suit.

5 Having considered the submissions made by the learned counsels appearing for the respective parties and having perused the judgement and decree of the Trial Court and the issues framed thereunder, on the question whether the plaintiff was entitled to file a suit for recovery of Rs.24,09,963/- while answering the issue in the negative, the Trial Court considered the evidence of one witness of the electricity Board, namely, that of one Prakashchandra Parekh at Exh.137. Reading of the deposition of this witness would indicate that in the cross-examination, the witness has deposed that the bill was issued based on the instructions of his higher officer, one Mr.Mahesh Vasavada, that the bill was issued on his oral instructions. That when the bill has to be made on the basis of theft of electricity, the records are examined. That he was not aware of report of the raiding party in context of the defendant assessee – Girnar Cements. In his cross-examination, he admitted that while assessing the bill and preparing it, he did not take into consideration the Rule Book, i.e. the Tariff Book, and therefore, the Trial Court came to the conclusion that the plaintiff was not in a position to prove whether it was entitled to suit for recovery of the aforesaid amount.

5.1 Further, assessment of the evidence would indicate that he had not gone to examine as to what extent theft had occurred and the supplementary bill was issued without the signature of the Executive Engineer. The Trial Court, therefore, and in our opinion rightly so assessed the evidence of the cross-examination of this witness and found that the bill in question was not prepared in light of the provisions of the Act and without the knowledge that the assessment had to be done based on the theft of electricity and the issue whether the plaintiff was entitled to file the suit was therefore rightly held to be in the negative.

5.2 On the issue whether the plaintiff was entitled to recover the sum of Rs.15,45,141/- the issue was also answered in the negative. The assessment of evidence was done based on the deposition of one Bharat Gautamrai Majmudar at Exh.114. Cross-examination of the witness when read indicates that he is not aware of the tendering of the original bill and also not aware that there was a contract by which the electricity company was entitled to recover an additional amount @2.5% on delayed payment. The bill also is not produced. The issue, therefore, was held in favour of the defendant and against the plaintiff and rightly so.

5.3 As is contested between the parties, issue 4A and its sub issues need to be essentially based on the evidence on record for the Court to come to the conclusion whether the judgement and decree of the Trial Court is just and proper. The root issue is whether the plaintiff is able to prove that in fact there was a power theft. That issue i.e. issue No.4 was answered in the negative. While doing so, the Trial Court assessed the deposition of one Bharat Gautamrai Majmudar at Exh.114, that one Ashvin Kantilal Talati at Exh.130, and that of one Devidas Hari Chaudhari at Exh.136 and some documentary evidences which these witnesses had sought to admit or deny.

5.4 Exh.114 is the deposition of Bharat Gautamrai Majmudar who has admitted in his cross-examination that there was no complaint that the respondent – defendant had indulged in power theft and that while installing the meter, there are signs of scratches on the meter and that therefore it cannot be a case where merely because of the scratches on the meter it would amount to a case of theft. Reading of the deposition of the witness Ashvin Kantilal Talati at Exh.130 would indicate that he in his crossexamination had admitted that where there are areas in which the electricity consumption is less than normal, it is a case of presuming theft. That he had not opined that the usage of power in the defendant company

was lower than the estimated actual consumption and that there was no complaint which was received by the Board that the defendant had indulged in theft of electricity. Reading of the examination of this witness would further indicate that that the meter that was checked was not taken to the laboratory for examination or inspection and if it was not so done, a case of power theft cannot be recorded. He admitted that the meter in question was not sent for examination for laboratory testing. Examination of one Devidas Hari Chaudhari at Exh.136 and his crossexamination indicated that the presumption that the defendant company had indulged in theft was not concluded without sending the meter for laboratory testing or for examination and inspection of the meter as to the readings that were recorded were based on an assessment of theft. That the police complaint at Exh.118 was recorded without assessing whether in fact the meter was tampered with and it was a case of theft.

5.5 The Trial Court, on assessing the evidence of these three officers came to the conclusion that it was essentially the burden of the company to prove that the theft of electricity had occurred due to tampering of the meter. The evidence on record by the company suggested that there was no laboratory examination done of the meter, that in fact, it was the case where theft could not be proved and the bill was raised on the basis of presumption, and therefore, adverse inference had to be drawn in accordance with the provisions of Sec.114 of the Evidence Act.

6 In our submission and opinion, the Trial Court, therefore, on assessment of this evidence, rightly came to the conclusion that the case of theft was not proved. On the question of additional issues framed by virtue of an application at Exh.167, it is a burden on the plaintiff to prove whether there was tampering of seals and that the suit was not filed based on

surmises and conjectures. That the contention of the defendant that the raiding party officers had recorded the statement of Manager and the Clerk and that the keys for the meter were not in exclusive possession of the Dy.Engineer and G7 Card which was given was not produced and that the meter box seals were not duplicate are assertions which the defendant had, through the weakness in the link of evidence, made the plaintiff fail to prove its case and the issue therefore was answered in the affirmative and in favour of the defendant.

6.1 In context of the issues whether the plaintiff proves that the dycode numbers of the seals were not changed, when we see the discussion of issue 4A, the Trial Court has again examined the evidence of one Prakashchandra Parekh at Exh.137. Reading of the evidence and the discussion on the issue indicates that one Bharat Gautamrai Majmudar had admitted that whenever a meter is installed and so done in the present case, Form 4 is filled, which is on the record of the Company and the Company records the dycode numbers. That during the course of filing of the suit, no such record suggesting the dycode numbers, in case of the defendant, has been produced. The witness further goes on to depose that he has no support to suggest that the dycode numbers had undergone a change. That while filing a report on the change of dycode numbers, he had done so without any record. It was therefore a clear case where the evidence of the officer and the plaintiff had suggested that before filing the suit a particular dycode number was implanted on the plastic seal and that the dycode number had changed was an assertion without any base and any record being produced, and therefore, the Trial Court, in our opinion rightly so came to the conclusion that there was no base to suggest that the dycode numbers and the plastic seals had been tampered to suggest a change in numbers.

7 Even the evidence of one Ashvin Kantilal Talati at Exh.130 had admitted that the dycode numbers of the manufacturing company on the plastic seal of the meter were not known. That such plastic seals undergo wear and tear with passage of time and that in case of such wear and tear, such meters are sent to the laboratory for examination and then replaced with a new seal and it was an exercise not done in the case of the defendant, and therefore, it can safely be presumed that the seals were not original.

7.1 Devidas Hari Chaudhari, was examined at Exh.136. The deposition of this witness also indicated that the entire record of the numbers of the dycode on the plastic seals is in the possession of the electricity company which has not been produced. He has admitted that such record is in their custody and the Trial Court, therefore, in our opinion rightly came to the conclusion that all the three witnesses had testified that the dycode numbers were recorded in Form 4. That with the passage of time there can be wear and tear on the dycode numbers which can be changed with replacement of seals after undertaking a laboratory test, which was not done in the case on hand and that the records with regard to dycode numbers and plastic seals were in the exclusive custody of the electricity company, was not proved. The Trial Court, while answering this issue and in our opinion rightly so held that no such records were produced by the plaintiff company to suggest a change in the dycode numbers and that it was not even informed as to which dycode numbers existed initially. The base therefore of the suit that the meter was tampered with and that the dycode numbers had changed was a case which fell on its feet as rightly recorded by the Trial Court.

8 Coming to the other essential issue as to whether the suit was filed on the basis of surmises and conjectures, once again based on the assessment of the evidence of the witness Ashvin Kantilal Talati at Exh.130, it was clearly proved and it was admitted by the witness that there could be scratches on

the seal while operating the meter and merely because there were scratches on the plastic seal of the meter, the suit was based on presumption that there was tampering. It has also come on record through the deposition of this witness that the meter had not been taken and sent to the laboratory for inspection. Relying on a decision of this Court in the case of ***Ladhabhai Munnabhai Mangukiya vs. Gujarat Electricity Board.***, reported in ***2003 (2) GCD 1433 (Gujarat)***, the Trial Court held that the seals were not duplicate or that the meter was imperfect, the burden was on the plaintiff and once there was evidence on record to suggest that there was no defect in the meter, the burden shifts on the plaintiff. The plaintiff in the present case had failed to prove. Furthermore, no dycode numbers were produced. The G7 Card which as per the deposition of the witnesses of the Company were filled in by the defendant every day to record power consumption and which were collected at the end of each month by the officers were not produced on record to suggest that the meter readings had discrepancies and the supplementary bill was prepared based on such discrepancies, and therefore, the Trial Court held that the documents which were exclusively in possession of the appellant were not placed on record, and therefore, the suit was based on surmises and conjectures.

- 9 The Trial Court then, further went on to discuss the evidence on the issue and opined that based on the evidence on record of one Bharat Gautamrai Majmudar, it had come on record through his testimony that the meter boxes are locked and they are examined every month by an officer of the cadre of Dy.Executive Engineer. The keys are exclusively in possession of such officer who would visit the premises, unlock the meter box and prepare a report. No diversion or tampering of such locks has come on record to suggest that the meter boxes and the locks thereon were opened otherwise except by an officer every month. That there was no evidence produced on record to suggest that the dycode numbers had changed or that the seals were



tampered with, and therefore, the Trial Court, in our opinion rightly held that there was an adverse inference drawn in favour of the plaintiff which had failed to prove its case that the meters were tampered with.

10 On the other essential issue as to whether the plaintiff proves that the seals were duplicate, the Trial

Court again on assessment of evidence found that one Devidas Chaudhari at Exh.136 had admitted that there are separate numbers on separate seals, that the dycode numbers on the seals change every five years, that there is no record to suggest that the questioned dycode numbers on the plastic seals of the meter in question were different from the one originally installed. This witness had admitted that without any record produced on the dycode numbers and any material with him, a case was made out for change in the numbers and the panchnama at Exh.115 and the Inspection Report at Exh.116 did not show the original dycode numbers, nor such documentary evidence were proved through any other evidence. The Trial Court, therefore, came to the conclusion that there was no evidence on record putforth by the plaintiff to suggest change in the dycode numbers. This would also answer the submission of the learned counsel for the company that a checking sheet recording change in dycode numbers should be taken as gospel truth when the witnesses of the electricity company have deposed otherwise.

11 On issue 4I, as to whether the reading of the meter was tampered with, it was found based on the assessment of Ashvin Kantilal Talati at Exh.130, particularly reading paragraph 19 thereof that there is a movement of the disk in the meter and that all the equipments are connected. That there is no evidence on record to suggest that the reading of the meter had been tampered with or the meter was tampered to run slow. He in his testimony admitted that there was no evidence to suggest that the meter was made to

- run slow or stop and that the meter reading had been obtained otherwise to suggest such a tampering of the meter.
- 12 All these therefore would suggest that there was no evidence on record for the plaintiff to come to a conclusion that it was entitled to decree of recovery of Rs.24 lakhs and odd when based on its own evidence it had failed to prove its case.
- 13 Mr.Dagli, learned counsel, has taken us through the judgement of the Trial Court and it had come on record from their officer's cross-examination which brought out the inherent defects in the evidence to suggest whether the meters were tampered with, whether the dycode number was changed and that based on the rojkam, the evidence of the witnesses. The Trial Court had come to the conclusion and in our opinion rightly so that the suit of the plaintiff does not deserve to be decreed.
- 14 At this stage, it will be in the fitness of things to appreciate the contention of learned counsel for the defendant by relying on the decision of the Division Bench of this Court rendered in First Appeal No. 836 of 2001 in respect of the same parties, where albeit on different evidence, the Trial Court findings on assessment of evidence by the First Appellate Court had been held more or less on the same standards as correct and the first appeal of the company was dismissed. Paragraphs 13 to 15 of the oral judgement of the Division Bench read as under:
- "13.We may assess the evidence in this background. Admittedly, on 29.11.1994, there was no occasion for the Board officials to come to the premises of the plaintiff company and replace the old cable and the meter. The Executive Engineer of the electricity company admitted that the meter reading was taken only few days before this. No report for any replacement of the cable or the meter was made by the officers of the Board. He had not received any complaint from the plaintiff in this regard. He had not drawn any Panchnama before setting out to visit the plaintiff's premises for such purpose. There was no initial point of any suspicion that the meter was tampered or that it was running slow. In absence of any such prior reason, the act of removal of the meter can, at the best, be seen as fishing inquiry. The Board failed to establish the basic reason for the officers to visit the site on 29.11.1994 and to remove the meter. For what reason they visited and on what*

*grounds they suspected a possible tampering of meter is simply not stated.*

*14. Further, we may not enter into the disputed question whether the representative of the plaintiff company was present at the time or not. However, it remains admitted that the officers of the electricity company did not draw any Panchnama of the removal of the meter, did not draw any Rojkam of the condition of the meter and its seals, did not seal the meter and remove the same and send it to the laboratory for its testing. Admittedly, the meter was tested almost a day later. In the meantime it remained in an unsealed and unprotected condition. Quite apart from these fundamental defects in the procedure, the electricity company also could not explain how the inner seals could be tampered when the outer seals and lock were found intact. As admitted by the witness of the electricity company, the outer lock and the seals were untampered and the keys of the lock were in possession of the officers of the Board. The outer seals would be removed and the locks opened only if for the purpose of recording the consumption it was found so necessary. Ordinarily, the recording of the consumption could be done through the glass pane in front of the meter box. All in all, in our opinion, the trial Court committed no error in holding that the entire procedure was tainted, resulting into rendering the laboratory report unreliable.*

*15. With respect to nonraising the issue of the legality of the Appellate Committee's order, when the trial Court, after hearing both the sides and appreciating the evidence on record, came to the conclusion that the bill for theft of electricity was unsustainable as there was no evidence of theft of electricity, rendering of the Appellate Committee's order invalid was a mere consequence. Even if the error of the Civil Court was in a nature of an irregularity, it would not render the decision invalid.*

*In that view of the matter, the first appeal is dismissed."*

- 15 For the aforesaid reasons, we find that there is no illegality committed by the Trial Court and it is not a case of mis-judgement or mis-assessment of evidence so as to warrant interference of this Court and the Court to take a view different from the one taken by it while dismissing the suit of the plaintiff – appellant. The present first appeal is accordingly, dismissed.

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