
(1973) 11 GUJ CK 0017
In the Gujarat High Court

Bhagwanji Devraj

APPELLANT

Vs

The Union of India (UOI) and Another

RESPONDENT

Date of Decision : 02-11-1973

Acts Referred:

Partnership Act, 1932 — Section 25, 25

Citation : (1975) 16 GLR 357

Hon'ble Judges : S.H. Sheth, J

Bench : Single Bench

Judgement

S.H. Sheth, J.—The Petitioner is a businessman at Jamnagar. He has got a telephone connection for his personal use. It is telephone No. 184. He is also partner of Shakti Oil Mills at Jamnagar. Shakti Oil Mills had another telephone line. It was telephone No. 491. In respect of telephone No. 491, Shakti Oil Mills had been in arrears of telephone charges since 16th June 196. The total arrears amounted to Rs. 9,710-20p. and the Telephone Department, therefore, served upon it a notice of demand. It was not complied with. Since the arrears were not paid, the telephone line of Shakti Oil was disconnected by the Telephone Department.

2. On 31st December 1970, the Telephone Department served upon the petitioner a notice calling upon him to pay up the arrears of charges in respect of telephone No. 491. The petitioner did not comply with the notice. Thereafter, on 15th April 1971, the Telephone Department served upon the petitioner another notice of demand. Besides calling upon the petitioner to pay up the arrears of charges in respect of the telephone line of his partnership firm, Shakti Oil Mills, the Telephone Department, by the said notice intimated to him that if it was not complied with, his personal telephone line would be disconnected. The petitioner did not comply with the second notice but replied to it on 21st April 1971. On 26th April 1971, the Telephone Department disconnected the personal telephone line of the petitioner.

3. The petitioner, therefore, filed Civil Suit No. 282 of 1971 in the Court of the

Civil Judge (Senior Division), Jamnagar, for a permanent injunction restraining the respondents from disconnecting his personal telephone line. In this suit the petitioner applied for an interim injunction. The learned Civil Judge granted ad-interim injunction and issued notice to the respondents to show cause why it should not be confirmed. The respondents appeared in the suit and stated that they had already disconnected the personal telephone line of the petitioner. The learned Judge, thereupon, vacated the ad-interim injunction. Thereafter the petitioner withdrew the suit on 30th July 1971 and filed this petition.

4. In this petition, Mr. Suresh M. Shah, who appears for the petitioner, has raised before me the following two contentions:

(1) Personal telephone line of a partner of a firm cannot be disconnected if the partnership firm is in arrears of telephone charges in respect of its own telephone.

(2) After the Telephone Department has once exercised the power to disconnect the telephone line, that power is exhausted and it cannot be exercised again.

5. In order to examine the first contention raised by Mr. Suresh M. Shah, it is necessary to turn to the Indian Telegraph Act, 1885, and the rules made thereunder. Section 3(1) defines the expression "telegraph" so as to mean "any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electro magnetic emissions, Radio waves or Hertion waves, galvanic, electric or magnetic means". This definition indisputably includes the telephone apparatus. Section 7 empowers the Central Government to make rules for the conduct of telegraphs. In pursuance of this rule making power, the Central Government has framed Indian Telegraph Rules, 1951. Part V of those rules provides for matters relating to telephones. Rule 2(pp) defines the expression "subscriber" so as to mean "a person to whom a telephone service has been provided by means of an installation under the said rules or under an agreement". There is no doubt about the fact that Shakti Oil Mills was a subscriber within the meaning of that expression. Rule 415 provides that all telephone connections and other similar services, provided or authorised by the Department, shall be subject to the conditions set forth in the said rules, unless they were governed by separate contract Rule 420 provides for a situation which may arise out of the default of a subscriber due to his insolvency or such other reasons. Rule 421 empowers the Divisional Engineer to disconnect a telephone line after recording the reasons in writing for doing so. Rule 422 empowers the Divisional Engineer to disconnect a telephone line in case of any emergency. Rule 424 empowers the Divisional Engineer to disconnect a telephone line on account of excessive calls. Rule 426 authorises the Divisional Engineer to demand the costs of repairing, renewing or replacing a telephone apparatus which has been damaged on the premises of its subscriber. It further empowers him to disconnect a telephone line, if its subscriber has altered or made any attachment to the apparatus supplies to him. Rule 436 requires a

subscriber to pay to the Telephone Authority installation or shifting charges and rent in respect of a telephone. Rule 437 deals with the payability of the rental of a telephone. Rule 439 provides that the telephone charges shall be payable on presentation of a bill in respect thereof. Rule 442 is a material rule. It provides as follows:

442. Any notice, bill or demand from the Telegraph Authority for any fee or charges due from a subscriber may be served by delivery to the subscriber, or by sending it by post to the address of the subscriber or by leaving it at the premises in or upon which the apparatus is installed.

Then follows Rule 443 which deals with the cases of default of payment. It is this rule on the construction of which Mr. Shah has argued before me. It provides as follows:

443. Default of Payment. If, on or before the due date, the rent or other charges in respect of the telephone service provided are not paid by the subscriber in accordance with these rules, or bills for charges in respect of calls (local and trunk) or phonograms or other dues from the subscriber are not duly paid by him, any telephone or telephones rented by him may be disconnected without notice. The telephone or telephones may, if the Telegraph Authority thinks fit, be restored, if the defaulting subscriber pays the outstanding dues and the reconnection fee together with the rental for such portion of the intervening period (during which the telephone remains disconnected) as may be prescribed by the Telegraph Authority from time to time. The subscriber shall also pay the above charges within such period as may be prescribed by the Telegraph Authority from time to time.

It is, therefore, clear that the telephone or telephones rented by a subscriber can be disconnected if a subscriber is in default of payment in respect of one of his telephones where he has more than one. That is how I read Rule 443. The question which, therefore, arises is whether the petitioner was the subscriber in respect of both the telephone lines - 184 and 491.

6. In the instant case, Shakti Oil Mills was the subscriber and it was that firm which was in default of payment of charges in respect of telephone No. 491. Mr. Shah has argued that Shakti Oil Mills, a partnership firm, was a distinct entity from the partners who constituted it. Therefore, the personal telephone line of the petitioner, a partner of the Shakti Oil Mills, could not have been disconnected on account of default committed by the Shakti Oil Mills. It has been averred in the petition by the petitioner that Shakti Oil Mills was constituted into a partnership firm by four partners. The petitioner was one of them.

7. In order to appreciate the contention raised by Mr. Shah, it is necessary to examine the nature and character of a partnership firm. In *Her Highness Maharajm Mandalsa Devi v. H. Ramnarain Private Ltd* 65 B.L.R. 31, it has been laid down by the Supreme Court that a partnership firm is to be treated as a corporate body only for the purpose of Order XXX of the Civil Procedure Code.

The legal fiction created by Order XXX cannot be carried too far. A partnership firm has no legal entity. The persons who are individually called partners are collectively called a firm, and the name under which their business is carried on is called the firm name. Therefore, a suit against the firm is really a suit against all the partners of the firm and, therefore, decree passed in such a suit is in effect against all the partners, though it may in form be against the firm. This decision of the Supreme Court makes it quite clear that a partnership firm is not a legal entity distinct from its partners. A firm and its partners are, therefore, interchangeable terms. If, therefore, a partnership firm incurs any liability, it is the liability of all the partners.

8. Section 25 of the Indian Partnership Act, 1932, provides that every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner. It is, therefore, clear that the liability of a partnership firm is the joint and several liability of all its partners.

9. Applying the principle down in the aforesaid decision of the Supreme Court, it is quite clear that telephone number 491, rented by Shakti Oil Mills, was really rented by its four partners. Therefore, any payment which became due in respect of the telephone, became the joint and several liability of all the four partners. The payment due from Shakti Oil Mills, therefore, could have been recovered even from the petitioner alone. This is a result at which I arrive on applying the test of liability. Even if I apply the test of service the petitioner with three others was served in his own right by telephone No. 491 rented in the name of Shakti Oil Mills. Therefore also could be called upon by the Telephone Department to make the payment of the arrears of telephone charges. It is, therefore, quite clear that the petitioner in respect of telephone No. 184 was the sole subscriber while he was one of the subscribers in respect of telephone No. 491 jointly and severally liable for payment of charges in respect thereof. If, therefore, he was in arrears of charges in respect of one of his telephones, both his telephones could be disconnected under Rule 443.

10. Mr. Shah has raised before me four arguments. According to him, a partnership firm is a distinct entity. In order to make good that argument of his, he has relied upon the decision of the Privy Council in *Bhagwanji A* for AIR 1948 100 (Privy Council). It has been laid down by the Privy Council in that decision that a partnership firm, under the Indian Partnership Act, possesses a distinct personality. That observation has been made by the Privy Council in the context of change in the constitution of the partnership firm. If the constitution of a partnership firm changes, the personality of the firm also changes. In other words, the personality continues unchanged so long as the constitution of the firm continues unchanged. The Indian Partnership Act does not make a firm a corporate body enjoying the right of perpetual succession. Therefore, up in the change in the partnership of the firm, the situation changes. The concept of distinct personality, laid down by the Privy Council, has reference to the change in the constitution of a firm. The Privy Council has not laid down in that decision

that the liability of the partnership firm is not the joint and several liability of its partners. In the instant case, if the constitution of Shakti Oil Mills had changed and if notice was served by the Telephone Department upon a partner who was not a partner thereof during the period for which the payment became due, the argument advanced by Mr. Shah would have required some consideration. In the alternative, if a partner who was a partner of the partnership firm at the time when payment became due had ceased to be the partner subsequently, in accordance with the provisions of law, and had disowned his liability on account of that reason, the argument advanced by Mr. Shah would have required some consideration. In the instant case, there has been no change in the constitution of Shakti Oil Mills. Therefore, the doctrine of distinct personality laid down by the Privy Council cannot be applied to exonerate the petitioner from the liability of the telephone charges which were due from Shakti Oil Mills.

11. The next decision which Mr. Shah has cited before me is in Commissioner of Income Tax, West Bengal Vs. A.W. Figgies and Co. and Others, . In that case the Supreme Court has laid down that a partnership firm can be charged as an assessable entity distinct from its partners who can also be assessed individually. The aforesaid decision of the Supreme Court is based upon certain special provisions of the Income Tax Act. The ratio laid down in that decision, therefore, cannot be made applicable to the instant case.

12. It has next been argued by Mr. Shah that, at the most, the petitioner was liable to pay telephone charges in respect of the aforesaid telephone only in his capacity as a partner of Shakti Oil Mills. That proposition submitted by Mr. Shah is quite correct. However, the liability of a partner must be determined in light of the provisions of Section 25 of the Indian Partnership Act to which I have referred earlier. It may be noted at this stage that the petitioner has not ceased to be a partner of Shakti Oil Mills.

13. The next argument raised by Mr. Shah is based upon a reverse analogy. This is how he has put it. If a partner is in default of payment of telephone charges in respect of his private telephone, can the telephone line of a firm of which he is a partner be disconnected? If it cannot be disconnected, it has been argued by Mr. Shah, his personal telephone line cannot be disconnected on account of default of payment by the firm in respect of the telephone installed in the name of the firm. The analogy which Mr. Shah has given does not hold good on account of provisions of Section 25 of the Indian Partnership Act. Personal liability of a partner is not the liability of all the partners constituting the firm. What Section 25 provides is that the liability of a partnership firm constituted by two or more partners is joint or several liability of each all of the partners. The analogy advanced by Mr. Shah clearly militates against the provisions of Section 25 of the Indian Partnership Act and cannot, therefore, be accepted.

14. The next argument which Mr. Shah has raised before me is that Rule 443 is penal in character and that, therefore, it should be construed strictly. It is difficult to say that Rule 443 is penal in character. It provides for consequences of

default in payment of telephone charges by a subscriber. However strictly one may construe it, it cannot be construed so strictly as to encourage evasion of payment of public dues. The arguments advanced by Mr. Shah do not appeal to me and, therefore, they are rejected.

15. The next contention which Mr. Shah has raised is that the power of disconnecting a telephone line cannot be exercised again after it has been once exercised under Rule 443. According to him once that power is exercised it exhausts itself. He has tried to highlight his contention by arguing that a penalty cannot be imposed twice. I find no substance whatsoever in this argument. A person who voluntarily takes a telephone connection must pay for its charges. If he has more than one telephone pay charges which become due respect of all. If he commits default in payment of charges in respect of one telephone, he cannot be allowed to escape with impunity and to retain his other telephone connections. Where there are more than one telephone connection, given to a subscriber, the Telephone Authority is the same and the subscriber is the same. The Telephone Authority and the subscriber remaining the same, there is no reason to hold that a defaulter may be allowed to retain his other telephone lines except one in respect of which default has been committed by him. In my opinion, therefore, the power of disconnecting one or more telephone lines of a subscriber can be exercised as long as the default continues and as long as there are telephone lines, installed for the benefit of the defaulting subscriber, available for disconnection.

In view of the aforesaid reasons I am of the opinion that the petitioner was liable to pay arrears of telephone charges in respect of telephone number 491, installed in the name of his partnership firm Shakti Oil Mills. Since he did not comply with the demand of the Telegraph Department to pay up those arrears and committed default in discharging his liability, it was open to the Telegraph Department under Rule 443 to disconnect his personal telephone line-being telephone No. 184. Under the aforesaid circumstances, the action of the Telephone Department, impugned by the petitioner in this petition, cannot be called in question. The Telephone Department had full powers under Rule 443 to do what they have done.

16. In the result, I find no substance in this petition. The petition fails and is dismissed with, of order as to costs.