

(1993) 02 OHC CK 0020

In the Orissa High Court

Case No : Second Appeal No. 171 of 1982

Divisional Engineer, Telephones, Cuttack and Another

APPELLANT

Vs

Beharilal Shyamsundar

RESPONDENT

Date of Decision : 24-02-1993

Acts Referred:

Arbitration Act, 1940 — Section 46
Civil Procedure Code, 1908 (CPC) — Section 9
Telegraph Act, 1885 — Section 7B

Citation : AIR 1993 Ori 302

Hon'ble Judges : G.B. Patnaik, J

Bench : Single Bench

Advocate : A.B. Misra, for the Appellant; B.H. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Patnaik, J.—Defendants are the appellants against a reversing judgment in a suit for injunction. Plaintiff filed the suit for relief of permanent injunction against the defendants from disconnecting the telephone number Cuttack 21 127 for non-payment of arrear dues in respect of Phone number Cuttack 1995 as the plaintiff have no connection with aforesaid telephone number Cuttack 1995. Plaintiffs case in brief is that he was the Managing Partner of Messrs Beharilal Shyamsunder and was the subscriber of Telephone number CK-21127 and was regularly paying all the dues in respect of the said telephone. There was no default on his part in paying the bills, but he received a notice on 7-11-1979 from the authorities of the Telephone Department wherein it was mentioned that the outstanding amount of Rs. 4,247.30 in respect of Telephone Number CK-1995 if not paid by 20-11-1979 then the plaintiffs telephone number Ck-21127 would be disconnected. It was alleged in the plaint that telephone number Ck-1995 belonged to Utkal Loom Industries with which the plaintiff has no connection and, therefore, his telephone bearing number Ck-21127 cannot be disconnected for non-payment of the dues of some other telephone connection. Since the plaintiff apprehended disconnection of his telephone line, he filed the

suit.

2. The defendants in their written statement denied the allegations made in the plaint and it was their plea that Shyamsundar Bajoria, the Managing Partner of the plaintiff-firm was also in management of the Utkal Loom Industries Cooperative Society Limited to whom Telephone Number Ck-1995 had been provided and, therefore, plaintiffs telephone is liable to be disconnected for non-payment of the dues in respect of the other telephone bearing number Ck-1995. It was also pleaded in the written statement that the statute having provided for an arbitration of any dispute, the suit is not maintainable.

3. On these pleadings, the teamed Trial Judge framed as many as 7 issues and on issues Nos. 4, 5 and 6 came to hold that Shyamsundar Bajoria was not the owner or in charge of both the establishments, nor was it established that both the phones are under his control. He further found that both the establishments are different and, therefore, giving notice to the plaintiff demanding to pay the outstanding dues amounting to Rs. 4,247.30 is unwarranted and the plaintiff is not liable to pay the outstanding dues for the phone number Ck-1995. But so far as issue No. 3 is concerned, after noticing the provision of Section 7-B of the Indian Telegraph Act, he came to hold that the suit is not maintainable as the aggrieved party has to avail the remedy available u/s 7-B(I) of the Act. Thus, even though on merits the trial Court found in favour of the plaintiff, but on the question of maintainability, it having found that Civil Court has no jurisdiction, dismissed the suit.

4. The plaintiff carried the matter in appeal. The learned District Judge came to hold that in the facts and circumstances of the present case, it cannot be said that there is any dispute regarding plaintiff's telephone number Ck-21127 which was sought to be disconnected and, therefore, the plaintiffs action cannot be thrown out on the ground that the dispute has to be referred to arbitration u/s 7-B of the Indian Telegraph Act. He further found that the defendants not having taken any steps as required u/s 34 of the Arbitration Act, the Civil Court will continue to have its jurisdiction and accordingly allowed the appeal. Hence the present second appeal by the defendants.

5. Mr. A.B. Misra, the learned Senior Standing Counsel for the Union Government, contends that the provisions of the Arbitration Act are not applicable to an arbitration contemplated u/s 7-B of the Indian Telegraph Act and, therefore, the learned District Judge committed an error in entertaining the suit and deciding the lis.

6. So far as the first contention of Mr. Misra, the learned counsel for the appellants is concerned, I have no hesitation to agree with him, inasmuch as the provisions of the Arbitration Act will have no application to an arbitration contemplated in Section 7-B of the Indian Telegraph Act, 1885. A learned single Judge of this Court in the case of Nityananda Sahu Vs. Postmaster General and Others, , after analysing the provisions of Section 7-B(2) of the Indian Telegraph

Act and in view of the provisions contained in Section 46 of the Arbitration Act came to hold that the general scheme of the Arbitration Act is not applicable to a statutory arbitration under the provisions of the Indian Telegraph Act. In that view of the matter, the lower appellate Court committed an error in applying the provisions of Section 34 of the Arbitration Act and the conclusion on that score, therefore, must be set aside. The first contention of Mr. Misra, the learned Senior Standing Counsel, is upheld.

7. But the next contention which requires rather detailed examination on the point relating to ouster of jurisdiction of the Civil Court may now be considered. According to Mr. Misra, in view of the clear legislative mandate contained in Section 7-B(1) of the Indian Telegraph Act, no suit by the Civil Court would be maintainable and an aggrieved party will have to approach the arbitrator as provided under the Act. In support of this contention reliance has been placed on the Full Bench decision of this Court in the case of Magulu Jal and Others Vs. Bhagaban Rai and Others, as well as a decision of this Court in the case of The Executive Engineer, Rural Engineering Division, Cuttack West, Cuttack Vs. Surendranath Kanungo, , and a decision of the Supreme Court in the case of Munshi Ram and Others Vs. Municipal Committee, Chheharta, . So far as the decision reported in The Executive Engineer, Rural Engineering Division, Cuttack West, Cuttack Vs. Surendranath Kanungo, , I really fail to understand how that decision is of any application in deciding the question of ouster of jurisdiction of the Civil Court. Obviously the decision has been cited without examining the same and though in the typed memo of citations it has been mentioned to be a Full Bench decision, but it is a decision of a learned Single Judge. The aforesaid decision is certainly not on the point in issue and does not help the appellants in any manner.

The Full Bench decision of this Court reported in Magulu Jal and Others Vs. Bhagaban Rai and Others, undoubtedly lays down the law as to exclusion of jurisdiction of the Civil Court. Certain well settled principles with regard to the exclusion of jurisdiction of Civil Court have been laid down in the aforesaid case which may be enumerated hereunder:--

" 20. The following principles may be laid down as well settled by the aforesaid authorities :

(1) Exclusion of the jurisdiction of the Civil Court is not to be readily inferred. Such exclusion must either be explicitly expressed or clearly implied.

(ii) Even if jurisdiction is so excluded, Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. Civil Court would interfere if it finds the order of the special tribunal is unfair, capricious or arbitrary.

(iii) Where a liability not existing at common law is created by statute which at the same time gives a special and particular remedy for enforcing it, a remedy

provided by the statute must be followed and the Court's jurisdiction is ousted. The scheme of the particular Act is to be examined to see if remedies normally associated with actions in Civil suits are prescribed by the statute.

(iv) The Legislature may entrust the special tribunal or body with a jurisdiction which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or to do something more. The Legislature shall have to consider whether there shall be an appeal from the decision of the tribunal as otherwise there will be none. In cases of this nature, the tribunal has jurisdiction to determine all facts including the existence of preliminary facts on which exercise of further jurisdiction depends. In the exercise of the jurisdiction the tribunal may decide facts wrongly or if no appeal is provided therefrom there is no appeal from the exercise of such jurisdiction.

(v) Even in a case when the Civil Court would have jurisdiction on a finding that the special tribunal has acted beyond the scope of its authority is in point No. (ii), it cannot substitute its own decision for that of the tribunal but would give a direction to dispose of the case in accordance with law. "

In the decision reported in *Munshi Ram and Others Vs. Municipal Committee, Chheharta*, , their Lordships of the Supreme Court having examined the provisions of the Punjab Municipal Act came to hold that where a revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all other forums and modes of seeking it are excluded. It was further observed that construed in the light of this principle, it is clear that Sections 84 and 86 of the Punjab Municipal Act bar, by inevitable implication, the jurisdiction of the Civil Court where the grievance of the party relates to an assessment or the principle of assessment under this Act.

Applying the aforesaid principles to the facts and circumstances of the present case, I have no doubt in my mind that the jurisdiction of the Civil Court will be ousted only if the dispute would be covered by Section 7-B(i) of the Indian Telegraph Act, 1885. But if the dispute is not covered by Section 7-B(I) of the Indian Telegraph Act, 1885 Civil Court's jurisdiction cannot be ousted. On the finding arrived at by the two Courts below to the effect that the plaintiff has no connection with Telephone number Ck-1995 and the further finding that so far as plaintiff's own telephone connection is concerned there has been no arrear, and on the admitted case that plaintiff's telephone connection Cuttack-21127 was sought to be disconnected for nonpayment of arrear dues of telephone number Ck-1995 and the plaintiffs case that he has no connection with the telephone number Ck-1995 having been established, it is difficult for me to hold that the dispute is one covered u/s 7-B(I) of the Indian Telegraph Act, 1885. In the Full Bench case of this Court *Magulu Jal and Others Vs. Bhagaban Rai and Others*, it was held that even if the jurisdiction is excluded yet Civil Court will have the jurisdiction to examine into cases where the provisions of the Act have not been

complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. In this view of the matter and in view of the conceded position, as referred to earlier, in my considered opinion, the provisions of Section 7-B(I) of the Indian Telegraph Act having no application to the disputed question, jurisdiction of the Civil Court cannot be held to be ousted. The contention of the learned Senior Standing Counsel on this score accordingly is rejected.

6. In the afore said premises, I do not find any merits in this appeal which is, therefore, dismissed, but in the circumstances, there will be no order as to costs.