

(1999) 04 MAD CK 0071
In the Madras High Court
Case No : S.A. No. 1746 of 1989

Dr. Ramarao

APPELLANT

Vs

The Divisional Engineer (Telegraphs) Telegraphs Officer,
Kaaraikudi and another

RESPONDENT

Date of Decision : 16-04-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Telegraph Rules, 1951 — Rule 24, 445

Citation : (1999) 2 CTC 290

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : Mr. T.R. Mani, for T.M. Hariharan, for the Appellant; Mr. M. Viyaya Kumar, Additional Central Government Counsel, for the Respondent

Judgement

1. The plaintiff in O.S. No. 525 of 1985 on the file of the District Munsif Court, Paramakudi, who had lost the suit claim before the two Courts

below is the appellant. The suit out of which this second appeal had arisen is the best example as to how the respondents treat the telephone

subscribers and as to how a telephone subscriber suffers for no fault on his part.

2. The present second appeal is directed against the judgment and decree of the learned Subordinate Judge, Ramnad at Madurai dated 22.6.1989

made in A.S.No.38 of 1988 in confirming the judgment and decree of the learned District Munsif of Paramakudi dated 23.3.87 made in O.S. No.

535 of 1985.

3. At the time of admission, the following three substantial questions of law were framed by this Court.

1. Whether the lower appellate Court is right in holding that the suit is for want

of notice u/s 80 C.P.C. when an application to dispense with notice was filed and ordered by the trial Court?

2. Whether the disconnection of the telephone without proper notice is legal and justified in view of Rule 42 and 445 of the Indian Telegraph Rules.

1951 ?

3. Whether the Courts below erred in coming to the conclusion that the meter was working properly ?

4. For convenience, the parties will be referred as arrayed before the trial Court.

5. It is disheartening to note that the plaintiff, a registered medical practitioner of repute in the locality had not only been deprived of a telephone

connection but the public in the locality have been deprived of reaching the medical practitioner during emergency over phone by the conduct of

the defendants. The impracticable approach and the stand taken by the defendants is an example as to how the subscriber of a telephone

department is being treated so high handedly. The two Courts below also have approached the issue on assumptions and surmises and as if the

defendants alone are persons of virtue, while the plaintiff's case deserves to be disbelieved and rejected. The approach of the two Courts below

had also resulted in inconvenience to the public at large.

6. A pragmatic approach should have been undertaken by the two Courts below and on the facts of the case and on the subsequent views, as well

the courts below ought to have granted consequential directions to render substantial justice to a subscriber who had been fighting the litigation for

more than a decade. A constructive approach not only by the defendants but also by the two Courts below is required.

7. The plaintiff is a subscriber of telephone for over 20 years ever since 1985 at his residence as well as in his clinic. The particular telephone

No.260 was located at his residence. The plaintiff was in the habit of using telephone to its minimum and his bi-monthly bills had never exceeded

Rs. 300. The bi-monthly average bill according to the plaintiff was only Rs. 137 For the period ending with 25.8.1985 a bill was sent by the

defendants and the bill read as if 3890 calls have been made and a demand was made for Rs. 1555 to be remitted finally on or before 26.9.1985.

8. According to the plaintiff the said demand was 12 times more than the normal bills, which the plaintiff had been receiving for over a decade and

the meter reading is incorrect or false or the meter had jumped. According to the plaintiff he had immediately on 9.9.1985 sent a registered letter

complaining about the excess metering and billing for which on 19.9.1985 the first defendant sent a reply stating that the second defendant is

responsible, but the second defendant kept silent. The plaintiff contacted the second defendant over phone and the 2nd defendant in turn stated

that the first defendant is the authority in charge. In the circumstances the plaintiff instituted the suit for declaration that the telephone bill for the

period 26.6.1985 to 25.8.1985 should be fixed by actual reading and a revised bill should be issued and till then the plaintiff's telephone should

not be disconnected. The plaintiff had produced number of earlier bills to show that his bills continuously were in the order of Rs.140 or Rs. 150

9. Pending the suit, the plaintiff filed an application for injunction for bearing the defendants from disconnecting the plaintiff's telephone. By order

dated 30th September, 1985, the trial court directed the plaintiff to deposit the entire bill amount into court and ordered that the defendants shall

not disconnect the plaintiffs telephone. However, despite such order the telephone has been disconnected admittedly and despite the plaintiff

depositing the entire bill amount into court the defendant had not chosen to restore the telephone connection and the defendant had been raising

certain hyper-technical objections. The disconnected telephone had not been restored till this date though the entire bill amount has been deposited

to the credit of the suit before the court below as per the orders of the Court.

10. The defendants 1 and 2 pleaded that the plaintiff is not entitled to the relief prayed for. According to the defendant the meter relating to the

plaintiff's telephone connection has been tested every month and that the present bill has been sent only as per the meter reading. According to the

defendant, the telephone exchange is an automatic exchange and it is not a manual exchange and there is no chance for any mechanical defect.

11. According to the defendants for the period 26.6.1985 to 25.8.1985 after allowing 200 free calls and 20 test calls the meter showed that the

plaintiff had made 3670 local calls. That apart the plaintiff was required to pay trunk call charges of Rs. 2, and bi-monthly rent of Rs.125 in all

aggregating Rs.1682 for the disputed bill in question.

12. According to the defendants, there is no separate meter for STD calls and the

STD calls were also billed along with the local calls and

therefore, the plaintiff has been billed for the actual number of calls made. It was contended that the Civil Court has no jurisdiction and that the

plaintiff has to take action as per the Indian Telegraph Act and Rules.

13. It is further contended that the suit is bad for failure to issue Section 80 notice and that the plaintiff should have paid the reconnection charges

of Rs.50 and should have secured the reconnection of the telephone and the plaintiff is not entitled for reconnection on mere depositing Rs.1682. It

is not correct to state that the bill amount has been multiplied by 12 and it is incorrect to contend that the meter is defective or the bill is either

excessive or arbitrary.

14. On the said pleadings, the trial Court framed five issues. The trial Court further found that the bill dated 11.9.1985 is correct and the meter is

also functioning correctly. The trial Court held that the suit is maintainable and the suit is not bad for failure to issue Notice u/s 80, C.P.C. The trial

Court However, dismissed the suit.

15. Being aggrieved, the plaintiff preferred A.S.No. 38 of 1988 on the file of the Subordinate Judge at Madurai. The first appellate Court also

framed five points for consideration and dismissed the appeal. The first appellate Court held that the suit is not maintainable as no notice u/s 80

C.P.C. had been issued. The first appellate Court held that the Civil Court has got jurisdiction.

16. The first appellate Court also found that the meter was functioning in a good condition and the bill dated 11.9.1985 is also correct. Being

aggrieved by the dismissal of the first appeal, the present Second appeal has been preferred.

17. Mr. T.R. Mani, Senior Counsel appearing for the appellant submitted detailed arguments, while taking this Court through the pleadings,

exhibits and the judgments of the two Courts below. Mr. M. Vijayakumar, Additional Central Government Standing Counsel appearing for the

contesting respondent submitted that being a concurrent finding of fact, no interference is called for in this Second Appeal.

18. As regards the first substantial question of law, this Court finds that the first appellate Court had miserably failed to go through the records of

the trial Court and as a result of which it has dismissed the suit holding that the

suit is not maintainable without a notice u/s 80, CPC. It is rightly pointed out that the said finding of the first appellate Court is a factual mistake committed by the first appellate Court.

19. It is fairly admitted at the bar and as also seen from the records of the two Courts below that the plaintiff had applied to the trial Court under

Sub-Section (2) of Section 80 and secured leave to institute the suit in view of the urgency to secure interim order. The trial Court was satisfied

and granted leave to the plaintiff to institute the suit without serving any notice as required by Sub-section (1) of Section 80, of C.P.C. The

Additional Central Government Standing Counsel after verification of the records admitted that the first appellate court had committed an error

which is apparent on the face of the record and that dismissal of the suit on that score is contrary to law. Hence the first question of law is

answered in favour of the appellant and against respondent.

20. As regards, the second substantial question of law, except sending a bill for which a protest has been made, the defendant had not chosen to

send a notice. What is sought to be contended is that the very bill itself is a notice of disconnection. The defendants knew that the plaintiff is a

subscriber for over a decade and he had been very regular in payment of the bills. It is also not disputed that the average billing for the period was

in the range of 125 to 250 calls and the bi-monthly bill never exceeded Rs.250.

21. But it is obvious that the plaintiff, who had applied for injunction also had volunteered to deposit the disputed bill amount. Accordingly the trial

court directed the plaintiff to remit the bill amount into court and granted interim orders forbearing the defendants from disconnecting the plaintiff's

telephone. Despite, that, the defendants have disconnected the plaintiff's telephone by playing the game of hide and seek.

22. Immediately on receipt of the bill dated 11.9.1985, the plaintiff had sent a notice, wherein the plaintiff pointed out that for the period of 60

days, as per the bill 3890 calls have been metered, that he had not made so many local calls and that he had already been complaining about the

erratic meter functioning during the last one and half years by his earlier letters. The plaintiff called upon the defendants to check the meter and send

a revised bill. The plaintiff also contacted the second defendant over phone. But they have sent the usual and standard reply without any effort to

look into the complaint.

23. Ex. A10 is the copy of the meter reading furnished to the plaintiff. The meter reading showed for a fortnight it had not exceeded 100 at any

point of time and for the period from 25.7.1985 to 10.8.1985 the meter had recorded 730 calls and it jumped from 01300 to 06830. Ex. B1 is

the meter reading to the plaintiff's telephone for the period from 25.8.1984 to 10.9.1985 and the metered calls bi-monthly were in the range of

100 of 240 during the period and it had not exceeded. But for the disputed quarter, it had jumped to 3890 calls.

24. Incidentally there was a dispute as to whether the defendants have refused the Court notice and injunction order. But it was contended by the

defendants that they have not refused the court order. But it is obvious that the defendants have refused and returned back the court order as well

as notice in the injunction application, wherein the court restrained the defendants from disconnecting the telephone connection as the plaintiff had

deposited the disputed bill into court to the credit of the suit as per the orders. Though certain other applications were taken but ultimately the

plaintiff had not sent the copy of such applications, except sending a formal reply that the defendants are not expected to concede the plaintiff's

demand. But there was no attempt to verify the meter.

25. However, it is obvious that the defendants have disconnected the telephone connection despite the Court orders and this has resulted in the

plaintiff being deprived of the telephone connection for over a decade. The conduct of the defendants in declining to act as per the court's direction

in the injunction order has to be deprecated and this is evident from the deposition of PW1 as well as the notice exchanged between the parties.

No steps have been taken by the defendants to restore the telephone connection despite the injunction order., despite the plaintiff's depositing the

entire amount under protest to the credit of the suit.

26. DW1 had admitted in cross-examination that in respect of the plaintiff's telephone for the period from 25.3.1985, it has been noted as

abnormal reading"". It was further admitted by him that original meter was brought to working condition. Therefore, it is obvious that the meter

reading, even according to DW1 was abnormal and the original meter was brought to working condition, which shows that the meter was either

faulty or jumping. This admission on the part of the first defendant (DW1) had been ignored by the two Courts below and they have omitted to

consider the same. This has resulted in miscarriage of justice and recording erroneous findings.

27. There is no reason at all for recording in Ex.B1 that meter brought back to working condition unless the meter is found to be defective or it has

jumped or it was not in working condition. All these admissions have been lost sight by the two courts below. DW2 admits that he had

disconnected the telephone connection on 30th September, 1985.

28. This Court is not going in to the conduct of defendants at this point of time in violating court orders as there had been very many changes in the

office of the defendants 1 and 2. The two courts have proceeded on the assumption that the meter reading is not defective and it was correct. The

two Courts have proceeded on the assumption that the meter was functioning proceeded on the assumption that the meter was functioning properly.

They have failed to take into consideration of the above admission of DW1 extracted above as well as Ex.B.1.

29. The two Courts have also proceeded on the assumption that during the relevant period there was a wedding function in the plaintiff's house

and therefore there was every chance of plaintiff using the telephone more. It is only an assumption, while the defendants had not let in evidence in

this respect. There was not even a cross-examination of P.W.1 in this respect. The two Courts below have chosen to believe the evidence of

DW1 on the assumption that there was a marriage function during the relevant period in the plaintiff's house and therefore, there might have been

large scale use of telephone by the plaintiff and his family members. When such a suggestion has been put to PW1 he had also denied that there

was no occasion for large scale use of the telephone within a fortnight. Within 15 days the meter has jumped and recorded 3890 calls.

30. As already pointed out, DW1 had admitted that the meter reading was abnormal and meter had been brought back to working condition. This

would show that the meter fixed to the plaintiff's telephone connection was defective and the meter recording was not correct. If the meter

recording was no necessity for the exchange staff to note abnormal meter recording for 15 days and further noting that the meter brought back to

the working condition. The two courts have failed to take into consideration of this evidence and the admission of DW1 and this has really

prejudiced the plaintiff. This is an obvious omission to consider material evidence.

31. It is unfortunate that the two courts have assumed that the plaintiff has actually used the telephone and for the period of 15 days in the plaintiff's

telephone more than 3000 calls have been made continuously at the rate of 64 calls. To put it precisely as seen from Ex.B1 for 15 days i.e. for the

period from 25.7.1985 to 10.8.1985, 3730 calls have been recorded by the meter. In other words according to the meter recording, the plaintiff

would have made 250 calls a day for the period i.e. 25.7.1985 to 10.8.1985, which cannot be believed as the plaintiff a registered medical

practitioner, who has got a clinic and who spends more time in his clinic as deposed by him.

32. Hence the admission of DW1 is relevant and DW1 had admitted that the reading of the meter was abnormal and had further admitted that the

meter has been brought back to working condition. This Court finds that the meter recorded an abnormal figure and therefore, it was brought back

to normal working condition.

33. In the circumstances, though sitting in second Appeal,, this court finds that the admission of the defendants have been omitted to be taken into

consideration by the Courts below. For no valid reason the plaintiff's evidence had been disbelieved and being a finding based on surmises and

conjunctures this Court has to answer the second and third substantial questions of law also in favour of the appellant. The 2nd and 3rd substantial

questions of law are answered in favour of the appellant consequently.

34. In the result, the judgment and decree of the two courts below are set aside. Consequently, the plaintiff would be entitled to the decree prayed

for But in the present case, despite injunction, the defendants have violated the orders of injunction by evading to receive the court order and

notice in the injunction application and have disconnected the telephone connection, which is a deliberate evasive conduct on the part of the

defendants as seen from the records.

35. This has resulted in not only serious prejudice but also irreparable hardship and injustice to the plaintiff. Despite the court granting an order of

injunction and despite the plaintiff depositing the entire bill amount without

prejudice to his rights, the defendants not only refused to receive the notice in the injunction application and also injunction order and disconnected the said telephone connection even after coming to know of the contempt proceedings. The defendants have been adopting a delaying tactics, as a result of which since 1985, the plaintiff's telephone connection stands disconnected. The defendants could have restored the telephone connection and sent the bill for reconnection charges, which the plaintiff would have paid without prejudice and subject to ultimate result, which course also the defendants have failed to resort to.

36. Taking into consideration of the entire facts and the admission of DW1, this Court finds that the meter with respect to the plaintiff's telephone during the relevant fortnight was defective and this has resulted in excess billing and consequently sending incorrect bill for a huge amount.

Normally this Court would have directed for arbitration. But the evidence of DW1 would show that the meter is defective and had metered abnormally and it was brought back to working condition by the end of that fortnight.

37. The cumulative effect had resulted in serious prejudice. The defendants being public authorities employed in the telephone department, a public utility should have approached the problem pragmatically and should not have taken the matter as if it is an action against individual and as a prestige issue for themselves. The persons belonging to the defendant's office should have at least called upon the plaintiff to remit charges without prejudice and should have restored the telephone connection. The plaintiff had paid the entire bill amount from 1985 onwards regularly and to his detriment he had not secured the telephone connection all these years.

38. To meet the ends of justice, while holding that the meter is defective, the defendants for no obvious reasons and after noting that the meter is defective had persisted in making the demand which is highly unbecoming attitude of public authorities. In the circumstances, this Court directs that the plaintiff's telephone connection be restored forthwith on production of the certified copy of production of this judgment of this Court without insisting for payment of reconnection charges.

38. This Court is very much agitated by the conduct of defendants, which is obviously high handed and unbecoming attitude with which they have

treated the reputed medical practitioner, who had been very regular in payment and who had maintained a service record with respect to

remittance. Had the plaintiff sued the defendants for damages, this Court would have granted substantial damage, as the plaintiff a registered

medical practitioner had been deprived of the telephone connection for nearly 14 years for no valid reasons no for and fault of his. However, this

court is awarding nominal damage of Rs. 1000 to the plaintiff though no such relief as damages has not been prayed for in the suit but this is a fit

case where to meet the ends of justice, on the facts of the present case, besides the defendants have flouted the directions issued by the trial Court

and declined to restore connection despite deposit of bill amount into Court.

40. Normally this Court will not interfere with the concurrent findings, on the facts of the present case, it is obviously clear that the two courts have

committed illegality and acted with perversity in the appreciation of evidence and this has resulted in the patent illegality.

In the result, the judgment of the two Courts below are set aside and there will be a decree on the following terms.

(i) The defendants shall reconnect and restore the telephone connection in the plaintiff's residence. (ii) The defendants shall apply to the court

below for payment out of Rs. 250 being the bi-monthly average bill, which the plaintiff had been paying. (iii) The balance amount lying to the credit

of the suit shall be refunded to the plaintiff. (iv) The defendants shall restore the telephone connection within 15 days from the date of production of

a copy this judgment and (v) The defendants shall pay a sum of Rs. 1,000 as nominal damages for the loss, inconvenience and mental agony

caused by their high handed conduct towards the plaintiff a medical practitioner and deprived him telephone facility for fourteen years for no fault

of the plaintiff and in violation of injunction order granted by the trial Court in respect of his telephone connection.

The Second Appeal is allowed with cost of Rs. 3,500