

(2010) 10 P&H CK 0262

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 4071 of 2010

Eider PW1 Communication Ltd. and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 25-10-2010

Acts Referred:

Citation : (2010) 10 P&H CK 0262

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

L.N. Mittal, J.—Defendants having lost in both the courts below have filed the instant second appeal.

2. Respondents - plaintiffs Union of India (UOI) and Bharat Sanchar Nigam Limited (BSNL) filed suit against the defendants -appellants for recovery of Rs. 10,07,847/- i.e. Rs. 5,33,917/- being the amount of telephone bills since 11.05.1992 till 01.09.1995 and Rs. 4,73,930/- being interest thereon, alleging that defendants had obtained telephone connection from UOI, which has been succeeded by BSNL - a limited company w.e.f. 01.10.2000. The defendants failed to pay the aforesaid telephone bills.

3. Suit was filed under provisions of Order 37 of the Code of Civil Procedure. Defendants moved application for leave to defend the suit. The said application was allowed subject to furnishing of surety in the sum of Rs. 12,00,000/-. However, defendants failed to furnish the surety. Consequently, after taking documentary evidence from the plaintiffs, learned Civil Judge (Junior Division), Chandigarh, vide judgment and decree dated 07.03.2009, decreed the suit for recovery of Rs. 5,33,917/(being the amount of unpaid telephone bills) along with interest thereon @ 12% per annum from the date of filing of suit till decree of trial court and future interest @ 6% per annum till recovery. First appeal preferred by defendants stands dismissed by Additional District Judge,

Chandigarh, vide judgment and decree dated 12.06.2010. Feeling aggrieved, defendants have preferred the instant second appeal.

4. I have heard learned Counsel for the appellants and perused the case file.

5. Learned Counsel for the appellants contended that the suit relates to telephone bills since 11.05.1992 till 01.09.1995 and the suit was filed on 22.09.2003 and therefore, the suit on behalf of BSNL, which is a company, is barred by limitation, the limitation period being three years, as held by this Court in the case of Bharat Sanchar Nigam Ltd. Vs. Pawan Kumar Gupta, . The contention cannot be accepted. It is correct that limitation period for filing suit for recovery by BSNL is three years, as held in the case of Pawan Kumar Gupta (supra). However, limitation period for filing suit by UOI was 30 years. BSNL came into existence on 01.10.2000 and therefore, the period of limitation of three years available to BSNL commenced on 01.10.2000. Consequently, the suit filed on 22.09.2003 i.e. within three years thereof is well within limitation. I am supported in this view by judgment of this Court in Rai Singh v. Bharat Sanchar Nigam Limited (R.S.A. No. 3817 of 2007 - decided on 23.09.2008), another judgment dated 23.04.2010 in R.S.A. No. 2628 of 2009 titled Banarsi Dass Sharma v. Bharat Sanchar Nigam Ltd. and also judgment dated 25.03.2010 in R. S. A. No. 5042 of 2009 titled B.S. Sidhu & Company v. Bharat Sanchar Nigam Limited and Anr. Consequently, the aforesaid contention raised by counsel for the appellants is repelled and rejected being devoid of merit.

6. Learned Counsel for the appellants next contended that appellant No. 1 company came in existence in the year 1996 and had no concern with the telephone bills, which pertained to some other company for period before coming into existence of appellant No. 1 company. The contention cannot be accepted as there is no pleading or evidence to substantiate the same. As noticed herein above, conditional leave to defend the suit was granted to the defendants/appellants, but they failed to satisfy the condition of furnishing surety and consequently, defendants had no right to defend the suit. As a necessary consequence, the suit has been rightly decreed by the courts below. The appellants could have raised the aforesaid contention in the trial court after availing of the right to defend the suit, but the defendants did not avail of the said right. Consequently, the contention is not substantiated by pleadings and any evidence.

7. For the reasons aforesaid, I find no merit in the instant second appeal. The courts below have rightly decreed the suit. There is no illegality in the judgments and decrees of the courts below. In fact, the courts below have already given undue favour to the defendants by not granting interest to the plaintiffs for pre-suit period without any justification.

8. The appeal being devoid of substance is accordingly dismissed in limine.