

(2006) 02 DEL CK 0112

In the Delhi High Court

Case No : Regular First Appeal 62 of 2004

Gaytri Devi Aggarwal

APPELLANT

Vs

M.T.N.L.

RESPONDENT

Date of Decision : 02-02-2006

Acts Referred:

Citation : (2006) 128 DLT 496 : (2006) 2 RCR(Civil) 272

Hon'ble Judges : Om Prakash Dwivedi, J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : V.N. Sharma, for the Appellant; Ravi Sikri and V.K. Rao, for the Respondent

Final Decision : Dismissed

Judgement

O.P. Dwivedi, J.—This appeal is directed against the impugned judgment and decree dated 27th September, 2003 passed by learned Additional District Judge whereby respondent's suit for Rs. 2,55,179/- Along with pendente lite and future interest was decreed.

2. Briefly stated the facts leading to the appeal are that on 20th May, 2002 the respondent/MTNL (plaintiff in the suit) filed the suit for recovery of Rs. 3,26,629/- against the appellant herein (defendant in the suit) towards arrears due against the telephone No. 2434070 which was originally allotted to Shri Raj Kumar Aggarwal, son of the appellant at 9542/11, Multani Dhanda, Paharganj, New Delhi with STD facility. After the death of the original subscriber Shri Raj Kumar Aggarwal, the telephone was transferred in the name of Smt. Gyatri Devi Aggarwal/appellant herein on her application. This transfer was effected on 9th February, 1990. From July, 2000 to December, 2000 respondent/MTNL issued the following bills to the appellant:-

-----	BILL	DATE	AMOUNT	-----
9.7.2000	Rs. 1,379.00	9.8.2000	Rs. 937.00	9.9.2000
Rs. 909.00	9.10.2000	Rs. 1,121.00	9.11.2000	Rs. 2,14,478.00
9.12.2000	Rs. 38,124.00	9.1.2001	Rs.	

36.00 (Rent) -----

3. The appellant however, failed to clear the aforesaid bills despite demands. The telephone was ultimately disconnected on 4th December, 2000 for non-payment of the bills. It was pleaded in the plaint that after giving some adjustments, a sum of Rs. 2,55,169/- was found due against the appellant which she failed to clear despite notice dated 16th June, 2001. plaintiff/respondent thereupon filed this suit for Rs. 3,26,629/- comprising Rs. 2,55,179/- being the principal amount due against the appellant plus Rs. 71,450/- being interest @ 14% per annum up to the date of filing of the suit. The suit was contested by the appellant. Her objection was mainly against two inflated bills, one dated 9th November, 2000 for the amount of Rs. 38,124/- and other dated 9th December, 2000 for the amount of Rs. 2,14,478/-. The defense taken by her in the written statement was that a perusal of these two inflated bills shows that most of the telephone calls were made to numbers beginning with 0900 i.e. International Chatting Numbers (PRM Calls). According to the appellant, she and her husband, both of whom are Senior Citizens had never made these calls. According to her, she along with her husband and other family members were residing at H-25A, Shakarpur, Delhi up to September, 2000 and thereafter for most of the time, they were out of Delhi. It is pleaded that the appellant or her husband had never used the telephone in question for commercial purpose and never dialed numbers beginning with 0900 (PRM calls). Appellant's plea in this regard is that her telephone line has been tampered with/diverted by some officials/linesmen of the respondent/MTNL to oblige someone who misused it by dialing international chatting numbers and that is why her telephone was not disconnected despite non-payment of the bills from July, 2000 onwards. On the basis of the pleadings of the parties, the following issues were framed by learned ADJ on 25th March, 2003: -

1. Whether the plaintiff is entitled to recover the suit amount Along with interest as prayed OPP
2. Whether the suit is without any cause of action and is liable to be dismissed OPD
3. Whether the suit as framed is not maintainable OPD
4. Relief.

4. In proof of its case, the respondent/plaintiff examined its employees namely Shri O.P. Chhabra, Senior Accounts Officer as PW-1, Sh. Rajendra Kumar, General Manager as PW-2, Sh. Dhananjay Kundo, Senior Accounts Officer/Special task Officer as PW-3 and Shri Shiv Kumar, SDE (EMC) as PW-4. The appellant/defendant examined her husband namely Shri Krishan Kumar Aggarwal, Attorney as DW-1. After considering the oral and documentary evidence placed on the record and oral submissions made by learned counsel for the parties, learned ADJ held that respondent herein/MTNL had proved its claim for recovery of Rs. 2,55,179/- in respect of various outstanding telephone bills which remain unpaid.

Accordingly, learned ADJ decreed the suit for an amount of Rs. 2,55,179/- along with pendente lite and future interest @ 6% per annum with proportionate costs.

5. Feeling aggrieved by the aforesaid judgment, the appellant has preferred this appeal.

6. We have heard learned counsel appearing for the parties and perused the records.

7. The only ground on which impugned judgment/decreed has been assailed before us is that the average monthly telephone bill of the appellant was around Rs. 1,000/- per month as is clear from the details given in para 6 of the plaint, Therefore, the appellant's plea that she or her family members did not make any commercial use of the telephone by dialing numbers beginning 0900 (PRM calls) should have been upheld by the learned trial court. In this regard, specific reference was made to cross-examination of PW-3/Shri Dhananjay Kundo, Senior Accounts Officer/Special Task Officer of the MTNL/respondent herein, who admitted that two inflated bills Ex.PW3/D-1 and PW3/D-2 are mostly in respect of calls made to International Chatting Numbers beginning with 0900 which are known as PRM calls. Learned counsel appearing for the appellant vehemently contended that appellant and her husband who are senior citizens could not have made such calls and evidently her telephone in question has been misused in their absence. Considering the fact that the average monthly telephone bill of the appellant was around Rs. 1,000/- as can be seen from the details given in the para 6 of the plaint, this argument cannot be said to be without substance but the question is who is the misuse Either it could be linesman or some other official of the MTNL who diverted the line to oblige somebody else or it could be some family members of the appellant who have misused the telephone in their absence. According to DW-1/Shri Krishan Kumar Aggarwal who is husband of the appellant, telephone in question is installed at premises No. H-25A, Shakarpur, Delhi which is also evident from the telephone bills Ex.PW3/D-1 and PW3/D-2 whereas their son namely Umesh Aggarwal resided at A-26, Gali No. 2, Shakarpur, Delhi. Thus the possibility of appellant's son or friends/relations misusing the telephone in question in the absence of appellant, cannot be ruled out. According to PW-4 namely Shri Shiv Kumar Kumar, SDE (EMC), the possibility of any misuse of such telephone by MTNL staff is ruled out because the said telephone was provided with dynamic STD facility wherein the subscriber feeds their own secret code to open and lock the STD facility. This facility could only be used by someone who knows that secret code number. Obviously, the secret code number could be known either to the appellant or her close family members. The appellant could also change that code on her will. Linesman is not supposed to know the secret code number of the STD facility available on the telephone of the appellant. Moreover, this is a technical procedure. The appellant has led no evidence whatsoever to prove that misuse of the STD facility by diversion of the line is technically possible, even if the private secret code number is not known to the linemen. Had the appellant led some evidence to

show that such diversion of line is technically possible, even without knowing the secret code number, there would have the some justification to entertain some doubt as to role played by the linemen or other employees of MTNL. In the absence of such evidence from the appellant's side, this argument cannot be entertained.

8. No other point was urged before us. MTNL/respondent's claim was fully substantiated by oral or documentary evidence placed on the record. We find no ground to take different view in the matter. In the result, this appeal fails and is hereby dismissed.