
(1990) 11 KL CK 0023
In the High Court Of Kerala
Case No : C.R.P. No. 2270 of 1980

Ittyarah

APPELLANT

Vs

Simon

RESPONDENT

Date of Decision : 23-11-1990

Acts Referred:

Telegraph Act, 1885 — Section 7B, 7B(1)

Citation : (1991) 2 KLJ 270

Hon'ble Judges : M.M. Pareed Pillay, J

Bench : Single Bench

Advocate : Legy Abraham and Roy Thomas, for the Appellant; K.N. Narayana Pillai, for the Respondent

Final Decision : Dismissed

Judgement

Pareed Pillay, J.—Defendants 1 and 2 are the revision Petitioners. Plaintiff filed the suit for declaration that the Memo 3467/41 dated 23-4-1985 issued by the second Defendant (District Manager, Telephones, Ernakulam) is null and void and that Kerala Optical Works is the real subscriber of Telephone No. 34647 of the Ernakulam Telephone Exchange and for a consequential order of injunction to restrain the second Defendant from disconnecting the telephone on the application of the first Defendant. First Defendant contended inter alia that jurisdiction of the civil court is barred in view of the alternative remedy provided u/s 7-B of the Telegraph Act.

2. The question for consideration is whether in a suit where rival claims are made for telephone by the parties reference to arbitration u/s 7-B of the Telegraph Act is mandatory. Contention of the Plaintiff is that Section 7B has no application as the dispute over the telephone is between the Plaintiff and the Defendant and not with the Telegraph authority. Section 7B of the Telegraph Act reads:

Arbitration of disputes.—(1) Except as otherwise expressly provided in this Act, if any dispute concerning any telegraph line, appliance or apparatus arises between

the telegraph authority and the person for whose benefit the line, appliance or apparatus is, or has been, provided, the dispute shall be determined by arbitration and shall, for the purposes of such determination, be referred to an arbitrator appointed by the Central Government either specially for the determination of that dispute or generally for the determination of disputes under this section.

(2) The award of the arbitrator appointed under Sub-section (1) shall be conclusive between the parties to the dispute and shall not be questioned in any court.

Section 7B provides for arbitration only when a dispute arises between the telephone authority and the person for whose benefit the telephone has been provided, Section 7B is categorical that only the disputes between the subscriber of the telephone and the telegraph authority need be referred to arbitration. In a case where there is a dispute between partners of a business over a telephone or where rival claims are made by the Plaintiff and Defendant regarding the ownership or possession of the telephone Section 7B is not attracted. The plain reading of Section 7B makes it clear that arbitration is intended only in a case where the dispute is between the subscriber of the telephone and the telegraph authority. In other words, where there is no dispute with the telegraph authority and the dispute is between the parties Section 7B has no application. There is no provision under the Act which confers any power to the telegraph authority to decide the dispute between the parties over the ownership or possession of a telephone. To attract Section 7B there must obviously be a dispute regarding a telephone and it must be between the telephone authority and the person to whom the telephone has been provided.

3. Counsel for Defendants 1 and 3 relied on Smt. Makhani Devi Banka Vs. Union of India (UOI), and contended that expression "any dispute concerning any telephone line, appliance or apparatus" takes within its sweep all kinds of disputes which relate to telephone line, apparatus or appliance and so even in a case where rival claims are made Court has no option but to resort to arbitration u/s 7B of the Act. The above decisions have no application to the present case where rival claims are made for the telephone and where the Telegraph authority has no significant role to play. But disputes of wide amplitude relating to the functioning and working of the telephone line, apparatus or appliance between the subscriber and telegraph authority would come within the ambit of Section 7B. The legislative intention of Section 7B is that the disputes relating to telephone lines, appliances or apparatus between the subscriber and the telegraph authority should be arbitrated upon. It cannot even be remotely held that in a suit where rival claims are made over a telephone line arbitration is contemplated u/s 7B of the Act.

4. Section 7B makes the position very clear that only in cases of disputes between the subscriber and the telegraph authority arbitration could be resorted to and not in cases where rival claims will have to be resolved in the suit.

The Munsiff rightly dismissed the petition. The C.R.P. is dismissed No costs.