

(2002) 07 DEL CK 0122

In the Delhi High Court

Case No : Civil Revision No. 1276 of 1999

Mahanagar Telephone Nigam Ltd.

APPELLANT

Vs

Meenu Gupta

RESPONDENT

Date of Decision : 17-07-2002

Acts Referred:

Telegraph Act, 1885 — Section 7B
Telegraph Rules, 1951 — Rule 443

Citation : (2003) 2 ARBLR 521 : (2003) 102 DLT 732 : (2002) 64 DRJ 192

Hon'ble Judges : S.B. Sinha, C.J

Bench : Single Bench

Advocate : Nem, for the Appellant; Navin Kumar, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Singha, C.J.—Although nobody has appeared on behalf of the petitioner, with the assistance of the counsel for the respondent this Court has gone through the record. The opposite party was provided a telephone by the petitioner-MTNL. The opposite party had not paid certain dues in respect of the said telephone connection. However, a telephone belonging to the partner of the respondent was sought to be disconnected in terms of Rule 443 of the Indian Telegraph Rules.

2. Opposite Party filed a suit for perpetual injunction. Petitioner relying and on the basis of Section 7B of the Indian Telegraph Act, raised a contention before the learned court below that the suit was not maintainable. The said contention of the petitioner was rejected. Hence this Revision Petition.

3. Section 7B of the Indian Telegraph Act reads thus:--

"Arbitration of disputes--7B(i) Except as otherwise expressly provided in this Act, if any dispute concerning any telegraph line, can be chamber tower, appliance or apparatus arises between the telegraph authority and the person for whose benefit the line, cable chamber tower 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 to the Central Government either specially for the determination of that dispute or generally for the determination of that dispute or generally for the determination of dispute under this Section."

4. Section 7B of the Indian Telegraph Act does not bar the jurisdiction of civil Court to entertain a civil suit. It is now trite that bar to the jurisdiction of the Civil Court to try a suit must be clearly stated in a statute either expressly or by necessary implication.

5. It is settled law that only because there exists an arbitration clause the same by itself would not stand in the way of a consumer to file a civil suit particularly when therein a prayer for a decree for permanent injunction has been made. Even if the dispute is covered by the arbitration clause, such a plea is required to be taken by the defendant at the first instance before taking any proceedings in the suit for stay of the suit but even then on that ground that suit cannot be dismissed nor the plaint can be rejected. The trial Court in the opinion of this Court has rightly arrived at a finding that in the facts and circumstances of the case, Section 7B of the Indian Telegraph Act was not attracted, as the suit filed by the plaintiff, opposite party, was not barred under any statute.

6. There is no merit in the petition. It is accordingly dismissed.