

(2001) 03 DEL CK 0018
In the Delhi High Court
Case No : Suit No. 2146/96

Manager Telephone Nigam Ltd.

APPELLANT

Vs

Shri Diwakar Sharma

RESPONDENT

Date of Decision : 08-03-2001

Acts Referred:

Citation : (2001) 4 RCR(Civil) 764

Hon'ble Judges : Jiwan Dass Kapoor, J

Bench : Single Bench

Advocate : Mr. Dinesh Agnani, for the Appellant;

Judgement

J.D. Kapoor, J.(Oral)

1. This suit though instituted by the Mahanagar Telephone Nigam Limited for recovery of arrears of telephone bills shows how a defaulter can escape from the action of dis-connection of the telephone by not making the payment of the bills running into lacs of rupees for years together either with active connivance or criminal remissness or delinquencies of the concerned officials and highly indifferent or cavalier attitude of the higher authorities in monitoring or regulating the revenue recovery. This is so because of the monolithic system that lacks in fixing individual liability or accountability. They disregard their obligations some times with impunity knowing it well that at the end of the day they would be let off by shifting the load of blame to one and another. Experience shows that subscribers whose outstanding bill either runs in hundreds or in thousands are ordinarily faced with immediate disconnection if the same is not paid by the due date. So much so even if the bill of the forgotten past even of paltry amount is found outstanding bells start ringing day in an day out to remind and threaten him with dis-connection. Instant case appears to be a tip of the iceberg. Many more skeletons in various forms may still be found in the cupboard.

2. For inaction or callous remissness on the part of the plaintiff, the public exchequer is not only being siphoned off in the form of non-recovery of the

telephone bills running into crores of rupees and interest thereon but also through the court fees affixed from the public exchequer to recover the said amount. This is most reprehensible and should be an eye-opener for the authorities to be vigilant and to punish the delinquents and it need be saddle them with personal liability. Facts are startling and disturbing and warrant severest action against every concerned official or officer.

3. The defendant had applied for telephone connection at C-74, Neeti Bach, New Delhi on 17th May, 1993. Pursuant to the said application telephone was sanctioned and telephone no. 6854595 was allotted to the defendant by way of installation of the telephone at his residence.

4. The first bill by the plaintiff was raised of 1st September, 1993 for sum of Rs.1,066/- for the turn calls only. The defendant did not make the payment even towards that bill. It did not make the authorities sit up. The next bill was raised on 1st January, 1994 for a amount of Rs.1,72,925/-. the plaintiff felt contended of receiving a fraction thereof and accepted sum of Rs.2,0101/- against the said bill and allowed the defendant to enjoy the facility. Again after two months i.e. of 1st march, 1994 another bill for Rs.71,563/- was raised and no payment was received either against the outstanding bill of January, 1994 nor against the current bill Similarly after another two months a fresh bill dated 1st May, 1994 amounting to Rs.1,39,624/- was raised. But no payment was received by the plaintiff and still the plaintiff did not wake up and allowed the defendant to use the facility. Unfortunately again on 1st July, 1994 hefty bill amounting to Rs.2,51,707/- remained unpaid and ridiculously paltry amount of Rs.380/- was adjust against the bill. For more than two long years no bill were raised. Each and every bill was independent bill and no arrears of the previous bills were shown or claimed Lastly on 29th June, 1996 a bill for Rs.1068/- toward cost of the Telephone Instrument and Directory was raised. Even that remained unpaid.

5. Accordingly to the plaintiff cause of action first arose when the first bill was raised in the year 1993 and it again arose on different dates when various bills were raised and it again arose on 24th July, 1994 when the said telephone was dis-connected and lastly it arose on 29th June, 1996 when the bill as to the cost of the Telephone Instrument and the Directory was raised.

6. The defendant shifted from the place where the telephone bills were raised and this also came to the knowledge of the plaintiff which again shows either the active connivance of the staff of the plaintiff or gross negligence. The defendant has been shown a resident of A-39, Poorvi Marg, Vasant Vihar, New Delhi, another posh locality of the town. However the summons of the suit were served upon the defendant but he did not put in appearance to contest the claim perhaps under the belief that the plaintiff would show further generosity to him by obtaining the decree but not executing the same as the plaintiff did in respect of as many as seven telephone bills amounting to lacs of Rupees.

7. The suit has been filed, signed and verified by Shri I.M.Anand, Chief Account

Officer of the plaintiff. He has also filed the affidavit in support of the suit claim.

8. The plaintiff contends that under the Rules it is the obligation of every subscriber to pay the telephone in time but glosses over about its own obligation and duty.

9. Time and again the obligation of the defendant has been harped upon. The plaintiff merely issued reminders in respect of every bill and ultimately disconnected the telephone on 24th July, 1994. Interest @ 24% per annum has been claimed through this suit. The amount of actual bills is Rs.6,36,177/- and the interest comes to Rs.3,62,033/-. Question is at whose cost the defendant has enjoyed such a luxury. Obviously at yours and mine. And that too in connivance with one or two petty officials or officers and lack of superintendence by higher authorities particularly the revenue collecting authority.

10. Rule 440 of the Indian Telegraph Rules casts obligation upon the subscriber to pay the bills by due date. It provides that a subscriber shall be personally responsible for all calls (local and trunkk) and phonograms sent for onward transmission from his telephone and for the payment of calls charges thereof.

11. Rules 442 provides that any notice, bill or demand from the Telegraph Authority for any fee or charges due from the subscriber may be served by delivery to the subscriber or by sending it by post to the address of the subscriber or by leaving it the premises in or upon which the telephone is installed).

12. Rule 443 empowers the Telegraph Authority to disconnect the telephone without notice if on or before the due date the rent or other charges in respect of telephone services provided are not paid by the subscriber in accordance with the rules or bills for charges in respect of calls (Local and trunkk) or phonogram or other dues from the subscriber are not duly paid by him.

13. However, the telephone so disconnected can be restored by the Telegraph Authority if the defaulting subscriber pays the outstanding dues and the reconnection fee together with the rental for such portion of the intervening period (during which the telephone remains disconnected) as may be prescribed by the Telegraph Authority from time to time. It further provides that the subscriber shall pay all the above charges within such period as may be prescribed by the Telegraph Authority from time to time. Another rule which ensures the payment of the outstanding bills is by way of depositing of security by the subscriber. This is Rule 445 and provide as under:

"Rule-445- The Telegraph authority may, at any time, before or during the period for which a telephone or other like services provided require a subscriber to deposit as security such amount as it amy consider necessary and if the subscriber fails to comply with such demand within such period as it may specify, the Telegraph authority may withdraw the service and remove any telephone or other apparatus belonging to the Telegraph authority. Where the security deposit

is paid, any amount due from the subscriber by way of fee or other charges under these rules may be adjustd against the amount so deposited."

14. It is settled law that any party claiming the arrears or outstanding amount can claim only legally recoverable arrears. Any arrears beyond limitation are not legally recoverable. The details in Para 7 of the plaint show that every bill raised was mainly for two months period and subsequent bill did not show the outstanding amount which remained unpaid towards the previous bill. For instance, the first bill for the billing cycle of 1.9.93 and is for the amount of Rs.3346/-. The second bill is for billing cycle of 1.1.(SIC) and is to the tune of Rs.1,72,925/-. The third bill in for billing cycle of 1.3.94 and is only for the amount of Rs.71,563/-. Similarly the bill for billing cycle of 1.5.94 is to the tune of the of Rs.1,39,624/- and the last bill is for the billing cycle of 1.7.94 for amount of Rs.2,51,707/-. None of the bills raised for different billing cycle shows the unpaid amount of arrears will regard to earlier bills. Thus for each and every bill the period of limitation has to be taken into account independently. Had the last bill included the arrears the earlier bills the limitation would have started from the period of the last bill. Fortunately, in the instant case first bill raised on 1.9.93 is within the ambit of legally recoverable amount as the suit was filed on 29.9.96 i.e. prior to the expiry of three years.

15. However, on the one hand Rule 440 provides that a subscriber shall be personally responsible for all calls (Local and trunkk) made and phonograms sent for onward transmission from his telephone and for the payment of call charges thereof, on the other hand the obligation is cast upon the Telegraph Authority firstly by way of Rule 441 providing that their designated officers shall maintain the account in respect of the proof calls and the charges due from the subscribers and such account would be conclusive proof whether the charges mentioned therein have been incurred but also requires the authority to disconnect the telephone or telex service if on or before the due date the amount or other charges in respect of telephone service are not paid by the subscriber and still further Rule 443 casts the obligation upon the Telegraph Authority to disconnect the telephone without any notice which is a very wide, unbridled and vast power but still the plaintiff allowed the defendant to continue using the telephone in spite of latter having fallen in arrears of more than Rs.6 lacs.

16. However, for lapse on the part of the Telegraph Authority the subscriber can not be let off. Every one has or her independent liability or responsibility. Two are mutually exclusive. One can't take advantage for the wrongs of the other. Since the defendant did not fulfill his obligation, he is liable to face the consequences.

17. As per Rule 441 any account maintained by the officer of the authority in respect of the number of calls and charges due from subscriber is a conclusive proof that the charges mentioned therein have been incurred. This Rule and the affidavit of the Chief Account Office who is an office duly designated under the Telegraph Act and Telegraph Rules persuade me to accept the claim of the plaintiff.

18. The suit is decreed for a sum of Rs.9,98210/- in favor of the plaintiff and against the defendant with pendente lite and future interest @ 24 per cent and also cost of the suit.

19. Unless and until the higher authorities regulate and monitor on day to day basis the recovery of outstanding, the lower functionaries will continue to have filed day. It is hoped that the authorities would not adopt the same attitude in executing this decree.

20. The suit is accordingly disposed of.