
(1992) 09 GUJ CK 0017
In the Gujarat High Court
Case No : First Appeal No. 1819 of 1992

Mangeram Daulatram Agarwal	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 02-09-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Telegraph Act, 1885 — Section 7
Telegraph Rules, 1951 — Rule 443

Citation : AIR 1993 Guj 160

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Advocate : S.V. Raju, for the Appellant;

Final Decision : Dismissed

Judgement

J.N. Bhatt, J.—In this appeal, u/s 96 of the CPC ("Code" for short), the appellant/original plaintiff has questioned the dismissal of Civil Suit No. 385 of 1983, passed by the City Civil Court Judge, Ahmedabad, on 23-7-1992.

2. Some material facts giving rise to the, present appeal needs narration. M/s. Daulatram Mangilal was allotted and installed a telephone No. 442340, in Ahmedabad, at the residence of the appellant and the appellant-Mangeram Daulatram Agarwal, is the sole proprietor, of the said concern. The appellant, who is the original plaintiff, initiated the suit in the trial Court for a declaration that the respondent/original defendants are not entitled to the amounts shown in the telephone bills in respect of the said telephone number for different periods. The said telephone came to be disconnected on the ground of non-payment of telephone bills. The plaintiff is also having two telephone connections, at Calcutta, bearing No. 357400 and 357401, The plaintiff received a notice for the disconnection of telephones, at Calcutta, on account of non-payment of telephone bills, at Ahmedabad. Therefore, the plaintiff filed the suit.

3. The defendants appeared and resisted the suit of the plaintiff denying all the

allegations. According to the contention of the defendants, the complaints about excessive billing made were investigated into and no substance was found therein. On the contrary, the department found that there was excessive use of STD facility made by the plaintiff for long distance calls, at Bombay, Calcutta, Rajkot, etc. The grievance of the plaintiff was personally examined by the General Manager, Ahmedabad Telephone, and no justification was found by him. The department also relied on the testing report and the documentary evidence of the department. It was pointed out by the department that during the period of observation it was found that the plaintiff used to talk up to 30 minutes at various stations like Calcutta, Bombay, Madras, etc., on STD. The report made by the department had shown that the meter registered 2040 calls during the said period of observation, which came to average 250 calls per day. It was the defence of the department that there was no fault or any negligence on the part of the department and, therefore, the subscriber was liable to pay the bills, as demanded. It was also contended by the department that the defendants are entitled to disconnect the plaintiff's any other telephone situated in any part of the country under various provisions of the Indian Telegraphs Rules.

4. The plaintiff placed reliance on the evidence and power of attorney holder, Kamlesh Agarwal, who was examined, at Ex. 24. The department relied on the evidence of one Divisional Engineer, Joitabhai Prabhudas Patel, at Ex. 51." The parties also relied on the documentary evidence.

5. In view of the facts and circumstances of the case and the evidence on record, the trial Court was pleased to hold that there was no substance in the suit. Therefore, the suit of the plaintiff came to be dismissed and the interim injunction granted, on 26-7-1983, in the notice of motion proceedings came to be vacated. Not only that, the trial Court was pleased to direct the plaintiff to pay compensatory cost in the sum of Rs. 1,000/- over and above the cost of the suit to the defendants, in the circumstances of the case.

6. Being aggrieved by the said judgment and decree, the original plaintiff has now come up before this Court, challenging its legality and validity.

7. Having examined the facts of the present case and having read the judgment under challenge, this Court is satisfied that there is no fit case to interfere with the impugned judgment and decree. The trial Court has appreciated the evidence and the factual scenario in its proper perspective while dismissing the suit of the plaintiff, with compensatory cost.

8. The learned counsel for the appellant contended that the trial Court has committed a serious error in deciding issue No. 3, pertaining to the jurisdiction. It is true that the trial Court had held that it has no jurisdiction to hear the suit as the plaintiff has not followed the procedure of the Ahmedabad Telephones by filing Appeal before the Area Manager or the Competent Authority against the rejection of the complaints. The suit is not dismissed only on this technical ground. The suit is decided, on merits. Therefore, the question as to whether the

finding of the trial Court with regard to issue of jurisdiction is correct or not, would not assume much significance. Once the suit is disposed of on merits, after appreciation of evidence, the question of jurisdiction pales into insignificance. Had the trial Court decided the suit of the plaintiff only on issue No. 3, the question would have been different. The suit is dismissed, on merits, after appraising and analysing the facts emerging from the evidence on records. Thus, the impugned judgment and decree are passed on fullfledged decision and not on technical point of jurisdiction, as contended. Therefore, the said contention does not help the appellant/original plaintiff.

9. The complaint made by the plaintiff, on 2-5-1981, to the department was attended and the plaintiff was called for personal representation, on 23-6-1981. But he did not avail of the opportunity. The plaintiff also complained of excessive bills in respect of the residential telephone No. 442340 for the following period :

Sr. No.

Period

Amount

Rs. Ps.

1.

11-1-1981 to 10-4-1981

8,735.20

2.

11-4-1981 to 10-7-1981

17,607.00

3.

11-7-1981 to 10-10-1981

16,444.00

4.

11-10-1981 to 10-1-1982

27,841.30

It is very clear from the evidence that the complaint dated 2-5-1981 was immediately attended but the plaintiff did not turn up for representation. During the period from 11-1-1981 to 10-4-1981, the plaintiff's telephone recorded high calling rate and, therefore, obviously his complaint was without any substance. It may be noted that the plaintiff was called for personal hearing again, on 26-11-1981, in respect of the second complaint but the plaintiff did not remain

present on that occasion also. It is found from the evidence on record that the plaintiff was informed telephonically on 1-11-1981 to remain present on 26-11-1981 for personal hearing in respect of his complaint. The department rightly found that in view of the excessive use of STD facility for long distance calls at Bombay, Calcutta, Rajkot, etc., there was no substance in the complaint of the plaintiff. It may be noted that plaintiff's case was personally examined by the General Manager, Ahmedabad Telephone, who was satisfied that there was no justification in the complaint of the plaintiff as the plaintiff had made use for long distance calls on STD. Even the observation report for the period from 2-4-1982 to 10-4-1982 showed that the plaintiff used to talk up to 30 minutes at various stations like Calcutta, Madras, etc. The said chart had shown that the meter registered 2040 calls during the said period which means an average call of 250 per day. Apparently, there was no fault of the department. Obviously, there was no misuse of telephone on the part of the department staff. Therefore, on account of non-payment of telephone bills, the said telephone was disconnected, on 17-6-1982. The plaintiff was informed on 28-5-1982 to pay the arrears of telephone bills. Again, on 7-6-1982, the plaintiff was informed on telephone, in this behalf. In the facts and circumstances, the trial Court has rightly found that the impugned telephone bills were not excessive, as alleged by the plaintiff. The department relied on the evidence of Divisional Engineer, J.P. Patel, at Ex. 51. His evidence is found quite trustworthy. The department has also produced documentary evidence. The complaints made by the plaintiff were attended promptly. The plaintiff was time and again called for representation and for personal hearing. But the plaintiff did not avail such opportunities. The telephone in question was kept under observation for a long time by the department. The department concluded that the meter was working properly. There was no defect therein. The report of the department is produced, at Ex. 52. The TRD Form No. 325 was also produced. The test was done in pursuance of the complaint made by the plaintiff with regard to excessive bills. The meter in question was found working in normal condition. General checking was also carried out by the department. The distribution point, situated outside the plaintiff's house was also checked and it was found normal. Unfortunately, the plaintiff rushed to the Court and obtained interim order by virtue of which his telephone was reconnected. The telephone was disconnected by the department, on 17-6-1982. Thereafter the plaintiff obtained interim order, on 27-9-1983, and the telephone was reconnected. The plaintiff had not paid full amount of telephone bills. The trial Court has observed in the judgment in para. 12 that when the plaintiff's telephone was disconnected, on 17-6-1982, he was required to pay telephone bills of Rs. 85,358.20. Learned counsel for the appellant/original plaintiff half-heartedly contended that the said observation is not correct. But he has not been able to show what was the correct amount due at that time. The plaintiff rushed to the Court when he received the notice of disconnection of his Calcutta telephones. In fact, the plaintiff filed the suit eight months after receipt of the said letter from the Calcutta Telephone Authority. Needless to mention that the interim order should not have been granted to such a plaintiff

who enjoys STD telephone facility and made extensive use of STD facility and has office of business in various parts of the country like Calcutta, Bombay, Madras, Rajkot, etc. It is not in dispute that the plaintiff has been using STD facility from the inception and the said facility is still being enjoyed by him. It is not in dispute that the plaintiff is a businessman and he is running business, at Calcutta, and is also a subscriber of two telephones, bearing Nos. 357400 and 357401. The trial Court has also rightly relied on Rule 443 of the Indian Telegraphs Rules, holding that the Department has right to disconnect other two telephones in view of the non-payment of telephone bills in respect of the telephone at Ahmedabad.

10. In these circumstances, this Court is in broad agreement with the trial Court. The final conclusions arrived at by the trial Court is required to be confirmed. No illegality is pointed out. No perversity is spelt out. No misreading of evidence is shown. No misinterpretation is suggested. Since there is no substance in this appeal, it is required to be dismissed at the threshold.

11. Learned counsel for the appellant/ original plaintiff, Mr. Raju, has also submitted that the plaintiff should be given some time so that he can pay up the arrears of telephone bills. This Court, reluctantly, grants 15 days time for the payment of full arrears of telephone bills so far issued in respect of the aforesaid residential telephone of the plaintiff. The respondent-department shall not disconnect the said telephone for a period of 15 days from today as the plaintiff is given time to pay up the full arrears within 15 days from today.

12. In view of the aforesaid observation, this appeal is summarily dismissed. There shall be no order as to costs.