(2002) 03 MAD CK 0179

In the Madras High Court

Case No : Writ Petition No. 9333 of 1996 and W.M.P. No. 12310 of 2996

R. Ramamurthy APPELLANT

Vs

The Accounts Officer, Madras Telephones, Madras RESPONDENT

Date of Decision : 08-03-2002

Acts Referred:
Telegraph Rules, 1951 — Rule 433, 443

Citation : (2002) 2 LW 768

Hon'ble Judges : S. Jagadeesan, J

Bench : Single Bench

Advocate : N.S. Sivanandaraj, for the Appellant; R. Santhanam, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner is the Managing Director of the firm Gemini Studios. He is having the Telephone connection bearing No.4995058 in his individual name. The firm is also having a Phone bearing No.4942930. A notice was issued to the petitioner calling upon the petitioner to pay the arrears in respect of the telephone owned by the firm, failing which, the personal telephone of the petitioner will be disconnected. Aggrieved by the same, the writ petition has been filed to quash the impugned notice calling upon the petitioner to pay the arrears of the telephone bill in respect of the Phone owned by the firm.

2. The short question arises for consideration is whether the personal phone of the Managing Director of the firm can be disconnected for the arrears of the telephone bill in respect of the firm.

3. Mr. Sivanandaraj, learned counsel for the petitioner drew my attention to the three judgments reported in Kailash Prasad Modi Vs. Chief General Manager, Orissa Telecommunication and Others, : AND B.V.K. Krishnan, Miss. Vinaya and Mrs. Nitthya Vs. BSNL-Chennai Telephones, . A Division Bench of the Orissa High Court held in the case of Kailash Prasad Modi Vs. Chief General Manager, Orissa

Telecommunication and Others, as follows:

". . . . Apart from it, the company is a juristic person having a separate legal entity and when it is the subscriber, its liability is not automatically transferred to the directors. In a private limited company, the liabilities of the directors are limited and as such they being not the subscribers of the company''s telephone, a director''s personal telephone is not to be disconnected by applying Rule 443 on account of any default in respect of the company''s telephone."

4. Another Division Bench of the Allahabad High Court held in the case of Smt. Shobha Chaturvedi Vs. Union of India and another, as follows:

"In Kailash Prasad Modi Vs. Chief General Manager, Orissa Telecommunication and Others, a Division Bench of the Orissa High Court after considering Rules 2 (pp) and 433 has held that disconnection of a personal telephone of son of an erstwhile Director of a Company on the ground of non payment of due of the Telephone of that Company cannot be disconnected applying Rule 433 on the ground that the company is a juristic person and when it is the subscriber, its liability is not transferred to its director and that in a Private Limited Company the liabilities of the directors are limited and as such they are not subscribers of the company''s telephone. We are in full agreement with the view expressed by the Orissa High Court. . . . .

19. In our considered view the stand of the respondents that they can disconnect the telephone of the petitioner on account of non payment of the bills of the Company''s telephone, is thoroughly misconceived and unjustified and thus rejected. It is indeed pity that such a course has been taken by the respondents."

5. A learned single Judge of this Court in the case of B.V.K. Krishnan, Miss. Vinaya and Mrs. Nitthya Vs. BSNL-Chennai Telephones, held as follows:

"6. It is true that the subscriber Miss Ramyah having a telephone bearing No.4863599 failed to pay the telephone bills. It is also true that the respective petitioner in W.P.Nos.658, 659 and 660 of 2002 is her father, mother and sister respectively and that they are having separate telephones in their names in the very same house. Admittedly, there is no statutory provision which enables the respondents to disconnect the telephone of the other subscribers. No doubt, Rule 443 of the Indian Telegraph Rules, 1951 empowers the authorities to disconnect any telephone on the ground of non-payment of bill. Since the respondents very much relied on the said Rule, it is useful to refer the same:-

"443. Default of payment,- If, on or before the due date, the rent or other charges in respect of the telephone service provided are not paid by the subscriber in accordance with these rules, or bills for charges in respect of calls (local and trunk) or phonograms or other dues from the subscriber are not duly paid by him, any telephone or telephones or any telex service rented by him may be disconnected without notice. The telephone or telephones or the telex so disconnected may, if the Telegraph Authority thinks fit, be restored, 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 or telex remains disconnected) as may be prescribed by the Telegraph Authority from time to time. The Subscriber shall pay all the above charges within such period as may be prescribed by the Telegraph Authority from time to time."

6. Learned counsel for the respondent fairly represented that on the basis of the principles laid down by the above judgments it is not open to the respondents to disconnect the telephone of another for the arrears of the telephone owned by a third party or some other relation. Hence, on the basis of the above principles, it is clear that for the arrears of the telephone bill of the firm, the petitioner''s telephone cannot be disconnected.

7. Accordingly the impugned proceedings is set aside. The writ petition is allowed. Connected W.M.P. is closed. No costs.