
(1990) 11 DEL CK 0045

In the Delhi High Court

Case No : Civil Writ Petition No. 33 of 1989

Reeta Kumari

APPELLANT

Vs

Mahanagar Telephone Nigam Limited and Another

RESPONDENT

Date of Decision : 12-11-1990

Acts Referred:

Citation : (1991) 43 DLT 199

Hon'ble Judges : Usha Mehra, J; S.B. Wad, J

Bench : Division Bench

Advocate : R.K. Sanghi and Rajeev Sharma, for the Appellant;

Judgement

S.B. Wad, J.

(1) We have 10 expedited writ petitions listed before us and they are on board for considerable time. Since 11.30 a.m. none of the advocates have appeared. After lunch only two advocates for the respondents are present. No request was made on behalf of any of the counsel for the petitioners for adjournment. We are, Therefore, proceeding to hear the writ petition on merits on hearing the counsel for the respondent. This experience is repeating everyday.

(2) One of us (Wad, J.) in Civil Revision No. 470 of 1983 voiced these difficulties in his order dated January 29, 1985. It was held :

"IT has now become almost a routine experience, both before the Division Benches and before the Single Bench that the counsel do not present themselves in regular hearing matters even after repeated indulgence is shown by the Courts. Most of the Benches of this Court are regularly required to dismiss the matters in default for the appearance of the counsel. But the experience is that the lesson does not go home for improving punctuality of attendance in the court. It only adds to the work of the court, which is already heavily over-worked. Restoration applications are moved to explain the absence. As a courtesy, the court does not normally probe these Explanations and the matters are restored. This fact not only results in the duplication of work but the entire

scheme of the disposal of cases is set at naught. The figures of arrears in the trial courts, the High Courts and the Supreme Court are annually announced. They are so staggering that it would be a herculean task to clear them in the near future. Bar and Bench are described as the two wheels of the chariot of justice. Unfortunately, the experience is that the Bar does not carry the responsibility in the equal measure as that of the Court. The Supreme Court has said that negligence of an Advocate is not the negligence of the litigant and, Therefore, he should not be punished by the Court dismissing the matters. There is no method to ascertain whether the litigants instruct their counsel to absent from the Court. Even if that is so, this practice would be injurious to administration of justice, as some litigants are always interested in delaying the matters. What is further shocking is that even the normal courtesies which were part of the judicial tradition are now completely forgotten. If counsel are in difficulty they would earlier mention their difficulty in time to the Court, so that the daily board is not disturbed. But even these elementary courtesies are becoming too rare. In 1976 the CPC was amended and it is provided in Order XVII, Rule I (c) that the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment. Sub-rule (d) further states that where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another Court, is put forward as a ground for adjournment, the Court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time- The thrust of these amendments is very clear, namely, that the matter shall not be adjourned on flimsy grounds. But what does the Court do where not even a request for adjournment is made and the Advocate has simply absented himself. The Court would be fully justified in dismissing such matters on merits or decide them on merits on the basis of the material disclosed on the record of the case. The counsel appearing in the Court sometimes complain of not being heard fully to their satisfaction. They should ponder as to whether a right to be heard can survive in future if they would not shed their apathy to Court work. I must mention here that sitting in D.B. we had called the President and Secretary of the Bar Association and asked them to explain these disturbing situations to their members. But, it appears that the Bar has not yet taken the matter in right earnest".

(3) This writ petition is filed by Smt. Reeta Kumari, challenging the payment notice dated 24.12.1988, sent by Mahanagar Telephone Nigam Limited, for payment of Rs. 51,339.00 . The payment notice, apart from calling upon the petitioner to make the payment, had informed the petitioner that telephone number 5413111 was likely to be disconnected without further notice if the bills were not paid within a week of the date of the said notice. Admittedly, no payment was made by the petitioner against this demand notice.

(4) M/S. Khanna Brothers were running the business of manufacture and export of handloom products on telephone number 5415110. Large arrears of Rs. 51,339.00 were not paid by M/s. Khanna Brothers and, hence their telephone

was disconnected on 11.5.1987. Thereafter the petitioner, who is the daughter-in-law of Mr. Sardari Lal Khanna, who is the proprietor of M/s. Khanna Brothers, got another telephone, viz. telephone number 5413111, as a temporary telephone on the medical ground of her being suffering from hypertension, in the same premises. Later on she applied for a fax machine to be fitted on the said telephone number 5413111.

(5) The allegation of the respondents is that after the disconnection of the telephone of M/s. Khanna Brothers, M/s. Khanna Brothers started "using the said telephone in the name of the petitioner for "their manufacture and export business of handloom products. The respondents had monitored the telephone in the name of M/s. Khanna Brothers and the telephone in the name of the petitioner and it was noticed that the same over-seas calls were made on the telephone in the name of the petitioner as they were made earlier on the telephone in the name of M/s. Khanna Brothers. All these facts are stated in the counter affidavit. No rejoinder has been filed by these petitioner controverting any of these facts.

(6) It is, thus, clear that M/s. Khanna Brothers in order to avoid the payment of Rs. 51,339.00 surreptitiously obtained the telephone number 5413111 on medical grounds in the name of the petitioner, who is the daughter-in-law of the proprietor of M/s. Khanna Brothers, and, thus, practiced a fraud on the respondents in the matter of payment.

(7) Rule 443 of the Indian Telephone Rules reads :

"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 fully paid by him, any telephone or telephones rented by him may be disconnected without notice. The telephone or telephones 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 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.

(8) The said rule provides that where the arrears on the telephone bills are not paid, any other telephone or trunk call or phonogram facility of the subscriber can be disconnected without any notice.

(9) In the present case we have held that M/s. Khanna Brothers have frequently acquired telephone number 541311 I in the name of the pensioner and have utilised the same for their business of manufacture and export of handloom products. The petitioner has been a party to the said fraud. Being so closely connected and the use of the telephone for the export business abroad clearly

creates the liability for the writ petitioner to make the payment of the bill raised on her. If the provisions of Rule 443 are not interpreted the way which we have done, the public revenue would be seriously prejudiced by the fraud practiced on the Telephone Department in the way in which it has been done in the present case.

(10) In CW. 662/89 the Division Bench of this Court dismissed the writ petition in limine on 8.9.89 almost in similar circumstances. There the petitioner was a private limited company wholly owned by the family. The proximity of the petitioner whose telephone was disconnected by the Department had close proximity with the defaulter. The Division Bench upheld the contentions of the respondent Mahanagar Telephone Nigam and dismissed the writ petition.

(11) In somewhat similar case of the Madras High Court, viz. C.W. 5963/87 the question was whether the arrears of telephone charges of the partnership firm, in which the husband of the petitioner and the minor children were partners, could be recovered by the Department. The Madras High Court held that the proximity of connection and the misuse of the telephone were writ large. The Madras High Court held that there was breach of Rule 443 by the petitioner in the case.

(12) For the reasons stated above, the writ petition is dismissed with costs. The Rule is discharged. Counsel fee Rs. 1,500/.