
(2011) 02 DEL CK 0481

In the Delhi High Court

Case No : Regular First Appeal No. 466 of 2001

Shri R.D. Vidyarthi

APPELLANT

Vs

Mahanagar Telephone Nigam Limited

RESPONDENT

Date of Decision : 24-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 29 Rule 1, 7B, 96

Citation : (2011) 02 DEL CK 0481

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This case is on the "Regular Board" of this Court since 17.1.2011 and today it is effective item No. 6 on the "Regular Board". No one appears for the parties although it is 3.00 P.M. I have therefore perused the record and am proceeding to dispose of the appeal.

2. The challenge by means of this Regular First Appeal u/s 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment and decree dated 4.4.2001 whereby the suit of the Respondent/MTNL for recovery of dues pertaining to telephone connection No. 2249822 was decreed.

3. The trial Court after pleadings were complete framed the following issues:

1. Whether the suit is barred by limitation? OPD
2. Whether the suit has not been signed, verified and instituted by a competent person? OPD
3. Whether the suit is bad for want of legal notice? OPD
4. Whether the pltf. is entitled to the suit amount? OPP
5. Whether the pltf. is entitled to interest, if so at what rate? OPP

6. Relief.

4. On issue No. 1, the trial Court has rightly held the suit within limitation because the suit was filed on 16.7.1996 with respect to recovery of bills raised w.e.f. 1.1.1993.

5. On issue No. 2, trial Court has rightly relied on Order 29 Rule 1 CPC and held that the suit was properly instituted.

6. Issue No. 3 was held in favour of the Respondent that legal notice was duly served before the suit was filed. To this, I may add that there is no provision of law which requires service of notice before filing a recovery suit.

7. The real issues were issue Nos. 4 and 5. On these issues, the trial Court has referred to the bills being Ex.PW1/1 to Ex.PW1/5 and the demand notice Ex.PW1/7. The trial Court has referred to disputes raised by the Appellant/Defendant only for one bill, and has held that the matter was referred to a committee who found no defect in the bill and which decision was communicated to the Appellant/Defendant vide Ex.PW1/D2. The trial Court has also thereafter held that once the Appellant/Defendant was availing STD and ISD facilities on his phone and charges for which are much more than normal charges, he could not contend that long hours of usage shows that the dues were not payable. Usage time is always lesser but the charges are higher when STD and ISD calls are made. Trial Court has also referred to the letter of the Appellant/Defendant wherein a claim was made for payment in instalments. So far as the issue of the suit being barred u/s 7B is concerned, I may note that the trial Court has held that the Appellant himself did not want to go for arbitration because of the time spent litigation and he simply wanted the suit to be dismissed without the matter being referred to arbitration. This has been stated in second para of the internal page 16 of the judgment.

8. I do not find any illegality or perversity in impugned judgment and decree. Merely because two views are possible, this Court will not interfere with the view taken by the trial Court, unless the view taken is wholly illegal and perverse which causes injustice. I do not find that there is any illegality or perversity in the impugned judgment or that injustice is caused to the Appellant. Once the Appellant was found to have used the STD and ISD facilities in his phone, he was bound to make payment with respect to the bills issued. The defence of the Appellant for non-payment of the bills being devoid of merits was rightly rejected by the trial Court.

9. The appeal therefore without merits is dismissed, leaving the parties to bear their own costs. Trial court record be sent back.