
(2010) 12 DEL CK 0178

In the Delhi High Court

Case No : Regular First Appeal No. 231 of 1997

Sita Ram and Sons

APPELLANT

Vs

Mahanagar Telephone Nigam Ltd.

RESPONDENT

Date of Decision : 13-12-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2011) 176 DLT 610

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Lakshay Sahni, for the Appellant; Dinesh Agnani, for the Respondent

Judgement

Valmiki J Mehta, J.—The challenge by means of the present appeal u/s 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment and decree dated 7.6.1997 whereby the suit of the Respondent Mahanagar Telephone Nigam Ltd. (M.T.N.L) has been decreed for Rs. 3,41,980/- with pendente lite and future interest @ 18% per annum. The facts of the case are that two bills of the amount of Rs. 1,46,677/-, dated 2.6.1991 and Rs. 1,94,983/- dated 2.4.1991 were raised against the Appellant. The bills in question being for just two periods are running in approximately 200 pages in number showing calls to various numbers internationally which itself in the facts and circumstances of this case is quite clearly incredible. The Appellant contended that all its earlier bills were in the region of but a few hundred rupees and therefore under no circumstances could at all such a billing amount exist against the subject telephone connection. It was contended that reference to these bills show that these bills pertained to various international calls made at short intervals by misusing the STD/ISD facility on the telephone connection of the Appellant. It is contended that there was in fact misuse of the telephone line by certain field staff of the Respondent and the Appellant should not be unnecessarily burdened with such large amount. By the impugned judgment and decree, the suit has been decreed and the relevant issue in this regard is issue No. 3 which reads as under:

Whether the debt. was not having STD connection as alleged by the debt, if so to what effect?

2. The counsel for the Appellant has contended that the bills which have been raised by the Respondent in this case were during the days when exchanges were not wholly electronic and field staff used to misuse the lines. It is contended that in all such cases where ever there was alleged to be misuse, the Respondent used to conduct a detailed enquiry including vigilance enquiry and after giving a show cause notice, only then liability was fastened to a consumer, but which the Respondent for some strange reason failed to conduct although the Appellant contends that all this was specifically informed to the Respondent and specific complaints in writing were made. These complaints are exhibited as Ex.DW1/5 dated 10.4.1991 and Ex.DW1/10 dated 11.1.1992.

3. A reference to the aforesaid findings with respect to issue No. 3 shows that all the relevant aspects with respect to past bills being of a few hundred rupees, the fact that the numbers at which calls were made whether the same were called in the past or not, whether show cause notice has not been given and whether enquiries/vigilance proceedings were conducted by the Respondent, are all conspicuous by their absence in the impugned judgment. The counsel for the Respondent therefore could not with any vehemence argue the case because the admitted position is that in all such cases where complaints are received for misuse of telephone having STD/ISD facility an enquiry is invariably conducted by the Respondent and such enquiry will look into various aspects including the value of past bills, the numbers to which the calls have been made using the STD/ISD facilities and so on. It is trite that a liability should only arise when the same is really existing. The facts and circumstances of the case show that the principles of natural justice have not been followed and no enquiry including a vigilance enquiry took place. The Respondent is thus quite clearly guilty in discriminating against the Appellant whereas admittedly this procedure with respect to disputed bills was the admitted norm.

4. Accordingly, I set aside the impugned judgment and decree and hold that the Appellant would therefore be only liable to pay the normal demands as raised with respect to these bills. However, one cannot rule out the possibility that at least some calls may have been made using the STD/ISD facility, though the business is stated to have been closed as per the Appellant. I feel that in the peculiar facts and circumstances of this case instead of the decretal amount, the Appellant should be ordered to pay a sum of Rs. 50,000/- in full and final settlement of all the claims of the Respondent under the bills to take care of the bill amount of normal calls and interest thereon. The counsel for the Appellant says that in view of the fact that the admitted norms/rules were not followed in this case and since there is no enquiry report available in the records, the Respondent should in the peculiar facts of this case seek to put a rest to litigation at this stage itself and to which the counsel for the Respondent has noted to be accepted accordingly by the Respondent on account of the direction of this Court

to the Appellant to pay Rs. 50,000/- in full and final satisfaction of all claims of the Respondent against the subject telephone connection and on the lines of which certain talks for compromise unsuccessfully took place. I must note that quite clearly, the Respondent has failed in its duty in the present case in not conducting necessary enquiry and which enquiry report would have in fact come in evidence in the present judicial proceedings where these bills are being challenged.

5. In view of the above, the appeal is partly accepted and the impugned judgment and decree is modified by directing that the Appellant shall be liable to pay a sum of Rs. 50,000/- to the Respondent in full and final satisfaction of the claims of the Respondent under the unpaid bills of the Respondent. The Appellant is granted two months time to make payment of this amount, however, in case the payment is not made then the impugned judgment shall stand revived. Appeal is accordingly disposed of, leaving the parties to bear their own costs.

Trial Court record be sent back.