(2009) 11 KL CK 0061

In the High Court Of Kerala

Case No : Regular Second Appeal No. 1008 of 2003

Subaida Ashraf APPELLANT

Vs

District General Manager RESPONDENT

Date of Decision : 13-11-2009

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 9
Motor Vehicles Act, 1939 — Section 68C, 68D
Telegraph (Amendment) Act, 1957 — Section 7, 7B, 7B(2)

Citation : (2010) 1 ILR (Ker) 181 : (2010) 1 KLT 193

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : Rajesh Nambiar, for the Appellant; Mathews K. Philip, for the Respondent

Judgement

Thomas P. Joseph, J.—The substantial question of law framed for a decision is whether Section 7B of the Indian Telegraph (Amendment) Act, 1957 (for short, "the Act") which provides for arbitration of disputes concerning telegraph line, appliance or apparatus arising between the Telegraph Authority and the person for whose benefit the line, appliance or apparatus is or has been provided, ousted jurisdiction of the Civil Court to entertain a challenge to the validity of bills issued by the Telegraph Authority concerning the telephone apparatus thus provided?

2. Short facts are: Appellant is a subscriber of telephone No. 832031 under the Edakkad Telephone Exchange, she having obtained it on transfer from Alakkal Vijayan with effect from 27.1.1995. She was issued with bills dated 1.4.1995,1.6.1995,1.8.1995 1.10.1995 and 1.12.1995 and a revised bill in respect of last of those bills, admittedly concerning the said telephone connection given to the appellant. She instituted the suit in the court of learned Munsiff, Kannur contending that the said bills are null and void for various reasons including that the bill dated 1.4.1995 covered period from 16.1.1995 to 27.1.1995 while telephone connection was given to her by transfer from Alakkal

Vijayan only with effect from 27.1.1995 and that in the bill dated 1.4.1995 there were unauthenticated hand made corrections regarding meter reading and the amount payable. As regards bill dated 1.12.1995 contention of appellant is that the entry initially made was ''zero'', that bill was withdrawn and a revised bill was prepared but has not even been served on her. Appellant contended that she had preferred several complaints to the Officer concerned but without any result. Appellant prayed for a declaration that the said bills are null and void, a direction to the respondents to issue proper bills and for injunction against disconnection of the telephone. Respondents while asserting correctness and validity of the bills contended that Civil Court has no jurisdiction to entertain the suit in view of the provision for arbitration u/s 7B of the Act. Learned Munsiff held that since the dispute does not concern the telegraph line, appliance or apparatus but only concerned validity of the bills Civil Court has the jurisdiction. It was also held that at any rate Civil Court has the authority to consider whether the statutory authority acted in accordance with the provisions of the Act. On the validity of the bills it was found that bills dated 1.4.1995 and 1.12.1995 are not enforceable. Consequently a decree was granted in favour of the appellant in part declaring the said bills as invalid and unenforceable and granting injunction against disconnection. Respondents preferred appeal. Learned Sub Judge held that the ''dispute'' involved in the case came within Section 7B of the Act and hence the suit is not maintainable. Accordingly appeal was allowed and the suit ended in a dismissal. Learned Sub Judge observed that parties are at liberty to approach the appropriate Forum u/s 7B of the Act for redressal of their grievances. That judgment and decree are under challenge in this Second Appeal on the substantial question of law which I have first above mentioned. Learned Counsel for appellant contended that it is only when the dispute concerned telegraph line, appliance or apparatus that Section 7B of the Act is attracted. According to the learned Counsel dispute in this case only concerned validity of the bills. Learned Counsel further contended that the Act does not contain any express or implied provision ousting jurisdiction of the Civil Court to decide validity of the bills. Reliance is placed on the decision of this Court in Union of India v. Sasi 1999 (2) KLT 521. Per contra it is contended by learned Counsel for respondents that Section 7B of the Act is wide enough to take within its sweep any dispute which relates to a telegraph line, appliance or apparatus and arising between the Telegraph Authority and the person for whose benefit the line, appliance or apparatus is or has been provided. ''Dispute'' contemplated u/s 7B of the Act takes in a dispute regarding the validity or otherwise of a bill issued in connection with a telegraph line, appliance or apparatus and hence the First Appellate Court was justified in holding that jurisdiction of the Civil Court is taken away by Section 7B of the Act, Learned Counsel has placed reliance on the decision in P.T. Bell & Co, Madras v. The Union of India and Ors. AIR 1993 Mad. 312 and Union of India (UOI) and Another Vs. Ramchand Naraindas, .

3. Section 9 of the CPC (for short, "the Code") confers jurisdiction on the Civil Court to try all suits of a civil nature excepting suits of which their cognizance is

either expressly or impliedly barred. The guiding considerations in the matter of decision as to jurisdiction of the Civil Court are that when a right not pre-existing in common law is created by the Statute for the first time and that Statute provided a machinery for enforcement of such right, then, even in the absence of an express bar jurisdiction of the Civil Court is impliedly barred, reason being that the right and remedy are created by the Statute. But when a right pre-existing in common law is recognised by the Statute and a new statutory remedy for its enforcement is also provided, then in the absence of an express provision excluding jurisdiction of Civil Court it could be said that common law and statutory remedies might become concurrent remedies. In Anwar Vs. First Additional District Judge, Bulandshahr and Others, the Apex Court, dealing with Sections 68C and D of the Motor Vehicles Act (Act 4), 1939 held that jurisdiction of the State Government (Hearing Authority) u/s 68D of the Motor Vehicles Act is exclusive in character and it is not open to a Civil Court to issue an order of injunction restraining the Hearing Authority from proceeding with the hearing of the case. It was held,

whenever the Statute uses the expression that a decision of an authority shall be final, jurisdiction of a Civil Court to go into the correctness or otherwise of the decision is taken away.

Bearing in mind the above guiding considerations I shall consider whether Section 7B of the Act ousted jurisdiction of the Civil Court to decide on the validity of a bill issued in connection with a telephone apparatus.

4. Section 7B of the Act reads,

Arbitration of Disputes: (1) Except as otherwise expressly provided in this Act, if any dispute concerning any telegraph line, appliance or apparatus arises between the telegraph authority and the person for whose benefit the line, appliance or apparatus is, or has been, provided, the dispute shall be determined by arbitration and shall, for the purposes of such determination, be referred to an arbitrator appointed by the Central Government either specifically for the determination of that dispute or generally for the determination of disputes under this Section.

(2) The award of the arbitrator appointed under Sub-section (1) shall be conclusive between the parties to the dispute and shall not be questioned in any Court.

(emphasis supplied)

Contention raised by the appellant is that the dispute in this case does not come within the purview of Section 7B of the Act in so far as the dispute did not concern any telegraph line, appliance or apparatus but concerned only validity of the bills issued. It is not disputed by the appellant that the impugned bills are concerning the telephone apparatus installed in her premises. With respect to the bill dated 1.4.1995 her contention is that it is in respect of the period prior to

27.1.1995 with effect from which date that telephone connection was transferred in her name. Be that it may, it is not disputed that bill dated 1.4.1995 also is concerning the telephone connection given to the appellant and issued after the telephone connection was changed to her name.

5. What then is meant by the expression, "any dispute concerning any telegraph line, appliance or apparatus used in Section 7B of the Act? ''In P. Ramanatha Aiyar''s Law Lexicon the word "concern" is given the meaning, "that which relates or pertains to one". The Concise Oxford Dictionary gives that word the meaning, "relate to, affect". Keeping that meaning of the word in mind, it would appear that it is not merely disputes in respect of telegraph line, appliance or apparatus alone that is referred to in Section 7B of the Act. Instead, the expression "any dispute concerning" occurring in Section 7B of the Act is of wide amplitude and capable of taking within its sweep any dispute relating to or pertaining to a telegraph line, appliance or apparatus which includes a dispute as to the correctness or validity of a bill issued in respect of the, apparatus which is or has been provided for the benefit of the person concerned. It may be a different matter if the bill issued is in respect of the apparatus provided for the benefit of any other person in which case it could be said that it does not pertain to the apparatus if any provided for the benefit of the person concerned. There is no reason to think that the legislative intent while enacting Section 7B of the Act and providing for arbitration was to keep out of its purview disputes relating to the correctness or validity of a bill or such other dispute concerning the apparatus provided for the benefit of the person concerned but to cover only disputes regarding telephone line, appliance or apparatus. The legislative intent is disclosed from the statement of Objects and Reasons for amendment of Section 7 of the Act where, it is stated,

... A provision as to arbitration is also considered necessary for the settlement of disputes that may arise between the Telegraph Authority and the telephone subscriber after the system of individual lining contract is replaced by the system of statutory Rules.."

(emphasis supplied)

6. Smt. Makhani Devi Banka Vs. Union of India (UOI), was a case where the Union of India filed a civil suit for realisation of arrears of bills from a subscriber. The subscriber disputed jurisdiction of the court referring to Section 7B of the Act. The Trial Court held that the suit is maintainable. That view was not upheld by the High Court. It held that the legislative intent is clear that all disputes concerning any telegraph line, appliance or apparatus which is or has been provided for the benefit of the person concerned is required to be arbitrated upon and that a finality is also attached to the award by Sub-section (2) of Section 7B of the Act. As the bills in question concerned use of the apparatus provided to the defendant it was held that the suit is not maintainable. In Union of India and Anr. v. Usha Spinning and Weaving Mills Ltd. AIR 1982 Delhi 111 correctness of certain bills was challenged in the Civil Court on the ground of malfunctioning or

misuse of telephone line by the Line and other staff of the Telephone Department. It was held,

On its plain language the expression "any dispute concerning any telegraph line, appliance or apparatus" is of wide amplitude and will take within its sweep all kinds of disputes which relate to the functioning and working of any telegraph line, appliance or apparatus. Therefore, the moment the correctness of the bill is challenged on the ground of mal-functioning or misuse or the lines, surely a dispute concerning the telegraph line, apparatus or appliance within the meaning of S7-B will spring up.

(emphasis supplied)

In Div. Eng. v. Beharilal Syamsunder Lal (1993) 1 CCC 757, injunction was sought against disconnection of the telephone connection. According to the plaintiff he got a bill for certain amount threatening disconnection if payment was not made within the time provided. According to him the amount demanded was not in respect of his telephone apparatus but that of somebody else. Trial Court found that suit is not maintainable. First Appellate Court held that dispute did not concern the telephone apparatus provided for the benefit of the plaintiff and hence the suit is maintainable. The Orissa High Court held that since according to the plaintiff the bill in question was not concerning his telephone apparatus but concerning the telephone apparatus of somebody else it is not a ''dispute'' concerning the telephone apparatus provided by the Telegraph Authority for the benefit of the plaintiff and hence the First Appellate Court is justified in its view that suit is maintainable. There, the dispute fell outside the sweep of Section 7B of the Act since according to the plaintiff the impugned bill was issued in respect of the telephone apparatus of somebody else and not of himself. In P.T. Bell and Co. Madras v. The Union of India and Ors. AIR 1993 Mad. 312 the dispute was concerning excess billing. Petitioner challenged correctness of the bill in a Writ Petition in the High Court of Madras. It was held that petitioner was disputing correctness of the bill which concerned or related to the use of the telephone apparatus provided for his benefit and hence it is a ''dispute'' covered by Section 7B of the Act. The Madras High Court took the view that the Writ Petition is not maintainable. Union of India (UOI) and Another Vs. Ramchand Naraindas, was a case where injunction was sought for, from the Civil Court. Dispute concerned correctness of the bill. The Telecom Department filed a petition for referring the dispute to the Arbitrator. Trial Court declined. The High Court allowed the appeal preferred by the Department as the dispute though concerning correctness of the bill, came within the scope of Section 7B of the Act. A Division Bench of the Gujarat High Court in G.P. Chovatta v. C.G.M., Gujarat Telecom Circle AIR 1996 Guj. 153, in a case involving alleged excessive billing in respect of the apparatus given for the benefit of the petitioner held that the dispute came within the purview of Section 7B of the Act and is to be determined by arbitration. The Division Bench held that Section 7B of the Act has to be widely construed.

7. In Union of India v. Sasi (supra) relied on by the appellant, the subscriber

quested Union of India to appoint an Arbitrator for settlement of the dispute (concerning correctness of the bill). No action was taken by the Union of India. Subscriber then filed a suit for mandatory injunction to direct the Union of India to appoint an Arbitrator. Trial Court decreed the suit. The Union of India challenged that decree on the ground that suit is barred u/s 7B of the Act. This Court took the view that Sub-section (2) of Section 7B of the Act only meant that the decision of the Arbitrator shall be conclusive between the parties to the dispute. That provision did not restrict power of Civil Court to issue a direction to appoint an Arbitrator. This Court therefore held that the court had jurisdiction to issue a mandatory injunction. That decision has to be understood on the facts of that case. That was not a case where jurisdiction of the Civil Court to go into the correctness of a bill was in question. Question considered was whether Civil Court could issue a mandatory injunction to the Union of India to appoint an Arbitrator in view of Section 7B of the Act. The dispute in that case was whether an Arbitrator had to be appointed. That did not come within the purview of Section 7B of the Act. The decision in Union of India v. Sasi (supra) therefore cannot apply to the facts of this case.

8. Having regard to Section 7B of the Act and the legislative intent behind introducing Section 7B of the Act using expressions of wide amplitude, I am of the view that any dispute relating to or pertaining to a telegraph line, appliance or apparatus including a dispute concerning the correctness or the validity of a bill provided, it is concerning the telegraph apparatus which is or has been provided for the benefit of the person concerned is required to be arbitrated u/s 7B of the Act. In this case it is not disputed that the bills in question concerning the apparatus provided for the benefit of the appellant. Hence the dispute came within the sweep of Section 7B of the Act.

9. Then the question is whether Section 7B of the Act ousted jurisdiction of the Civil Court. According to the learned Counsel for appellant Section 7B or any other provision of the Act does not oust jurisdiction of the Civil Court. Learned Counsel would contend that in so far as the right to challenge the correctness or validity of a bill is not conferment of Statute, but is a right available to the appellant at common law, in the absence of an express provision jurisdiction of the Civil Court is not ousted.

10. Section 7B of the Act which I have extracted above states that disputes referred to therein

shall be determined by arbitration....

Sub-section (2) of Section 7B of the Act states,

award of the Arbitrator in such matter shall be conclusive between the parties to the dispute and is not liable to be questioned in any court.

(emphasis supplied)

11.S.7B, when it states that a dispute coming within that Section "shall be determined by arbitration", contains an in-built bar against such disputes being determined in any other manner, in any other Forum. Section 7B of the Act provides expressly that such disputes shall be determined by arbitration (and in no other manner). That, coupled with Sub-section (2) of Section 7B of the Act which says that award of the Arbitrator shall be final, in my view ousted the jurisdiction of the Civil Court. The Orissa High in Makhani Devi''s case (supra) has taken the view that Section 7B(2) of the Act is clear that the jurisdiction of the Civil Court is ousted. The Gujarat High Court in the case of G.P. Chovatia (supra) observed,

In fact, due to the existence of Section 7B, even the jurisdiction of the Civil Courts u/s 9 of the Code of Civil Procedure, would be regarded as impliedly ousted. Therefore, even a civil suit challenging the correctness of the bills so raised would not be maintainable in a Civil Court.

I also bear in mind that the arbitration provided u/s 7B of the Act is a statutory arbitration unlike arbitration based on an agreement between the parties coming within the ambit of the Arbitration and Conciliation Act, 1996. Hence the question of Civil Court entertaining a suit concerning disputes of the nature referred to in Section 7B of the Act and referring the parties, as provided under the Arbitration and Conciliation Act for determination of the dispute u/s 7B of the Act does not arise. On going through Section 7B of the Act it is clear that jurisdiction of the Civil Court to entertain a suit concerning the dispute referred to in Section 7B of the Act is ousted. First Appellate Court was correct in holding that Civil Court has no jurisdiction to entertain the suit. The substantial question of law raised is answered accordingly.

12. It is argued by the learned Counsel for respondents that so far no dispute has been raised by the appellant before the appropriate authority and no request has been made to appoint an Arbitrator. It is seen from Exts.A7, A9 to All., A14 and A16 that letters were addressed to the authority concerned challenging the enforceability of the bills in question. The mere fact that in those letters a specific request was not made to appoint an Arbitrator cannot mean that the appellant had not raised the dispute before the appropriate authority. When a challenge is made to the enforcement of the bill, it is for the authorities concerned to take up that matter in right earnest and appoint an Arbitrator as provided under the Act rather than standing on technicality. First Appellate Court has observed that it is open to the parties to approach the authorities concerned for appointment of Arbitrator. Since appellant has already approached the authorities I do not consider it necessary that she must again be asked to approach the authorities concerned. The communications which I have referred to above can be taken as raising the dispute and requesting the authorities to appoint an Arbitrator. Hence I direct the General Manager, BSNL, Kannur to appoint an Arbitrator as provided u/s 7B of the Act to determine the dispute raised by the appellant in the letters above referred and concerning the bills in question. This shall be done within a period of six months. The General Manager,

BSNL, shall ensure that the Arbitrator so appointed will hold his sittings at Kannur. I make it clear that appellant will also be free to bring the dispute to the Telephone Adalath in the meantime for amicable settlement. In case appellant wishes to do so, that shall be done within a period of forty five days from this day.

13. So far as the cost of arbitration if any required is concerned, the authorities shall follow the binding decisions on the point. With the above observations and directions, Second Appeal is dismissed directing the parties to suffer their costs through out.

