

(1996) 07 CAL CK 0030
In the Calcutta High Court
Case No : C.O. No. 3328 of 1992

Union of India (UOI)

APPELLANT

Vs

Bikaner Properties (Pvt) Ltd.

RESPONDENT

Date of Decision : 17-07-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Telegraph Act, 1885 — Section 7B, 7B(1)

Citation : (1996) 2 CALLT 368 : (1997) 2 CivCC 601 : (1997) 2 RCR(Civil) 46

Hon'ble Judges : Arun Kumar Dutta, J

Bench : Single Bench

Advocate : Ashim Kr. Ghosh and Sundaranda Pal, for the Appellant; Priyabrata Mukherjee and Sumit Kr. Roy, for the Respondent

Final Decision : Dismissed

Judgement

Arun Kumar Dutta, J.—This Revisional application by the Defendant-Petitioner is directed against the order dated 24th June, 1992 passed by the learned Judge, Sixth Bench, City Civil Court, Calcutta in Title Suit No. 1384 of 1995 before him, for the reasons stated and on the grounds made out therein.

2. The plaintiff-Opposite Party had filed the relevant Suit before the Court below in view of alleged excessive telephone Bills in respect of their Telephone, as pleaded in the Plaint. The Defendant-petitioner had thereafter filed an application before the Court below u/s 7B(1) of the Indian Telegraph Act, 1985 (hereinafter referred to as said Act) contending that the Court has no jurisdiction to entertain and try the relevant Suit in view of the provisions contained therein. The learned Judge upon hearing the submissions of both sides had over-ruled the contention of the Defendant-Petitioner and had rejected their said application. The Defendant-Petitioner has thus moved this Court in revision.

3. The only point for consideration here is whether, in the nature of the relevant Suit, the Civil Court below would have Jurisdiction to entertain and try the relevant Suit in view of the provisions of Section 7-B of the said Act. Section 7-

B(1) of the Act reads as follows:

"7-B(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 specially for the determination of that dispute or generally for the determination of disputes under this section."

4. The learned Advocate for the Petitioner had referred me to the decision of a Single Judge of this Court in *National Decorating Co. Vs. Union of India and Others*, in support of his contention that a dispute relating to the amount of bill concerning or relating to a telephone is a dispute within the meaning of Section 7-B of the aforesaid Act. But on perusal of the said decision it does not appear to be a decision on the said point. All that has been observed therein is that if dispute relating to amount of bill concerning or relating to a telephone is a dispute within the meaning of Section 7-B of the aforesaid Act and such a dispute is raised by the subscriber, it is difficult to understand as to how any action to the prejudice of the subscriber can be taken by the Telegraph Authority for non-payment of such bill, without having that dispute resolved by arbitration under and in accordance with the aforesaid provision. It has been held therein that once a dispute is raised within the meaning of Section 7-B of the aforesaid Act and arbitration thereunder is a must before the Authority can proceed further to the prejudice of the subscriber. The aforesaid decision is not an authority on the point that a dispute relating to the amount of bill concerning or relating to a telephone is a dispute within the meaning of section 7-B of the aforesaid Act. The learned Advocate for the petitioner had again sadly sought to refer to another decision of the Orissa High Court in *Nityananda Sahu Vs. Postmaster General and Others*, in support of his aforesaid contention. The facts therein do not, however, appear to be applicable to the facts herein as the said matter did not relate to a dispute regarding excessive telephone bill, as in the relevant Suit before us. In the said decision it has, per contra, been held that Section 7-B of the Telegraph Act does not in any manner oust the jurisdiction of the Civil Court. I do neither find any provision in the Indian Telegraph Act, 1885 ousting the jurisdiction of Civil Court in respect of such like disputes. That apart, a Full Bench of the Guwahati High Court In *Sardar Santosh Singh v. Divisional Engineer, Telephones* 1990(1) C C Cases 514 has held that Section 7-B is confined to matters specially indicated therein and not to all disputes between the Telephone Department and the subscribers. Had that been the intention of the legislature it would used a quite different language and would not have confined the scope of this section to specific disputes, namely, "dispute concerning any 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." It has thus been held by the Full Bench of the Guwahati High Court that the dispute

regarding the excess billing does not fall within the ambit of Section 7-B of the aforesaid Act. On a plain reading of Section 7B of the aforesaid Act I find nothing to differ from the said view and fully concur with the view so taken by the Full Bench of the Guwahati High Court.

5. In the above view of the matter, the Impugned order passed by the Court below does not seem to me to suffer from any incorrectness, illegality or impropriety calling for interference by this Court in the exercise of its revisional Jurisdiction. That apart, it would oddly appear from the certified copy of the Order Sheet annexed that the relevant Suit had been posted to 27/7/1992 for filing Written Statement therein. The defendant's relevant petition could not clearly have been entertained at that stage either.

6. In the premises above, there seems little substance in this revisional applications, which be accordingly rejected on due consideration.

7. In the nature of the matter, I direct the parties to bear their respective costs of this hearing.

8. Interim Stay, if any, stands vacated.