

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No. 277/2001**

% 6th December, 2010

MAHANAGAR TELEPHONE NIGAM LTD. Appellant

Through: Mr. Ravi Sikri,
Mr. Ayushya Kumar and
Mr. Vaibhav Kalra,
Advocates

VERSUS

SMT. SUMAN SHARMA Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

VALMIKI J. MEHTA, J (ORAL)

1. By the present appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC), the appellant, Mahanagar Telephone Nigam Ltd. impugns the judgment and decree dated 30.3.2001 passed by Shri Prithvi Raj, Additional District Judge, Delhi and by which judgment and decree, the suit of the appellant/plaintiff has been dismissed on the ground that the appellant has failed to prove the authority of the officer for signing and verifying the plaint.

2. The facts of the case are that the appellant sanctioned a telephone number to the respondent bearing no. 2463419 on

15.4.1995 at the premises of the respondent at 1/59, Gali No. 3, Main Road, Vishwas Nagar, Delhi. On account of failure of the respondent to pay the bills for the relevant periods, the appellant filed a suit for recovery of Rs.1,07,182/- and which was contested. The appellant led evidence through three witnesses. The suit was however dismissed on the ground that Sh. S.P.Gupta, who was Sr. Accounts Officer (legal) had no authority to sign and verify the pleadings. The fact of the matter is that PW-2 Sh. Qazi Mohd. Iqbal Hussain in fact identified the signatures of Sh. S.P.Gupta who was stated to be the Sr. Accounts Officer (Legal).

3. In my opinion, the court below has clearly fallen into an error in dismissing the suit on the ground that the plaint was not duly signed and verified. In terms of Order 29 Rule 1 of the CPC, any principal officer of a corporation, such as the appellant, can sign and verify the pleadings. It need not be gain said and that an Accounts Officer (Legal) is definitely a principal officer of the appellant corporation. In this regard reference may be made to Section 2(30) of the Companies Act, 1956 which defines an 'officer' and which provision reads:-

““officer” includes any director, manager or secretary, or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act;”

The aforesaid is an inclusive definition. Though there appears to be possibly a mistake in the language of the said sub-section because it is an officer who acts on the instructions of the board and not vice versa which appears to be wrongly stated in this section, it is however

quite clear that an officer of a corporation includes besides a Director or Manager or Secretary, a person who is having duties as cast upon him by the Board of Directors and an Accounts Officer is one such principal officer in terms of Order 29 Rule 1 CPC.

4. This aspect, with respect to the authority to sign and verify the suit by a principal officer has been dealt with by a Division Bench of this Court in the case of ***Kingston Computers (I) P. Ltd. Vs. State Bank of Travancore 153 (2008) DLT 239 (DB)*** and in which, it has been held that a principal officer is authorized by virtue of Order 29 Rule 1 CPC not only to sign and verify the pleadings, but also therefore to institute the suit. Paras 23 to 26 of this judgment are relevant and the same read as under:-

23. This then is the short issue which needs to be considered by us exercising appellate jurisdiction.

24. Order 29 Rule 1 of the Code of Civil Procedure reads as under:-

“ 1 . Subscription and verification of pleading.-

In suits by or against a corporation, any pleading maybe signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.”

25. Discussing Order 29 Rule 1 of the Code of Civil Procedure, in the decision in *United Bank of India's* case (supra), in para 10, Hon'ble Supreme Court held as under:-

“Reading Order 6 Rule 14 together with Order 29 Rule 1 of the Code of Civil Procedure it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and dehors Order 29 Rule 1 of the Code of Civil Procedure, as a company is a juristic entity, it can duly authorize any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 of the Code of Civil Procedure.”

26. Suffice would it be to state that in law, the Secretary, Director or a Principal Officer of a company would be treated as duly authorized to institute suit on behalf of a company. This flows out from a bare reading of Order 29 Rule 1 of the Code of Civil Procedure and as further explained in the decision in *United Bank of India's* case.”

5. Reference may also be made usefully to the judgment of the Supreme Court in the ***United Bank of India Vs. Naresh Kumar & others (1996) 6 SCC 660***, in which, in para 13, it is said that there is a presumption of valid institution of a suit once the same is prosecuted for a number of years. This test as laid down by the Supreme Court is also satisfied in the present case inasmuch as the suit in fact has been prosecuted for about two years by the appellant corporation for seeking an appropriate decree against the respondent by adducing evidence.

I may note that the appellant is a public sector undertaking and not a private company where there would be disputes between two sets of shareholders claiming right to management and one set of shareholders are opposing another set of shareholders with respect to control and management of the company. This thus is an additional fact that there can be no dispute as to the authority of the person signing/verifying the pleadings and instituting the suit.

6. I may note that in the present appeal the respondent was duly served as noted by a Division Bench of this court as per its order dated 8.4.2002 but the respondent has failed to appear.

7. Accordingly, in view of the ex parte evidence, as led of three witnesses of the plaintiff PW-1 (Sh. Shyam Das), PW-2 (Sh. Mohd. Iqbal Hussain) and PW-3 (Mr. A.R.Gogiani) who have proved the factum of sanction of the telephone connection, its installation, the bills as Ex. PW1/1 to Ex.PW1/5 (One of the bill Ex. PW1/4 was paid by the defendant), the notices Ex. PW 1/6 and Ex.PW1/7, it is clear that the plaintiff has proved its case for recovery against the respondent.

8. Accordingly, the impugned judgment and decree are set aside and the suit is decreed for the recovery of Rs.1,07,182/- in favour of the appellant and against the respondent with pendente lite and future interest at the rate of 14% per annum simple from the date of institution of the suit till realization. Costs of the suit and the present appeal are also awarded in favour of the appellant and against the respondent. Decree sheet be drawn accordingly.

The appeal is accordingly disposed of as allowed.

DECEMBER 06, 2010

VALMIKI J. MEHTA, J.