

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.783 OF 2010
IN
SUIT NO.3338 OF 1992**

Mahanagar Telephone Nigam Ltd. & Anr. ... Applicants/Plaintiffs
versus
Ratilal Becharlal and Sons and Ors. ... Defendants

Ms. S.I.Shah i/by M/s. S.I.Shah and Co., for Applicants/Plaintiffs.
Ms. Patrawala i/by M/s. Pravin Mehta and Mithi and Co., for Defendants.

**CORAM: S.J. KATHAWALLA, J.
DATE: 4th SEPTEMBER, 2015**

PC.:

1. The Defendants have in the year 1992 filed Writ Petition No.1565 of 1992 impugning the bills raised by MTNL qua the land line facility made available to the Defendants. The said Writ Petition was disposed of in the year 1999 and the dispute was referred to arbitration under Section 7(b) of the Indian Telegraph Act. However, no progress was made in the arbitration proceedings for a period of 9 years.

2. In the year 1992 the Plaintiff - MTNL had also filed a Suit being Suit No.3338 of 1992 seeking a decree for a sum of Rs.1,46,660/- against the Defendants i.e. to recover its dues which were challenged by the Defendant in Writ Petition No. 1565 of 1992. On 26-02-2008 this Court (Coram : A.M. Khanwilkar, J.) disposed of the Suit by the following order :

“1. It is common ground that the Defendant had filed Writ Petition in this Court being Writ Petition No.1565 of 1992. The said Writ Petition was disposed off and the dispute was referred to Arbitration under section 7B of the Indian Telegraph Act. That Order was passed as far back as in 1999. It is however, agreed between the parties that no further progress has been made in the arbitration proceedings though initiated in the year 1999 in terms of the Order of this Court. In the circumstances, both sides by consent are inviting order in the present Suit that the Plaintiffs be permitted to appoint another arbitrator in place of the earlier arbitrator, so that the newly appointed arbitrator can proceed with the arbitration proceedings in accordance with the law, which will be disposed off within six months from the date of arbitrator entering upon the arbitration.

2. The Plaintiffs assure to appoint new arbitrator within eight weeks from today. That assurance is accepted.

3. As the dispute in relation to the suit bills is already referred to arbitration, nothing survives for consideration in the present suit. In the circumstances, Plaintiffs seek liberty to withdraw the present suit without prejudice to the rights and contentions of the Plaintiffs in the proceedings before the arbitrator in relation to the self same telephone bills. Accordingly, Suit is allowed to be withdrawn with liberty, as prayed. Refund as per rule”.

3. By an order issued by the Asstt. Director General (TR) dated 22-05-2008, Mr. R.V.Nayak, DGM, CT-II, was appointed as an Arbitrator to determine the dispute between the parties. In the said letter, the Assistant Director General has clarified that since the time allowed by the Court for the appointment of an Arbitrator has lapsed, the Court be approached for condonation of delay. However, the above Chamber Summons was taken out two years thereafter i.e. only in the year 2010. It also appears that no application was moved for an urgent hearing of the Chamber Summons.

4. The Chamber Summons was taken up for hearing by this Court on 04-04-2012 (Coram : M.S.Sanklecha, J.) when the Plaintiffs were directed to file an Affidavit-in-Rejoinder to the Reply filed by the Defendants. However, even after three years the said directions have not been complied with by the Plaintiffs. On the last occasion, i.e. on 28-08-2015 this Court gave one more opportunity to the Plaintiffs to comply with the order dated 4th April, 2012, however, the Plaintiffs have again failed to comply with the direction dated 4th April, 2012.

5. From the aforestated facts, it is clear that the dispute which arose between the parties was referred to Arbitration about 23 years back. However, no proceedings were thereafter, initiated for nine long years. Despite that, one more opportunity was given in the year 2008 to the Plaintiffs to appoint an

Arbitrator and proceed in the matter. Admittedly, once again there was delay on the part of the Plaintiffs to appoint an Arbitrator and therefore in the letter of appointment itself, it was mentioned by the Assistant Director General (TR) of the Plaintiffs that an Application be moved before the Court for condonation of delay. However, the Plaintiffs moved an Application two years thereafter that is in the year 2010 and even thereafter, failed to make an Application seeking urgent relief. The Notice of Motion was taken up for hearing in the year 2012 and the Plaintiffs were admittedly directed to file an Affidavit-in-Rejoinder. The Plaintiffs failed to file an Affidavit-in-Rejoinder as directed thereby committing breach of the order. On behalf of the Plaintiffs, time was sought on 28th August, 2015 to file an Affidavit-in-Rejoinder, which was granted. However, despite the said opportunity, the Plaintiffs have till date not filed an Affidavit-in-Rejoinder. I am therefore satisfied beyond any doubt that the Plaintiffs are not interested in pursuing the Arbitration proceedings, which are pending since the last 23 years. They have also failed to comply with the directions passed by this Court despite repeated opportunities being granted to them. I am therefore, constrained to dismiss the above Chamber Summons. The Chamber Summons is disposed of as dismissed.

(S.J.KATHAWALLA, J.)

C E R T I F I C A T E

I certify that this Order uploaded is a true and correct copy of original signed Order.

Uploaded by : Swaroop S. Phadke, P.S.

Uploaded on : 5th September, 2015.