

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.01.2015

CORAM :

THE HON'BLE MS. JUSTICE K.B.K.VASUKI

Second Appeal No.557 of 2007

R.Muthuraman

Vs

.. Appellant/Defendant

Bharat Sanchar Nigam Limited
Repd. By its General Manager
Office at Telecom District Office
Rangapillai Street, Pondicherry

.. Respondent/Plaintiff

Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 07.02.2007 made in A.S.No.45 of 2005 on the file of the Principal District Judge, Pondicherry confirming the Judgment and Decree dated 28.07.2005 made in O.S.No.396 of 2003 on the file of the Additional Sub Judge, Pondicherry.

For Appellants : M/s.V.Raghavachari
For Respondent : M/s.M.S.Velusamy

J U D G M E N T

The unsuccessful defendant is the appellant herein.

2.The suit is filed by the respondent/plaintiff BSNL for recovery of Rs.53,296/- with interest at 12%p.a. for total bill amount from the date of plaint till the date of realisation, as per the details of valuation given in paras 4 and 5 of the plaint. The amount claimed according to the plaintiff/BSNL is the arrears of bill for the telephone used by the defendant having telephone No.2346316 and having consumer No.134455 installed at the factory situated at Plot No.161, 6th cross, Boomianpet, Pondicherry - 605 005. The arrears of outstanding according to the plaintiff is relating to the period before the formation of BSNL on 01.10.2000, whereas, the demand was made after formation of BSNL.

3.The suit was resisted by the defendant on the following three grounds (i)telephone number 2346316 installed in the address at Plot No.161, 6th cross, Boomianpet, Pondicherry - 605 005 is not given to the defendant company under the name and style of M/s.Pondicherry Lamps Private Limited, which is situated at Door No.7, 4th cross, Anna Nagar, Pondicherry and the defendant never applied for any telephone

connection and never used telephone no.2346316 (ii)the defendant company was private limited company having three directors and the defendant herein was the Managing Director having his residence at No.14, IInd cross, Thirumal Nagar, Pondicherry and the same is not proprietorship concern, as such, the suit filed against the defendant in his capacity as proprietor of the company is not maintainable and (iii)the claim is barred by limitation, as the same is filed beyond three years.

4.The trial Court on the basis of the oral and documentary evidence negatived the defence raised by the defendant and accepted the claim of the plaintiff and decreed the suit. Aggrieved against the same, the defendant preferred AS.No.45 of 2005. The lower Appellate Court also on appreciation of the entire facts and circumstances involved in the case and evidence adduced before the trial Court agreed with the findings of the trial Court and confirmed the judgment and decree of the trial Court. Hence this second appeal by the defendant before this Court.

5.The Second Appeal is admitted on the following substantial questions of law :-

(i)Whether the suit as framed is maintainable in law when the suit is instituted against the Director of the company in his personal capacity?

(ii)Whether the suit claim is not barred by limitation even as per the plaint allegations?

(iii)Whether the orders of the Courts below are right when it had concluded the telephone connection is for proprietary concern contrary to Exs.B3 and B4?

(iv)Whether the lower appellate Court has not misplaced the burden of proof on the appellant, when it is the obligation of the plaintiff to prove the telephone connection was effected to the appellant's premises?

6.Heard the rival submissions made on both sides and perused the records.

7.The suit is filed for recovery of arrears of telephone charges to the tune of Rs.35,657/- vide bills Exs.A1/dated 01.06.1999, A2/dated 11.10.1999 and A3/Supplementary bill dated 28.02.2002 relating to the period between 15.03.1999 and 30.04.1999 and 01.08.1999 to 30.09.1999 against the defendant/R.Muthuraman as proprietor of M/s.Pondicherry Lamps Private Limited. The claim is in respect of the telephone connection bearing Telephone No.2346316 and consumer No.134455 installed at factory address Plot No.161, 6th cross, Boomianpet, Pondicherry - 605 005. The documents produced

herein as Exs.A1 to A3 telephone bills and supplementary bills relating to Pondicherry Lamps Private Limited, represented by its Proprietor Muthuraman at 161, 6th cross, Boomianpet, Pondicherry is for the period between 01.06.1999 and 28.02.2002.

8.As already stated, the legal objection raised in the suit is regarding the maintainability of the claim. It is stated that as the period of claim related to 1999, the suit filed in 2003 beyond three years is barred by limitation. In this case, the amount claimed became due to the Department of Telecommunication/Union of India before the formation of Bharat Sanchar Nigam Ltd (BSNL for short) on 01.10.2000 Whereas, the recovery suit came to be filed by BSNL only on 30.09.2003. According to the learned counsel for the plaintiff, under Article 112 of the Limitation Act, the time limit for filing a suit for recovery by Department of Telecommunication/Union of India is 30years or else three years from the date of formation of BSNL. The learned counsel for the plaintiff has cited the following authorities in support of his contention so raised herein.

- (i) Vipin Kumar Jain v. BSNL and another - RSA.3829 of 2009 (O&M) - Indian Kanoon - <http://indiankanoon.org/doc/8596827>
- (ii) Sri C.T.Chandrashekhar V. BSNL RFA.No.302 of 2007 dated 10.08.2010 RFA.No.302 of 2007 Karnataka High Court and
- (iii) BSNL V. Satpal Gupta RSA.No.1374 of 2010

9.The learned counsel for the defendant has cited the decision of Punjab and Haryana High Court reported in (2007) 4 PLR 414 - Bharat Sanchar Nigam Ltd V. Pawan Kumar Gupta : Indian Kannon - <http://indiankanoon.org/doc/156814> in support of his contention that the status of BSNL cannot be equated to the Central Government and it is a separate and distinct entity from the Central Government and it is to be treated as company incorporated under the companies Act.

10.It is true that Punjab and Haryana High Court has in the judgment cited on the side of the appellant declared BSNL to be wholly controlled Government company and falls outside the definition of Central Government. It is further held that insofar as its legal and contractual rights and liabilities are concerned, Article 112 which provides for limitation of 30years in respect of a suit by Central and State Government, is not applicable to any of its instrumentalities or agency particularly corporation even if it is established by Central/State Government.

11.However, the Punjab and Haryana and Karnataka High Courts in the judgments relied on by the learned Standing counsel for the plaintiff/respondent have under identical circumstances while dealing with the maintainability of the suit by telecommunication department through BSNL for the recovery of the amount due to the department of telecommunication clearly held that the limitation applicable for the suit instituted by the department of telecommunication/Central

Government is three years from the formation of BSNL on 01.10.2000 under Article 112 of the Limitation Act.

12.By applying the same view to the facts of the present case, the limitation for filing the present recovery suit is three years from the date of formation of BSNL (i.e,) on 01.10.2000 and the suit for recovery filed on 30.09.2003 within three years from 01.10.2000 is hence within the period of limitation and well maintainable and is rightly held so by the courts below.

13.The other two objections raised on the side of the defendant/appellant is that M/s.Pondicherry Lamps private limited for which the telephone connection was installed is only a private limited company and not proprietorship concern and no such telephone connection is given for the same at the address given in the telephone bills. In this connection the documents relied on by the Courts below are Exs.A1 to A11 while Exs.A1 to A3 are the impugned telephone bills; Exs.A4 and A5 are the exchange of legal notice between BSNL and the defendant; Ex.A7 and A8 are returned unserved letters addressed to Muthuraman, Pondicherry Lamps Private Limited to Plot No.161, 6th cross, Boomianpet, Pondicherry; Ex.A9 is the extract from subscriber record card (SRC) as on March 2002; Ex.A10 is the extract of Register call deposits maintained in the department of telecommunication; Ex.A11 is the new telephone advice note containing the particulars of telephone connection No.PY 46316 which is the corresponding old number for the telephone connection in dispute.

14.The combined appreciation of all the documents above referred to would reveal that the telephone connection having number 23463616 in the name of Ms/.Pondicherry Lamps Private Limited proprietor/Muthuraman was installed on 23.09.1997 at Plot No.161, 6th cross, Boomianpet, having the same address for its billing purpose and thereafter the telephone connection was being used by the same subscriber in the same address. It is also mentioned so, in Ex.B1/demand notice dated 29.09.2003, which is addressed to R.Muthuraman for the settlement of outstanding bills pertaining to telephone connection PY 346316 (2346316) worked for Pondicherry Lamps Private Limited at Plot No.161, 6th cross, Boomianpet, Pondicherry. Exs.B3 and B4 documents produced on the side of the defendant would go to show that Pondicherry Lamps is only a private limited company having its registered office at No.7, 4th cross, Anna Nagar, Pondicherry having three Directors one of among whom R.Muthuraman as its Managing Director. However, even according to DW1/Muthuraman the private limited company incorporated during 1992 ceased to exist from 1995.

15.The learned counsel for the plaintiff would at this juncture contend that the genuineness and correctness of Ex.A1 to A5 and Exs.A7 to A12 and Ex.B1 documents having not been denied and Exs.B3 and B4 related to only for the period from 1992 to 1995 the objections raised herein on facts against the claim of the plaintiffs

is devoid of any merit and substance. This court finds greater force in the argument so advanced on the side of the respondent/plaintiff.

16.Both the Courts below after due appreciation and analysis of entire oral and documentary evidence adduced on both sides, rendered clear findings that M/s.Pondicherry Lamps Private Limited which was originally incorporated as private limited company, was functioning only for three years and thereafter the company remained as Proprietorship concern having R.Muthuraman as its Proprietor and the telephone connection in question was installed at the address given in the documents on 23.09.1997 and had been functioning in the same address during the arrears period and the defendant is unable to make out any ground much less legal ground to disagree with such factual findings which are based on sufficient materials and supported by proper reasoning and the same warrants no interference by this Court. The substantial questions of law are hence answered in favour of the plaintiff/department.

17.In the result, the second appeal is dismissed. No costs.
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-s/d-
Assistant Registrar (Co)

True Copy

Sub-Assistant Registrar

To

1.The Principal District Judge, Pondicherry.

2.The Additional Sub Judge, Pondicherry.

COPY TO:

The Section Officer,
V.R.Section,
High Court, Madras.

+ 1 cc to Mr.V.Raghavachari, Advocate SR 1545

+ 1 cc to Mr.M.S.Velusamy, Advocate SR 1967

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prk15/10

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