

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA NO.2666 OF 2010 (O&M)
DATE OF DECISION : 20th JANUARY, 2015

Bharat Sanchar Nigam Limited (BSNL)
..... Appellant(s)
Versus
Ishwar Chand
..... Respondent

RSA NO.2576 OF 2009 (O&M)

Bharat Sanchar Nigam Limited (BSNL)
..... Appellant(s)
Versus
Ashwani Dewan
..... Respondent

RSA NO.2333 OF 2009 (O&M)

Bharat Sanchar Nigam Limited (BSNL)
..... Appellant(s)
Versus
Des Raj Gupta
..... Respondent

RSA NO.447 OF 2009 (O&M)

Bharat Sanchar Nigam Limited (BSNL)
..... Appellant(s)
Versus
Dev Raj Dua
..... Respondent

RSA NO.1200 OF 2009 (O&M)

Bharat Sanchar Nigam Limited (BSNL)
..... Appellant(s)
Versus
Ashok Gupta
..... Respondent

RSA NO.360 OF 2009 (O&M)

Sandeep Narang

.... Appellant(s)

Versus

Bharat Sanchar Nigam Limited (BSNL)

.... Respondent

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

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Present : Mr. Madan Mohan, Advocate for appellant(s) &
for respondent in RSA-360-2009.

Mr. Sanjiv Gupta, Advocate for appellant in RSA-360-2009.

Mr. Saurav Khurana for respondent in RSA-2666-2010.

Respondent ex parte in RSA-1200-2009.

None for respondents in remaining RSAs.

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SURINDER GUPTA, J. (ORAL)

1. All the appeals mentioned above have been taken up together for disposal as similar question of law is involved in all these appeals.
2. Bharat Sanchar Nigam Limited (BSNL) has filed these appeals bearing **RSA No.2666 of 2010 (instant appeal), RSA No.2576 of 2009, RSA No.2333 of 2009, RSA No.447 of 2009, RSA No.1200 of 2009**, against concurrent finding of both the Courts below, declining relief of recovery of various amounts with interest claimed as due against the respondent(s) being outstanding amount of the telephone bills, on the ground that the claim of appellant(s) is barred by limitation. In **RSA No.360 of 2009** the suit filed by the BSNL for recovery of ₹37,922/- was dismissed by the Civil Judge (Junior Division), Karnal. On appeal filed by BSNL the same was allowed and the suit was decreed as prayed for. The defendant-Sandeep Narang has filed this regular second appeal seeking reversal of the

judgment of the Court below and restoration of the judgment passed by the Civil Judge (Junior Division), Karnal.

3. The defendant(s) while admitting that telephone connection had been provided to them, denied their liability to pay any amount allegedly outstanding against them. They also took preliminary objection that the suit filed by the BSNL was hopelessly barred by time. Learned lower Court recorded finding that the amount as claimed in all the suits along with interest, was due against the defendant(s)-respondent(s) (appellant in RSA No.360 of 2009), however, plaintiff(s)-BSNL was not entitled to recover the same as the suit filed by it were barred by limitation being filed beyond three years from the date of accrual of cause of action.

4. On appeal, first Appellate Court affirmed findings of the learned lower Court, observing that the suit amount was due against the defendant(s) but upholding their plea that claim of plaintiffs was barred by limitation, the appeal(s), except in case of BSNL Vs. Sandeep Narang, were dismissed. Feeling aggrieved, the plaintiff-BSNL has preferred the above captioned second appeals and RSA No.360 of 2009 has been preferred by Sandeep Narang.

5. I have heard learned counsel for the parties and perused the paper book(s).

6. Relief of recovery of the suit amount was declined to BSNL on the ground that suit was not filed within a period of three years from the date of accrual of cause of action, which has been reckoned from the date the suit amount becomes due in different suits between 1991 to 1999. Learned

counsel for the appellant(s) has argued that it is no more *res integra* that the period of limitation for filing the suit against the BSNL, commenced w.e.f. 01.10.2000, when the company was incorporated, as such, these suits which have been filed on or before 30.09.2003 are within limitation. He argues that earlier there was conflict in observation of different Benches of this High Court on this point but the matter has since been settled by the Hon'ble Supreme Court, affirming the view of Hon'ble Single Bench of this Court in the case of ***Bharat Sanchar Nigam Limited vs. Satpal Gupta (RSA-1374-2010)*** that the limitation starts from the date of incorporation of BSNL and not from the day cause of action accrued to recover the suit amount.

7. The learned counsel for the respondent(s) argue that in the case of ***Bharat Sanchar Nigam Limited vs. Pawan Kumar Gupta*** reported as ***2007(4) Civil Court Cases 366***, it was observed by single Bench of this Court that the suit of BSNL filed beyond the period of three years from the date of cause of action, was barred by limitation. Appeal against the above judgment is still pending before the Hon'ble Supreme Court.

8. Finding of the Additional Civil Judge that the suit amount was outstanding against the defendant(s)-respondent(s) has become final as no appeal was filed against this finding. Now the only question, which arises for consideration in these appeals, is whether in the facts and circumstances discussed above the suit is barred by limitation or not.

9. In a catena of judgment of this Court and also affirmed by the Hon'ble Supreme Court, it is now settled proposition of law that limitation in suit for recovery filed by BSNL within 3 years of its incorporation i.e.

01.10.2000 are within limitation. A coordinate Bench of this Court in case of ***Bharat Sanchar Nigam Limited vs. Satpal Gupta*** (RSA-1374-2010) decided on 01.10.2012 examined the legal proposition in similar facts and circumstances and observed as follows:

Plaintiff-appellant(s) BSNL (a company) came into existence w.e.f. 01.10.2000 as successor-in-interest of Union of India. Limitation period for filing of suit by Union of India is 30 years. Therefore, suit filed on 30.09.2003 would have been within limitation, if filed by Union of India. However, admittedly, limitation period for filing a suit by BSNL is three years. The suit was filed by BSNL within limitation period of three years from its coming into existence. Consequently, the suit is within limitation. In this view, I am supported by three unreported judgments of this Court namely ***M/s B. S. Sidhu and Company vs. Bharat Sanchar Nigam Limited and another*** passed in ***R. S. A. No. 5042 of 2009*** - decided on 25.03.2010, ***Rai Singh vs. Bharat Sanchar Nigam Limited*** passed in ***R. S. A. No. 3817 of 2007*** - decided on 23.09.2008 and ***Banarsi Dass Sharma vs. Bharat Sanchar Nigam Ltd.*** passed in ***R. S. A. No. 2628 of 2009*** - decided on 23.04.2010. Counsel for defendant(s)-respondent(s), however, relied on judgment of this Court in the case of ***Bharat Sanchar Nigam Ltd. vs. Pawan Kumar Gupta*** reported as ***2007 (4) Civil Court Cases 366***. However, this judgment has also been considered in the case of ***M/s B. S. Sidhu and Company (supra)*** and also in the case of ***Banarsi Dass Sharma (supra)***. Consequently, it is held that suit filed by the plaintiff-appellant(s) is within limitation.

10. Sat Pal Gupta filed SLP (Civil) 27144 of 2012 wherein Hon'ble Supreme Court found no error in the view taken in the aforesaid appeal on the question of limitation.

11. In view of the above settled proposition of law the findings of Courts below that the suit is barred by limitation are perverse and not legally sustainable. The suit filed by the plaintiff in the appeals captioned above were all filed before 30.06.2003, as such, are held to be within limitation. All the suits for recovery filed by BSNL on or before 30.09.2003 are within limitation.

12. As a sequel of my above discussion **RSA No.2666 of 2010 (instant appeal), RSA No.2576 of 2009, RSA No.2333 of 2009, RSA No.447 of 2009, RSA No.1200 of 2009**, are allowed and the judgment and decree of both the Courts below are set aside. However, the appeal bearing RSA No.360 of 2009, is dismissed, being without merit.

RSA No.2666 of 2010 (instant appeal)

13. The suit filed by the plaintiff-appellant is decreed with costs throughout for recovery of ₹23707/- (rupees twenty three thousand and seven hundred seven only) along with pendente lite and future interest @ 12% per annum.

RSA No.2576 of 2009

14. The suit filed by the plaintiff-appellant is decreed with costs throughout for recovery of ₹1,93,899/- (Rupees one lac ninety three thousand eight hundred and ninety nine only) along with pendente lite and future interest @ 12 % per annum.

RSA No.2333 of 2009

15. The suit filed by the plaintiff-appellant is decreed with costs throughout for recovery of ₹41,779/- (Rupees forty one thousand seven hundred and seventy nine only) along with pendente lite and future interest @ 12 % per annum.

RSA No.447 of 2009

16. The suit filed by the plaintiff-appellant is decreed with costs throughout for recovery of ₹24,899/- (Rupees twenty four thousand eight hundred and ninety nine only) along with pendente lite and future interest @ 12 % per annum.

RSA No.1200 of 2009

17. The suit filed by the plaintiff-appellant is decreed with costs throughout for recovery of ₹1,05,732/- (Rupees one lac five thousand seven hundred and thirty two only) along with pendente lite and future interest @ 12 % per annum.

18. The interest in all the above cases has been allowed @ 12% as the matter relates to the recovery of the charges payable on account of services provided by the BSNL which was a commercial and business transaction.

20th January, 2015
'raj'

(SURINDER GUPTA)
JUDGE