

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

Regular Second Appeal No.5042 of 2011 (O&M)

Date of decision: 18.5.2015

Bharat Sanchar Nigam Limited

... Appellant

Versus

G.K.Mohan

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Madan Mohan, Advocate,
for the appellant.
Mr.J.K.Goel, Advocate,
for the respondent.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

On the point of limitation, Mr.Madan Mohan learned counsel appearing for the BSNL relies on a decision of this Court in **BSNL v. M/s National Auto Store, RSA No.2977 of 2011** decided on 12th March, 2014 in which it has been held that the limitation would run from the date BSNL was carved out from the Department of Telecommunications and made an autonomous independent entity with effect from 1st October, 2000 vide notification dated 30th September, 2000, from which date, it ceased to enjoy the status of a Department of Government of India and ceased to have the protection of period of 30 years for recovery of money. It was in this background that the Court held that the limitation for filing a suit for recovery would be within 3 years from the date of incorporation of BSNL, i.e., 1st October, 2000. Admittedly, the suit was filed one day prior to the

expiry of the period of limitation, i.e., on 29th September, 2003 and was thus within limitation.

Since the view of this Court was not available to the first appeal court, the error occurred which has resulted in a miscarriage of justice. The BSNL's suit was dismissed as barred by limitation and presently, that is not the correct legal position obtaining. This Court had applied the law in M/s National Auto Store (supra) in RSA No.2239 of 2007 titled BSNL v. Mohinder Singh and RSA No.5009 of 2009; BSNL v. M/s Panesar Enterprises decided by a common order dated 10th April, 2015.

In view of the statement of law in the aforesaid cases, the appeal court decree to the extent it dismisses the suit as time barred is unsustainable and, therefore, is set aside.

Be that as it may, the first appeal court has reversed the findings recorded by the learned trial court on issue No.1 on merits with respect to payment of bills for use of a telephone at the premises of the respondent, the defendant in the suit. However, the respondent has not filed cross-objections to refute the findings of the learned first appeal court and, therefore, this Court cannot be of any aid to the respondent in the absence of challenge to the findings on merits.

In these circumstances, the suit is decreed in terms of the appeal court decree and accordingly, the appeal stands allowed.

(RAJIV NARAIN RAINA)
JUDGE

May 18, 2015
Paritosh Kumar