

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **C.R.P. 119/2011 & CM APPL.16185/2011 (Stay), CM APPL. 16186/2011 & CM APPL.8183/2011 (O.VI Rule 17 CPC)**

Decided on: 24th August, 2015

MAHANAGAR TELEPHONE NIGAM LIMITED..... Petitioner
Through: Ms. Rachana Joshi Issar, Advocate

versus

MOHD. SHER BAHADUR Respondent
Through: *Ex-parte.*

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. The present revision petition has been filed by Mahanagar Telephone Nigam Limited (MTNL) against the impugned orders dated 28.01.2010 and 05.05.2011 passed by the learned Insolvency Judge in I.No. 15/05 dismissing the applications under Order IX Rule 7 CPC and Order VII Rule 11 CPC respectively filed by MTNL.
2. For the sake of convenience the parties herein are being referred to by their names and as per their status in the present petition.

3. Mohd. Sher Bahadur has been served by way of substituted service, however, there is no appearance on his behalf and therefore, he is proceeded *ex-parte*
4. I have heard the learned counsel for MTNL/petitioner in respect of the civil revision petition. I have also gone through the record.
5. Before dealing with the submission made by the learned counsel for MTNL/petitioner it may be pertinent here to mention the brief facts of the case. The present petitioner has obtained a decree for a sum of Rs.12,37,430/- against Mohd. Sher Bahadur along with interest @ 12% per annum on 05.04.2005. The aforesaid decree was passed *ex-parte* against Mohd. Sher Bahadur/respondent on account of certain outstanding telephone bills having not been cleared by him.
6. Mohd. Sher Bahadur/respondent in order to avoid the execution of the decree has alleged to have filed Insolvency Petition No.15 of 2005 before the Court of Insolvency Judge. MTNL/petitioner who was the respondent in the Insolvency Petition were served and on 28.01.2010 when Mohd. Sher Bahadur was present and since there was no appearance on behalf of MTNL, an application under Order

IX Rule 7 CPC filed by MTNL for setting aside the *ex-parte* proceedings dated on 21.08.2008 passed against them, was dismissed. The reason for dismissal of the setting aside of the *ex-parte* proceedings against MTNL/petitioner in the insolvency proceedings was that earlier also *ex-parte* proceedings were initiated against MTNL/the present petitioner on 08.12.2005 for which MTNL/petitioner had filed an application under Order IX Rule 7 along with another application under Section 5 of the Limitation Act, which was allowed subject to payment of cost of Rs.800/- vide order dated 14.02.2008 and MTNL, who was the respondent in the insolvency petition was granted 30 days time to file the written statement. The matter was adjourned on 14.02.2008 to 10.07.2008. On 10.07.2008 neither was the written statement filed nor did any counsel appear before the Insolvency Judge and therefore, MTNL was again proceeded *ex-parte*. It was against this order of *ex-parte* that another fresh application under Order IX Rule 7 read with Section 151 CPC was filed by MTNL on 21.08.2008, which was rejected by the learned Insolvency Judge vide impugned order dated 28.01.2010.

7. MTNL in its application had given an explanation that though the next date of hearing, i.e. 10.07.2008 was mentioned on the file cover but there was no corresponding entry made in the diary and the counsel who had represented MTNL had resigned from the office of the counsel engaged by the MTNL, therefore, this mistake of non-appearance had happened. It was on this ground that the *ex-parte* proceedings were sought to be set aside against MTNL. This explanation having been furnished by MTNL was not accepted to be a genuine and convincing one by the learned Insolvency Judge and accordingly, the application was rejected. The reasoning which was given by the learned Judge was that the date was mentioned on the file cover and therefore they ought to have been vigilant in prosecuting the matter. Moreover, the counsel who had allegedly resigned from the office of the counsel of the MTNL had not been named and, therefore, this was only taken as make-believe story set up by MTNL and on this ground the application was accordingly disallowed.
8. Still not feeling satisfied a fresh application under Order XLVII Rule 1 read with Section 114 CPC was filed seeking review of the

order dated 28.01.2010 and another application under Order VII Rule 11 CPC was also filed on the ground that the Insolvency Petition does not disclose any cause of action and, therefore, deserves to be dismissed.

9. So far as the review application is concerned that was dismissed on the ground that there was no error apparent on the face of record and as regards the application for rejection of the plaint is concerned, the Court observed that the ground of rejection of a plaint is the lack of cause of action or the averments regarding the same were not made by MTNL. This order was passed on 05.05.2011 and the case was adjourned for 04.08.2011. It is against these two orders that the present revision petition has been filed.
10. I have heard Ms. Rachna Joshi Issar, the learned counsel for MTNL who has vehemently contended that the case is still at the threshold and therefore, they must be given an opportunity to file their written statement to contest the insolvency petition as it would otherwise defeat the very interest of getting the money recovered from Mohd. Sher Bahadur. It has also been contended that the present petitioner can be put to terms.

11. I have considered the submission made by the learned counsel for MTNL. However, I find that the present petition is not at all maintainable as a civil revision petition, firstly on the ground that two separate orders are assailed in one revision petition. The main body of the revision petition shows that the order dated 28.01.2010 is challenged while as in the prayer clause there is no mention about this order of 28.01.2010 and only the order dated 05.05.2011 is challenged. Even if, it is assumed that both the orders are assailable, two independent civil revision petitions and not a common petition would lie against two separate orders passed on two different dates.
12. In addition to this after 1999, the provision of Civil Revision has been amended and a proviso has been added to Section 115 which has limited powers of revision of the Courts. The proviso specifically lays down that a revision will not be allowed except in case where the order if made in favour of the party applying for revision would have resulted in final disposal of the case in its favour. The exact language of Section 115 is as under:-

“115. Revision.

(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:

[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.]

[(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.]

[(3) A revision shall not operate as a stay of suit or other proceeding before the, Court except where such suit or other proceeding is stayed by the High Court.]

[Explanation.-In this section, the expression “any case which has been decided” includes any order made, or any order deciding an issue in the course of a suit or other proceeding.]”

13. A perusal of the aforesaid Section would clearly show that as per the present proviso, the final termination of the Insolvency Petition

is not envisaged by order dated 28.01.2010 or by order dated 05.05.2011, if they were decided in favour of MTNL. The case would have still continued and therefore, the orders which are impugned in the present revision petition as a matter of fact cannot be subjected to modification, reversal or judicial scrutiny under the powers of revision. Therefore, to that extent the revision petition filed by MTNL is totally misconceived.

14. So far as the other application under Order VII Rule 11 CPC is concerned, a perusal of the application would clearly show that it is bereft of any material particular as to how no cause of action has been urged by MTNL in the Insolvency Petition. It is really very unfortunate that for such a small matter unlimited time of the Court has been wasted since 2011 when the matter was listed for the first time. The matter has been taken up as long as more than 50 times repeatedly for the service without making any effort to address the Court with regard to maintainability of the petition itself. It is the petitions like these which are filed by a party without considering the legal position which results in wastage of time and consequently, the cases which really need the attention of the Court

go unattended. I feel that the present petition is totally frivolous and not maintainable and accordingly, the same is dismissed.

15. In normal circumstances, I would have burdened the present petitioner with costs, however, keeping in view the fact that the petition itself had been dismissed, I am refraining from doing so.
16. Since the main petition has been dismissed, no separate orders are passed on the applications. Both the applications are treated as disposed of.

V.K. SHALI, J.

AUGUST 24, 2015

vk