

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

**R.S.A No.5248 of 2014 (O&M)
Date of decision: 21.03.2016**

Chahal Frozen Foods

..... Appellant

Versus

Bharat Sanchar Nigam Ltd.

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Rajeshwar Singh, Advocate
for the appellant.

DARSHAN SINGH,J

CM No.12391-C of 2014

There is delay of 55 days in re-filing the present appeal.

Heard on the application.

In view of the reasons mentioned in the application, the application stands allowed and the delay of 55 days in re-filing the appeal is hereby condoned.

CM No. 12392-C of 2014

There is delay of 1 day in filing the present appeal.

Heard on the application.

In view of the reasons mentioned in the application, the application stands allowed and the delay of 1 day in filing the appeal is

hereby condoned.

R.S.A No. 5248 of 2014

This Regular Second Appeal has been directed against the judgment and decree dated 23.11.2013 passed by the learned Additional District Judge, Hoshiarpur, vide which the appeal filed by the appellant-defendant against the judgment and decree dated 24.02.2012 passed by learned Civil Judge (Sr. Division), Hoshiarpur, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. Plaintiff-respondent Bharat Sanchar Nigam Limited (for short BSNL) through its general manager has filed the suit for recovery of Rs. 38,899/- i.e. Rs.27,588/- as principal amount being arrears of rent + Rs.9931/- as interest + Rs.1380/- as legal fee and other costs along with future interest on the grounds *inter alia* that on the basis of an application moved by the defendant, the telephone connection bearing no.222066 was provided to the defendant. The appellant-defendant utilized the services of the same till its disconnection, but the defendant did not pay the aforesaid amount. Hence, the suit.

4. Appellant-defendant contested the suit on the plea that if any amount is proved to be outstanding against the defendant in that event Randaman Kaur is not liable to pay any amount to the plaintiff as she is not partner of the defendant. The suit has been wrongly filed against Randaman Kaur. It was further pleaded that defendant firm has since been sold to M/s Chahal Mashrooms Ltd. by virtue of the sale deed dated 25.10.2001 owned by M/s Brar Group, since then Randaman Kaur is not

the partner of M/s Chahal Frozen Food. It is further pleaded that intimation in this regard has been immediately given to the plaintiff-respondent after the execution of the sale deed. It is further pleaded that she cannot be held liable to pay the dues accrued, if any, after the execution of the sale deed dated 25.10.2001. All other averments of the plaint were controverted.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 16.09.2009:-

1. Whether the plaintiff is entitled to recover the suit amount along with pendente-lite and future interest as prayed for?OPP
2. Whether the suit is not maintainable in the present form?OPD
3. Whether the suit is bad on account of non-joinder of necessary parties and misjoinder of the parties?OPD
4. Relief.

6. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court, vide impugned judgment and decree dated 24.02.2012, decreed the suit of the plaintiff-respondent for the recovery of Rs. 38,899/- along with *pendente lite* and future interest on the decretal amount at the rate of 6 % per annum from the date of filing the suit till its actual realization.

7. Aggrieved with the aforesaid judgment and decree, the appellant-defendant preferred the appeal and the same was also dismissed by the learned First Appellate Court, vide impugned judgment and decree dated 27.11.2013. Hence this Regular Second Appeal.

8. I have heard Mr. Rajeshwar Singh, Advocate and have meticulously gone through the record of the case.

9. Initiating the arguments, learned counsel for the appellant contended that the disputed bill has become due on 18.12.2002. Whereas, appellant-defendant firm was already sold to M/s Chahal Mashroom Ltd. owned by M/s Brar Group by virtue of the sale deed dated 25.10.2001 that is much before the disputed bill became due. After execution of the sale deed, the appellant has no concern with the aforesaid telephone connection nor the said connection was used by the appellant. He further contended that the appellant-defendant firm was sold with all the assets and liabilities to M/s Chahal Mashroom Ltd. owned by M/s Brar Group. So, even if, any amount was outstanding that was recoverable from M/s Chahal Mashroom Ltd. and no liability can be fastened upon the appellant-defendant. Thus, he contended that the learned Courts below have wrongly passed the decree.

10. I have duly considered the aforesaid contentions.

11. From the statement of PW-1 Jagmohan Singh, the then S.D.O (Telephones), BSNL, Tanda, it comes out that M/s Chahal Frozen Food has obtained the telephone connection bearing no. UMA-222066 from their telephone exchange. He has also brought on record the original application Ex.P-1 submitted by the appellant-defendant for grant of the telephone connection. Pardeep Singh Chahal one of the partners of the appellant-defendant firm has appeared as DW-1. He has categorically admitted that M/s Chahal Frozen Food was constituted in the year 1979 and at that time he, his mother Randaman Kaur along with other persons were partners of the said firm. He further admitted that he and his mother had applied for issuance of the telephone connection in question. He

further categorically admitted that the application Ex.P-1 bears his signatures as well as the signatures of his mother. Thus, the telephone connection in question was installed in the premises of the appellant firm on the basis of application moved by Randaman Kaur and Pardeep Singh Chahal, the partners of the appellant firm. Said facility was availed by the defendants. Application Ex.P-1 establishes the privity of contract between the plaintiff-BSNL and the appellant firm through its partners.

12. There is no material on record to show that any written information was sent by the partners of the appellant/ defendant firm to the plaintiff-B.S.N.L intimating the transfer of the ownership of the demised premises. The terms and conditions of the sale between appellant firm and M/s Chahal Mashroom Ltd. will not bind and adversely affect the rights of the plaintiff-respondent, as the plaintiff-respondent was not a party to the contract between the appellant firm and M/s Chahal Mashroom Ltd. The appellant firm being privity to the contract with the plaintiff for providing the telephone facility is certainly liable for payment of the outstanding amount. So, no fault can be found with the concurrent findings recorded by the learned courts below in favour of the plaintiff/respondent.

14. Thus, no question of law, much less, the substantial question of law as claimed by the appellant arises in the present appeal.

15. Consequently, the present appeal having, no merits, is hereby dismissed with no orders as to costs.

March 21, 2016

s.khan

(DARSHAN SINGH)
JUDGE