

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3535 of 2014 (O&M)

Date of Decision: 18.12.2018

Bharat Sanchar Nigam Ltd.

.....Appellant

Vs.

M/s Sab Infotech

.....Respondent

CORAM: HON'BLE MR.JUSTICE DR. RAVI RANJAN

Present:- Mr.Anil Rathee, Advocate, for the appellant.

Mr.Abhishek Sanghi, Advocate, for the respondent.

DR. RAVI RANJAN, J.

I have heard parties and perused the record of this case.

This appeal is directed against the judgment and decree dated 07.03.2014 rendered by the District Judge, Bathinda, in Civil Appeal No.17 of 07.03.2014 by which the lower appellate Court has affirmed the judgment and decree passed by the trial Court which was allowed in part.

Obviously, the appellant also assails the part of the judgment and decree of the trial Court by which their case for compensation recoverable from the defendant on surrender of service before contracted period but failed to pay two bills raised vide Ex.PW1/P and Ex.PW1/Q. It is pertinent to note here that upon reading of previous order passed by the Co-ordinate Bench of this Court dated 10.02.2015, it appears that the appellant-plaintiff has confined his prayer in the present appeal for recovery of amount specified in the aforesaid bills.

Short facts which should be necessary for consideration of *lis*

between the parties stand enumerated as under:-

The plaintiff-appellant Bharat Sanchar Nigam Limited filed a suit for recovery of Rs.5,57,953/- out of which Rs.4,72,842/- was claimed as principal amount and Rs.85,111/- as interest which had accrued upon the aforesaid principal amount @ 12% per annum. Plaintiff has stated that BSNL is a Corporation having its office at New Delhi and General Manager office at Bathinda. It is further stated in the plaint that the defendant Sab Infotech, hired the services of plaintiff under certain terms and conditions for which necessary 6 Optical Fiber Cables were laid in the office of the defendants. The defendants were availing the facilities but system was closed on the instructions of the defendant. It is averred in the plaint that plaintiff was issuing regular bills to the defendant as per R & G Terms (i.e. Rent and Guarantee) which were confirmed by the defendant. The defendant made part payment of the rent and cost of the articles except the bills which were disclosed in the plaint.

The defendants appeared upon summons being issued and filed its written statement raising ground of maintainability as also of alternative remedy which was available to the plaintiff to move the Telecom Regularity of India Act, 1997 and also on merits by denying the period of services for which bills were raised and also that the quality of service being provided by the plaintiff was very poor, causing monetary loss to the defendant and do not tally with bills raised by the plaintiff. In the aforesaid circumstances defendant was forced to discontinue the business with the plaintiff. It is also the case of the defendant that rates were also enhanced in between. It is further case of the defendant that plaintiff started raising inflated bills which were more than the agreed rates and there has

been exaggeration of the total amount.

The trial Court on appreciation of pleadings framed following issues:

1. Whether plaintiff is entitled for recovery of Rs.4,72,842/-? OPP.
2. If issue No.1 is proved, whether plaintiff is entitled to interest, if so at what rate? OPP.
3. Whether the suit is within limitation? OPP.
4. Whether court has jurisdiction? OPP.
5. Relief.

The suit was decreed with respect to Ex.PW1/L to Ex.PW1/O. So far as Ex.PW1/P and Ex.PW1/Q are concerned, those were not allowed and decreed for the reasons that the case of the plaintiff was that these bills pertain to compensation recoverable for surrender of service before the guarantee period. The defendants' case is that they have already surrendered the connections before 21.06.2005 and hence, they are not liable to pay the amount pertaining to the aforesaid bills.

The learned counsel for the appellants vehemently argued while referring to the clauses of premature surrender of guaranteed TGP/TPH lines in the license agreement having been executed between the parties that the defendant would be liable to pay such amount. However, the trial Court has returned a finding that since the concerned document shown by the agreement between the parties, upon and which the plaintiff has placed reliance, was a Xerox copy and even that has not been brought on record in accordance with law. Thus, the same cannot be looked into. Under such circumstances, the plea of plaintiff was rejected.

The plaintiff-appellant moved the lower appellate Court against the aforesaid part of the judgment of the trial Court. However, the lower appellate Court has also returned a finding that the document cannot be looked into as the same has neither been exhibited nor marked and as such, recovery claimed under the aforesaid bills cannot be enforced against the defendant. In the result, the appeal was also dismissed.

Learned counsel appearing for the appellant has made effort to impress upon this Court that since the license agreements were admitted therefore, such finding could not have been recorded by the Courts below as the defendants also cannot question the same.

On such submissions having been advanced on behalf of plaintiff/appellant, this Court put a query as to where such statement was made in the plaint and where in the pleading of defendant the same stands admitted. However, from the perusal of the pleadings, learned counsel for the appellant was not able to demonstrate the aforesaid fact.

Having considered the rival contentions, this Court is also of the opinion that if the document is to be relied upon for grant of decree then the same has to be brought on record. Merely the Xerox copy of the document cannot be accepted unless both sides have admitted the same and such document is brought on record with the consent of both the parties without any objection having been raised. In the case in hand, it does not appear that such sort of thing had happened and as such, there is no reason to disagree with the concurrent view of both the Courts below that the plaintiff has based its case upon a document that was required to be brought on record in accordance with law. In the absence of the aforesaid document, the xerox copy cannot be considered by the Court of law especially when the terms

and conditions are being questioned and denied by the other side.

In the result, I am of the opinion that this appeal being devoid of any merit, is not required to be admitted. Hence, the same is dismissed. However, parties would bear it with their own costs.

(DR. RAVI RANJAN)
JUDGE

18.12.2018

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No