

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No. 369/2018**

% **4th May, 2018**

B.S.MEENA @ BHAGAT SINGH MEENA Appellant

Through: Mr. S.N. Gupta, Mr. Ayush
Gupta and Ms. Shikha Meena,
Advocates.

versus

MAHANAGAR TELEPHONE NIGAM LTD. & ORS.

..... Respondents

Through: Mr. S.K. Singh, Advocate for
R-1.
Mr. Neeraj K. Gupta and Mr.
Ranjeet Kr. Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

Caveat No. 412/2018

Counsel appears for the caveator. Caveat accordingly stands
discharged.

CM Nos. 18113-14/2018 (Exemption)

Exemptions allowed subject to just exceptions.

CMs stand disposed of.

RFA No. 369/2018 & CM Nos. 18111/2018 (U/o XLI Rule 27 CPC for Additional evidence) & 18112/2018 (stay)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellant/defendant no.1 in the suit impugning the judgment of the Trial Court dated 4.1.2018 whereby the trial court has decreed the suit filed by the respondent no.1/plaintiff/Mahanagar Telephone Nigam Ltd. (MTNL) against the appellant/defendant no.1 for a sum of Rs.27,30,430/- along with interest at 10% per annum. The suit for recovery was decreed because the appellant/defendant no.1 was a phone inspector working for the respondent no.1/plaintiff and he misused the telephone line bearing telephone connection no. 626993 (digit 4 was pre-fixed subsequently) whereby STD/ISD calls were illegally got permitted on this line resulting in huge revenue loss to the respondent no.1/plaintiff.

2. The facts of the case are that the respondent no.1/plaintiff filed the subject suit for recovery of Rs. 27,30,430/- against three defendants. Defendant no.1 was the appellant Sh. B.S. Meena. Defendant no.2 was the wife of the appellant. Defendant no.3 was the entity in whose name the subject telephone connection existed and

which was misused for making STD/ISD calls resulting in huge loss to the respondent no.1/plaintiff.

3. Appellant/defendant no.1 filed his written statement and denied that he was at fault as was the case made out in the plaint, and therefore, the suit was prayed to be dismissed.

4. After pleadings were complete the trial court framed the following issues:-

- “(1) Whether Mr. S.P.Jain, Accounts Officer (Legal) is duly authorized to sign, institute and verify the plaint? OPP
- (2) Whether the plaint is liable to be rejected for failure to implead landlords? OPD
- (3) Whether the suit against defendant no.1 is barred by limitation? OPD
- (4) Whether the plaintiff is entitled to file the present suit for recovery against the defendant no.1,2 and3 jointly? OPP
- (5) Whether the plaintiff is entitled to a decree for recovery? If so, against which defendant and for what amount? OPP”

5. Parties thereafter led evidence of witnesses and this aspect is recorded in para 6 of the impugned judgment which reads as under:-

“6. In order to prove its case, the plaintiff led its evidence by examining 6 witnesses i.e. Sh. S.P. Jain as PW-1, Sh. J.S. Sharma as PW-2 and Sh. Satvinder Singh as PW-3, Sh. G.S. Takshi as PW-4, Sh. Mahender Singh as PW-5, Ms. Sarita Pathak as PW-6. Thereafter, defendants have led their evidence. Defendant no. 1 examined herself as DW-1. Defendant no. 2 has not led any evidence. Defendant no. 3 examined himself as DW-3.”

6. The relevant issue for decision as to the liability of the defendants in the suit was issue no.4 and this issue has been discussed by the trial court from paras 14 to 29 of the impugned judgment. Trial court has dismissed the suit of the respondent no.1/plaintiff so far as defendant no.2-wife of the appellant is concerned and also against the erstwhile subscriber of the subject telephone, but the suit has been decreed against the appellant/defendant no.1 in view of the statements recorded and depositions given by six witnesses of the respondent no.1/plaintiff.

7. Trial court has reasoned that since the present case is based on fraud and cheating, and therefore it was very difficult to bring on record direct evidence, however the evidence led of the witnesses, including those who were the witnesses to the raid, was held can be believed for holding that in a civil case on balance of probabilities, respondent no.1/plaintiff successfully proved the illegal acts of the appellant/defendant no.1 causing loss. Trial court has relied upon the statement made by the witness of the respondent no.1/plaintiff Sh. J.S. Sharma, and who was one of the parties to the raid conducted on the subject telephone connection, for holding as

proved the case against the appellant/defendant no.1. The relevant portion of the examination of Sh. J.S. Sharma PW-2 has been reproduced by the trial court in para 21 of its impugned judgment and this para 21 reads as under:-

“21. All the above said facts have been deposed in the affidavit tendered in evidence by PW2 Sh. J.S. Sharma. Sh. J.S. Sharma also deposed that on 04.11.1992, a raid was conducted by the CBI and he was also part of the said raid. In the said affidavit Ex. PW2/A, the PW2 deposed in detail the modus operandi of shifting of the telephone in question from one place to another and its misuser by defendant no.1. The said testimony is very important and therefore, the same is reproduced as under:

“The CBI team alongwith Sh. Madan Lal Paul, Ramesh Grover, YP Chopra and myself reached at 14/7 Pant Nagar, Jangpura Extn., New Delhi. Smt. Ram Kali W/o. Sh. B.S. Meena was found present in the house. We all remained present there and at about 9 PM. Sh. B.S. Meena came there in his Maruti Van No. DL-5C-0218, who was working as Phone Inspector under SDO (P) IV KBN Exchange, MTNL, New Delhi. Sh. B.S. Meena handed over to two telephone instruments (Panasonic) Automatic System from his Maruti Van No. DL-5C-0218, which have been seized through separate seizer/Receipt memo. The observation/checking memo dated 04.11.1992, separate seizer/Receipt Memo dated 04.11.1992, surprise checking cum observation memo dated 05.11.1992 etc. are having my signatures. Sh. B.S. Meena was arrested and his personal search was conducted but noting was found. On enquiries Sh. B.S. Meena confessed that he and his brother Sh. Satinder Singh had taken a room at second floor of 25/10 Pant Nagar, Jangpura Extension, from where he arranged STD/ISD calls through telephone no. 4626993 to various persons on cheaper rates. After that we all moved towards 25/10 Pant Nagar, New Delhi. At about 11:30PM. We all reached at 25/10 Pant Nagar, New Delhi at the instance of Sh. B.S. Meena, Sh. Ramesh Chand Mehra, S/o. Sh. Shyam Lal Mehra, R/o. 25/10 Pant Nagar, New Delhi was present who informed that the occupant of second floor had gone 2 hours back i.e. at about 09:30PM on 04.11.1992, Sh. Ramesh Chand Mehra got opened the lock of that room and on inspection it was found that one telephone instrument make Panasonic, made in Japan and was lying in the room at second floor. During search telephone drop wire coiled in pieces, length approx 17.48 m + 6M+14.72+ mts were found lying on the roof of that room. On enquiries Sh. Om Prakash Meena, S/o. Yad

Ram Meena, R/o. 25/8, Pant Nagar, New Delhi which was adjoining to that room told us that at about 9.30 PM on 04.11.1992 the telephone functioning in that room was disconnected and the telephone wire was thrown on the roof. He informed that three persons including Sh. Satinder Meena who runs a shop at 8/14 Jangpura Extension in the name of Arts Gallery had disconnected/broken the telephone connection and thrown the telephone wires on the roof. The telephone was connected from telephone pole installed near house no. 24/1 Pant Nagar, New Delhi. Accordingly, I inspected and seen that a telephone wire was found hanging from DP Box installed on the pole. After verification and checking I informed that the hanging wire was connected to pair no. 9 of DP no. JB/15105. The instrument so found was connected with the hanging wire and telephone no. 4633594 was dialed and on that telephone, Sh. Sumit Paul, S/o. Sh. Madan Lal Paul attended the call, Sh. Sumit Paul was asked to dial and make a call at telephone no. 4626993. Just after a minute telephone bell ranged on the above instrument connected to the so hanging wire, the hand receiver was lifted. Sh. Sumit Paul was on the other side who confirmed that he had dialed telephone no. 4626993. After that a test ISD call no. 001-908-6799191 was made and call materialized. The telephone instrument was disconnected and taken into possession by CBI. The hanging wire was disconnected and taken into possession which was measured as 6.5 mts. Three pieces of drop wire found on the roof as already mentioned measuring 38.20mts. In total had also been taken into possession by CBI.

Sh. Ramesh Chand Mehra and his father Sh. Shyam Lal Mehra, who is owner of that house no. 25/10 Pant Nagar, New Delhi also came on site and informed that he had given the second floor portion where the above mentioned telephone instrument was installed to Sh. B.S. Meena, a telephone Inspector of MTNL residing at 14/7 Pant Nagar, Jungpura Extn. Through Sh. Ghanshyam Dass, Sh. Ghanshyam Dass also arrived at the spot and who after identifying Sh. B.S. Meena Phone Inspector, MTNL, Kidwai Bhawan and R/o. 14/7 Pant Nagar informed that he had arranged one room portion at 2nd floor of 25/10 Pant Nagar, New Delhi on rent for some relatives of Sh. B.S. Meena on 07.10.1992. Sh. Ghanshyam Dass further told that the said portion was arranged from Sh. Shyam Lal Mehra on a monthly rent of Rs. 2,000/- One visiting card of Martina Halen bearing some call numbers of foreign countries was recovered from that room. Telephone instrument, socket, telephone drop wires and visiting card was taken into possession. All present had signed surprise checking cum observation memo. The proceedings of surprise checking cum observation memo started at about 11.30PM on 04.11.1992 and completed at about 03.10AM on 05.11.1992.” (underlining added)

8. A reading of the aforesaid statement of the witness PW-2 Sh. J.S. Sharma shows that a raid was conducted by the CBI and in this team along with the witness PW-2 the other persons were Sh. Madan Lal Paul, Sh. Ramesh Grover and Sh. Y.P.Chopra. The premises which were raided were 14/7, Pant Nagar, Jangpura Extension, New Delhi. This was the address at which though the subject telephone connection was not installed but the same was found to be misused by extension of wires from the equipment/main wires/fixtures of the respondent no.1/plaintiff. It is seen that the appellant/defendant no.1 came to the site in his Maruti Van and he handed over two telephone instruments of Panasonic Brand which were seized. At the time of the raid appellant/defendant no.1 admitted that he and his brother Sh. Satinder Meena had taken a room at second floor of 25/10, Pant Nagar, New Delhi from where he arranged STD/ISD calls through the subject telephone connection to various persons on cheaper rates. When the raiding team reached at 25/10, Pant Nagar, it was found that the occupant had suddenly left about 2 hours back but he had left behind vital clues in the form of Panasonic telephone instrument, telephone drop wire coiled in pieces etc. The

adjoining occupant told that at about 9.30 PM on 4.11.1992 the telephone functioning in that room where the telephone connection was misused was disconnected and telephone wire was thrown on the roof. The adjacent occupant informed that three persons including Sh. Satinder Meena had disconnected/broken the telephone connection and thrown the telephone wires on the roof. The telephone was connected from telephone pole installed near House No. 24/1, Pant Nagar, New Delhi. On inspection, it was found that the telephone wire hanging from DP Box installed on the pole. A check was made on the telephone line and when the telephone number 4633594 was dialed Sh. Sumit Paul, S/o Sh. Madan Lal Paul attended the call. Even a test ISD call was made on an international number which materialized. Other facts have also been deposed to by this witness.

9. Believing this statement of the witness Sh. J.S. Sharma, PW-2, trial court has held the appellant/defendant no.1 liable, including in view of the statement of one other witness PW-4 Sh. G.S. Takshi who had deposed on the point of inspection of the site and finding unauthorized connection of the wires to the telephone connection installed at Pant Nagar address. In the cross-examination

of PW-4, no suggestions were given as to there being no unauthorized telephone wire at the Pant Nagar address.

10. It was argued on behalf of the appellant/defendant no. before the trial court, and as also so argued before this Court, that Sh. J.S. Sharma in a criminal case had turned hostile, and therefore the deposition given by him in the present suit should be disbelieved, but this argument in my opinion has been rightly rejected by the trial court because decision of a criminal case does not bind a civil court because a civil case is decided on balance of probabilities. Any decision of the criminal case or any evidence in the criminal case is irrelevant once in the civil case evidence is led on behalf of the respondent no.1/plaintiff, and which as per the balance of probabilities was believed by the trial court to pass the impugned judgment.

11. Trial court in my opinion has also rightly rejected the defence of the appellant/defendant no.1 that he was not posted in the area but was posted in a different area, inasmuch as posting of the appellant/defendant no.1 has no relevance to the issue of misuse of the particular telephone line. Trial court has rightly concluded that the

appellant/defendant no.1 was liable for causing huge revenue loss to the respondent no.1/plaintiff/MTNL/plaintiff.

12. Appellant/defendant no.1 has filed an application in this Court under Order XLI Rule 27 CPC being CM No. 18111/2018 for leading additional evidence. Additional evidence which is sought to be led is the statement of Sh. Madan Lal Paul recorded before the CBI court. In my opinion, this application has no merit and is liable to be dismissed. The first reason is that, and as already observed above that any evidence/deposition in a criminal case will have no bearing to decide the subject civil case wherein evidence has been independently led. Also, it cannot be disputed that appellant/defendant no.1 had complete opportunity during the trial of the suit before the trial court for leading of evidence in support of his case, and that object of Order XLI Rule 27 CPC is not enable the parties to reopen the case and lead additional evidence to fill up lacunae in his case.

13. There is no merit in the appeal. Dismissed.

MAY 04, 2018
ib

VALMIKI J. MEHTA, J