

Item-30. 22-09-2022

sg

Ct. 8

SA 82 of 2021

Smt. Chandana Mukherjee
Versus
The Secretary & Ors.

The appeal is of the year 2005. The appellant is not represented. The records would show that the appellant has not taken any steps for admission of this appeal. This matter initially appeared on 9th September, 2022 but thereafter, the matter is appearing in the list. In spite of due notice, the appellant is not represented nor any accommodation is prayed for on behalf of the appellant.

The appellate judgment and decree dated 31st January, 2005 passed by the Additional District Judge, Asansol affirming the judgment and decree dated 11th September, 2002 in a suit for declaration and permanent injunction is the subject matter of this second appeal.

The appellant complained of disconnection of the telephone line. The plaintiff alleged that in spite of payment of all bills, the line was not restored. The defendant denied the said allegation that the defendant indicated that the due to delayed payment of the bills, the telephone line was disconnected but subsequently restored. The evidence would show that for the period when the telephone line was not functional, there was no culpable negligence on the part of the defendant. There were mechanical and technical issues for which the telephone line could be out of order. However, it was established that such disconnection was not intentional.

The appellate court considering the provision for

interruption beyond 14 days held that a subscriber could be entitled to receive rebate but could not grant any such relief as no prayer was specifically made in the plaint. The relevant Rule being Rule 446 sub-rules 2 and 3 gives a right to a subscriber to claim rebate in the event of fulfillment of the aforesaid conditions. When the suit was heard, the telephone line was restored.

On such consideration, we feel that the trial court as well as the first appellate court was justified in not granting any relief to the plaintiff. We do not find any merit in the appeal. The second appeal is dismissed.

(Uday Kumar, J.)

(Soumen Sen, J.)