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

CM-2535-C of 2018 in/and
RSA-1015 of 2018
Date of decision: 18.08.2023

Bharat Sanchar Nigam Ltd.

......Appellant

vs.

Rajiv Kumar @ Raju and another

......Respondents

**CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR**

Present: Mr. Rajesh Gupta, Advocate,
for the appellant.

**NAMIT KUMAR, J. (ORAL)**

**CM-2535-C of 2018**

1. This application has been filed by the applicant-appellant for condonation of delay of 57 days in refiling the appeal.

2. In view of the averments made in the application, which is duly supported by an affidavit, same is allowed. Delay of 57 days in refiling the appeal is condoned.

**RSA-1015 of 2018**

1. Instant Regular Second Appeal has been filed by the plaintiff/appellant against the judgment and decree dated 19.11.2015 passed by the Court of learned Civil Judge (Junior Division), Ludhiana, whereby suit filed it for recovery has been dismissed as well as against the judgment and decree dated 19.04.2017 passed by the Court of learned Additional District Judge, Ludhiana, whereby appeal filed by the appellant has been dismissed.

2. Brief facts of the case are that plaintiff filed a suit for recovery of Rs.31,14,137/- pleading therein that pursuant to the new Telecom Policy, 1999, the Government of India decided to corporatise the service provision function of the department of Telecommunications and decided to transfer the business of Telecom Services in the country currently run and entrusted with the department of Telecom Services and Department of Telecommunication to the Newly formed BSNL w.e.f. 1.10.2000. It has been alleged that one PCO connection was obtained by defendant No.1 Rajiv Kumar vide Telephone No.728973 at 8, Modi Complex, Ghas Mandi, Ludhiana and another telephone connection (Non PCO) was also obtained by him in the same premises. Two separate applications were moved by Rakesh Kumar, defendant No.2 for availing telephone connections in shop No.36 at Karta Ram Street, Modi Complex, Ghas Mandi, Ludhiana in the name of its proprietorship concern M/s Fly Wing Courier Service of which defendant No.2 was the proprietor. Plaintiff provided two separate telephone connections bearing No.730411 and 730428 on 19.1.2001 to defendant No.2. On the request of subscriber, both the telephone connections were provided with STD/ISD facility by the plaintiff. It has been further pleaded that one complaint from Karan Saxena was received in the office of plaintiff whereby he had informed that proprietor of Raju PCO is misusing the telephone connections 730411 and 730428 and its proprietor Rajiv Kumar @ Raju is getting frequent overseas calls through the said telephone connections with intent of not paying the bills of the Department. Entertaining the said complaint, inquiry was marked to Vigilance Cell and it was revealed that in fact shop

No.36 where telephone connection no.730411 and 730428 were installed, was lying vacant and there was no telephone operator available. Further probing into the matter, it was found that defendant No.1 Rajiv Kumar @ Raju impersonated himself as Rakesh Kumar falsely alleging himself to be the proprietor of M/s Flywing Courier Services as the handwriting and signatures appearing on the applications for availing PCO telephone connections as well as telephone no.730412 and 730428 were identical. Rakesh Kumar (defendant No.2) alleged proprietor of M/s Flywing Courier Service on whose name these telephone no.730411 and 730428 were availed, were found to be missing and not occupying shop no.36 where the said telephone connections were availed by him. Not only this, Mr. B.K.Gupta and R.P. Singhania, who had witnessed the nomination/application for telephone of Rakesh Kumar, were contacted at their given addresses, who denied having signed the said application as nomination witnesses. It appeared that defendant No.1 had given fictitious addresses and names so as to deceive the plaintiff and embezzled huge amount of plaintiff. It has been alleged that telephone no.730411 and 730428 were excessively used by making overseas and long distance calls. Defendants had consumed calls to the tune of 31,14,137/- i.e. amount of Rs.17,02,692/- against telephone no.730411 and Rs.14,11,445/- against telephone no.730428. It has been alleged that a criminal case was got registered by plaintiff through FIR No.53 of 11.8.2001 in P.S. Divn. No.3, Ludhiana U/S 409, 419, 420, 468, 120-B of the IPC and after completion of investigation, challan against defendant No.1 had been presented and charges have also been framed on 20.5.2005. So defendant No.1 had cheated the plaintiff by making excessive calls and a sum of Rs.31,14,137/- stood due against the defendant. Fraud had been committed by defendant No.1 which *prima facie* stood established by framing of charge by the Court of JMIC, Ludhiana and as such, suit of the plaintiff is filed within one year from 20.5.2005 and is within limitation. Defendants through legal notice dated 20.9.2005 were called upon to make the said payment but they refused to do. Hence, the suit was filed.

3. Upon notice, defendant No.1 appeared and contested the suit by filing written statement raising preliminary objections *inter alia* that suit of the plaintiff is bad for misjoinder of parties. Defendant is not consumer of telephone numbers in question. Plaintiff has suppressed material facts from the Court. Suit of the plaintiff has not been filed by competent person and it is hopelessly time barred. Present suit is further barred as under the Telegraph Act, only arbitration proceedings are maintainable. On merits, it has been alleged that defendant is not holder of telephone numbers 730411 and 730428. It has been denied that defendant No.1 had impersonated himself as Rakesh Kumar falsely alleging himself as Rakesh Kumar proprietor of M/s Flywing Courier Service or that the handwriting or signatures appearing on the three applications were identical. It has been admitted that FIR has been registered against defendant and charge has also been framed but the same is false and frivolous. Denying the remaining averments, defendant No.1 prayed for the dismissal of the suit.

4. Upon notice, defendant No.2 failed to appear despite service and was proceeded against ex parte vide order dated 21.5.2012.

5. Out of the pleadings of the parties, following issues were framed

by the trial Court vide order dated 28.9.2012: -

> *"1. Whether plaintiff is entitled to the relief of recovery of the suit amount alongwith interest as alleged? OPP.*
> *2. Whether suit is not maintainable? OPD.*
> *3. Whether suit is time barred? OPD.*
> *4. Whether suit is bad for misjonder of defendant? OPD.*
> *5. Relief."*

6. Parties led oral as well as documentary evidence in support of their respective contentions.

7. After hearing arguments and after appreciating evidence on record, trial Court dismissed the suit of plaintiff vide judgment and decree dated 19.11.2015.

8. Aggrieved against the judgment and decree of the trial Court, plaintiff preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 19.04.2017.

9. I have heard learned counsel for the appellant and perused the record.

10. Perusal of the judgments of the Courts below would show that the suit has been dismissed on the ground of limitation as it has been held that cause of action to the appellant arose in the year 2001 and whereas the suit was filed in the year 2006. Findings recorded by learned Civil Judge (Junior Division), Ludhiana vide judgment dated 19.11.2015 reads as under: -

> *"16. After hearing the rival contentions of both the parties and perusing the record carefully, I have found that through this suit, the plaintiff company has sought the relief of recovery against the defendant on the ground that defendant No.1 has*

*impersonated as defendant No.2 and obtained the telephone connections on the basis of fake documents by committing fraud and thereafter he used the said connections and consumed calls worth Rs.31,14,137/- which is due till date. On the contrary, the defendant has opposed the claim of the plaintiff and pleaded bar of limitation. This Court finds force in the arguments advanced by Ld. Counsel for the defendant regarding suit being time barred. Admittedly, the aforesaid fraud committed by the defendant was discovered in the year 2001. The aforesaid factum stands duly substantiated from the copy of complaint proved on record by the plaintiff itself as Ex.P-2 dated 09.08.2001. On the basis of the aforesaid complaint, the FIR was registered against defendant No.1 on 11.08.2001 meaning thereby that the plaintiff had acquired a clear and substantial knowledge regarding fraud having been committed by the defendant No. 1 thereby giving rise to cause of action to file the present suit in the year 2001 itself. The period of limitation prescribed for the suit of recovery is 3 years under the Limitation Act and in case a fraud is pleaded then as per the provision of Section 17 of Limitation Act, the limitation starts from the period when a party obtains a knowledge about the fraud. As discussed above, the knowledge of the fraud can be attributed to the plaintiff in the year 2001 when the complaint was lodged against the defendant and subsequently the FIR was registered. Although, Ld.Counsel for the plaintiff has made an attempt to treat the suit within limitation by contending that the limitation would start from the date of framing of charge in the criminal case as the cause of action had accrued on the said date, however, the aforesaid contention of Ld.Counsel for the plaintiff is highly misconceived. As already discussed above, as per provision of Section 17 of the Limitation Act, in case of fraud the period of limitation would begin to run from the date of discovery of the fraud. From the documentary evidence on* *record it is clearly established that the knowledge regarding fraud was obtained by the plaintiff in the year 2001 itself while i.e. when the complaint was fled and the FIR against the defendant was registered. However, the present suit has been filed only on 25.01.2006. No explanation is forthcoming as to why the present suit has not been filed within prescribed period of 3 years under the limitation Act. I have also gone through the case laws cited by Ld.Counsel for the plaintiff, however, no benefit of the same can be given to the plaintiff, as there is nothing in the aforesaid case laws to suggest that the limitation in such a case would begin from the date of framing of charge. In AIR 1921 Calcutta 251 relied upon by the plaintiff itself, it has been observed by Hon'ble Kolkata High Court that there must be clear and definite knowledge of the fact which constitute the fraud and in the present case a clear and definite knowledge can be attributed to the plaintiff in the year 2001 itself when the complaint was moved and subsequently the FIR was also registered. On the contrary, Ld. Counsel for the defendant has rightly relied upon case law titled as Kanibhai Bhagwanji Patel v. Nanduben Shamjibhai Sorathiva and Others 2013 (1) ICC 482 (Gujrat) wherein it has been observed by Hon'ble Gujrat High Court as under:-*

> *"8.06 It is required to be noted that the only contention on behalf of the plaintiffs in support of their case that the suit is within the period of limitation, is that they came to know about the forged signature on the power of attorney when they came to know from the report of the handwriting expert and herefore, for that day, the suit is within the period of limitation. In support of the above submission, the learned advocate appearing on behalf of the plaintiffs has relied upon section 17 of the Limitation Act. However, considering the facts of the case on hand, plaintiffs cannot get benefit of section 17 of the Limitation Act. In the present case as stated above, even the original plaintiffs have instituted a private complaint in the court of learned Judicial Magistrate (First Class), Rajkot on*

*20.01.2004 for the offences punishable under Section 406, 420, 467, 468, and 471 of Indian Penal Code, against the defendants alleging forgery of the power of attorney dtd.5/1/1997 and therefore, even considering section 17 of the Limitation Act, starting point of limitation at least can be said to be from the date on which the plaintiffs filed complaint alleging forgery of power of attorney and fraud. At this stage, Article 56 of the Limitation Act is required to be considered. As per Article 56 of the Limitation Act, period of limitation to file suit to declare forgery of any instrument issued or registered shall be three years from the date on which issue or registration becomes known to the plaintiffs. As held by the Hon'ble Supreme Court in the case of Khatri Hotels Private Limited and another (supra), period of limitation would commence when right to sue first accrues.*

*8.07 Now, so far as the contention on behalf of the learned advocate appearing on behalf of the plaintiffs that while considering application under Order 7 Rule 11(d) of the code of Civil Procedure, court is required to consider the averments made in the plaint only and in para 10 of the respective suits, the plaintiffs have averred that they came to know about forgery when they received report of the handwriting expert in the year 2008 and therefore, it cannot be said that the suit is barred by law of limitation is concerned, it is required to be noted that this Court has considered and gone through the averments made in the respective suits/plaint. It appears that by claver drafting the plaintiffs have tried to bring the suit within the period of limitation. As stated hereinabove, the respective plaintiffs had knowledge with respect to transactions in the year 1999, even so pleaded in para 10 if the respective suits, and even the respective plaintiffs had knowledge with respect to alleged forgery and/or alleged forged signature on the power of attorney when they filed complaint in the year 2004 against the defendants for the offences punishable under Sections 406, 420, 467, 468, 471 of Indian Penal Code. By receipt of the report of the handwriting expert at the most it can be said that their case with respect to alleged forged signatures is strengthened but by that it cannot* *give a fresh cause of action to the plaintiffs to institute the suit when they have already alleged forgery in the year 2004."*

*17. Hence, in view settled case laws and facts & circumstances discussed above, this Court has got no hesitation to arrive at the conclusion that the suit of the plaintiff is time barred. The remaining arguments advanced by Ld.Counsel for the plaintiff pale into insignificance when the suit itself has been held to be time barred. Therefore, it is held that the suit of the plaintiff is not maintainable and plaintiff is not entitled to the relief of recovery as prayed for due to bar of limitation. Consequently, issues No.1 is decided against the plaintiff and issues No.2 & 3 are decided in favour of defendant."*

11. The said finding has been upheld by the lower Appellate Court vide judgment and decree dated 19.04.2017 by recording as under: -

*"17. Appellant/plaintiff had filed suit for recovery of Rs.31,14,137/- against defendant No.1 Rajiv Kumar @ Raju, who by way of impersonation, had on the basis of fake documents, got two telephone connections bearing No.730411 and 730428 on 19.1.2001 on which he also obtained STD and ISD facility from plaintiff and later on he misused the said telephone connections by making frequent overseas calls. Rajiv Kumar @ Raju impersonated himself for Rakesh Kumar alleging himself to be the proprietor of M/s Flywing Courier Services. From the averments made in the plaint, it is evident that the said fraud committed by defendant No. 1 upon plaintiff came to light when one complaint filed by Karan Saxena was received which was marked to Vigilance Cell who reported that Rajiv Kumar @ Raju had impersonated for Rakesh Kumar, proprietor of M/s Flywing Courier Services in whose name the said telephone connections were obtained though indeed there was no M/s Flywing Courier Services. It is further made out that on the basis of complaint filed by plaintiff Ex.P2 dated 9.8.2001, one*

*FIR was registered against defendant No.1 on 11.8.2001. Meaning thereby, plaintiff with the registration of FIR, gained the knowledge of commission of fraud by defendant No.1. Section 17 of the limitation Act is reproduced as under:*

> *"Effect of fraud or mistake. - (1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,-*
>
> *(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or*
>
> *(b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or*
>
> *(c) the suit or application is for relief from the consequences of a mistake; or*
>
> *(d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him,*
>
> *the period of limitation shall not begin to run until plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production:"*

*18. The Hon'ble Punjab and Haryana High Court in "Bharat Sanchar Nigam Ltd. v. Pawan Kumar Gupta, (P&H) 2007(4) R.C.R. (Civil) 10" was pleased to hold that period of limitation for use of telephone by BSNL is 3 years and not 30 years under Article 112 of Limitation Act. BSNL is a company incorporated under the Companies Act. Being a company it is a separate and distinct entity from the Central Government. It cannot acquire the status of 'Central Government'. BSNL does not come within the definition of Central Govt. under Section 3(8) of General Clauses Act.*

*19. So in the present case, in the light of section 17 of the limitation act and the above discussed law, plaintiff was required to sue for recovery of the amount due within a period of three years from the discovery of fraud i.e. from 9.8.2001 when complaint was filed by them before the Police for the* *registration of the FIR. Suit for recovery could have been filed upto 9.8.2004 but the present suit had been filed on 25.1.2006 i.e. after lapse of three years. No doubt, in the light of law laid down by the Hon'ble Apex Court in "Megh Mala and Ors. vs. G.Narsima Reddy and Ors., (supra)" fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by any application of any equitable doctrine, including resjudicata but still, the period of limitation of filing suit for recovery could not have been ignored. Hon'ble Patna High Court in "Ram Swaroop Singh vs. Ganesh Misip and Ors. (supra)" was pleased to hold that fraud is a continuing offence but in the present case, plaintiff has not come forward with any plea that defendant had still been misusing the telephone numbers on detection of the fraud to make it a continuing offence. Rather when fraud had been detected, plaintiffs gained the knowledge of the fraud committed upon them which gave them the cause of action to file the suit under appeal. Once FIR had been registered, plea of plaintiff that on framing of charge in the case registered against the defendant No.1, the fraud was detected, does not seem probable. Hon'ble Delhi High Court in "Sukhbiri Devi and Ors. vs. Union of India and ors (supra)" was pleased to hold that suit for declaration and injunction can be filed only within three years from the date cause of action arises. It cannot be filed on any subsequent dates even if cause of action arises on subsequent occasions also. So plaintiff could not have got fresh cause of action on charge being framed in the FIR registered against defendants.*

*20. In the light of above discussed law, I am of the considered opinion that no illegality has been committed by the learned lower Court in dismissing the suit of plaintiff, being barred by limitation. Findings of the Id. Lower court stand affirmed. Hence, the appeal of the appellants stands dismissed with costs. Decree be prepared."*

12. Learned counsel for the appellant has not been able to point out any illegality or perversity in the findings recorded by both the Courts below. No question of law much less substantial question of law has been raised or arises for consideration in the present appeal.

13. Dismissed.

**(NAMIT KUMAR)**
**JUDGE**

**18.08.2023**
R.S.

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No