

Form No. J (2)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

**MAT 1435 of 2024
IA NO: CAN/2/2024
CAN/3/2024
CAN/4/2025
CAN/6/2025**

The General Manager, Bharat Sanchar Nigam Limited & Anr.
vs.
M/s. Maa Jahara Enterprise & Ors.

with

**MAT 1436 of 2024
IA NO: CAN/2/2024
CAN/3/2024
CAN/4/2025
CAN/6/2025**

The General Manager, Bharat Sanchar Nigam Limited & Anr.
vs.
M/s. Sen Enterprise & Ors.

For the Appellants : Mr. Sanajit Kumar Ghosh, Advocate

For the Respondent
Nos. 1 and 2 : Mr. Arka Kumar Nag, Advocate
Mr. Sannidhya Datta, Advocate

Heard & Judgment on : 28.08.2025

Debangsu Basak, J.:-

1. Appeals and the application by the private respondents/writ petitioners being CAN/6/2025 are taken up for final hearing.
2. Appeals are directed against an order dated April 23, 2024 passed in two writ petitions being WPA 22295 of 2016 and WPA 22298 of 2016. They involve similar issues. Therefore, they are taken up for analogous hearing.
3. By the impugned order, learned Single Judge, directed payment to the private respondents/writ petitioners before us.
4. Learned advocate appearing for the appellants submits that, work orders were issued to private respondents herein for laying of cables. Works were not executed by any of the private respondents. There are several disputed questions of fact involved. In any event, the claim made in the two writ petitions is purely money claim and are completely barred by laws of limitation.
5. Learned advocate appearing for the private respondents refers to the orders passed from time to time in the writ petition as also in the present appeal. In particular, he draws the attention of the Court to the annexures of CAN/6/2025 which are orders passed by the learned Single Judge and appeal Court from time to time. He submits that, initially appeal was filed by two functionaries of BSNL. Thereafter, on the prayer made by the two appellants, BSNL was transposed from the category of pro forma respondent to the category of the appellant. He submits that, affidavit of competency as well as

Vakalatnama for such transposed appellant was not filed by the appellant. Moreover, he seeks recalling of the order transposing the pro forma respondent to the category of the appellant by this Court.

6. Apparently, the two writ petitioners/private respondents were granted work orders by BSNL. Apparently, they failed to execute work. It is the contention of the BSNL that two writ petitioners/private respondents did not discharge their obligations fully. Bills were raised by the writ petitioners/private respondents from time to time for the work claimed to be done by them. Bills are of 2009. The so-called certificate is also of 2009. Writ petition was filed in 2016.
7. There are no documents between the period 2009 to 2016 which remotely suggest that claim of the writ petitioners/private respondents is within the period of limitation prescribed.
8. Limitation is an issue of mixed question of fact and law.
9. There are rival contentions with regard to the work executed. At the basic minimum, there are disputed questions of fact involved.
10. Learned Single Judge, did not address the issue of limitation. Learned Single Judge also did not address the issue of the disputes raised.
11. The objection of the writ petitions/private respondents that, BSNL cannot be transposed to the category of the appellant and in any event, BSNL did not file appropriate affidavit of competency, in our view, in the facts and circumstances of the present case not tenable. Two functionaries and officials of the BSNL are before us as appellants originally. BSNL was originally arrayed as a pro forma respondent in the appeal.

12. Work order was issued by BSNL. Writ petitioners/private respondents are seeking reliefs against BSNL. Officials of BSNL preferred the appeal directed against the impugned order which directed BSNL to make them payment.
13. Transposing BSNL to the category of the appellant on the prayer of the two officials of BSNL when for all practical purposes the appeal is that of BSNL and that, the two appellants as official of BSNL were directed to prefer such appeal is plausible view and was accepted.
14. Contention that, appeal of BSNL is without the affidavit of competency is also of no consequence since, two high officials of BSNL are the original appellants.
15. Writ petitioners/private respondents in CAN/6/2025 did not seek leave to rely upon any document in terms of Order 41 Rule 27 Code of Civil Procedure, 1908. Nonetheless, our attention was drawn to only orders of the Court. We allowed the writ petitioners/private respondents to rely on the same.
16. CAN/6/2025 is **dismissed**.
17. **MAT 1435 of 2024** alongwith **MAT 1436 of 2024** are **allowed**. The impugned order is set aside.

(Debangsu Basak, J.)

18. I agree.

(Md. Shabbar Rashidi, J.)