

AS.(MD)No.35 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 17.02.2025

Pronounced On : 28.02.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HON'BLE MR.JUSTICE M.JOTHIRAMAN**

A.S.(MD)No.35 of 2017
and
C.M.P.(MD)No.2253 of 2017

N.Paramaguru

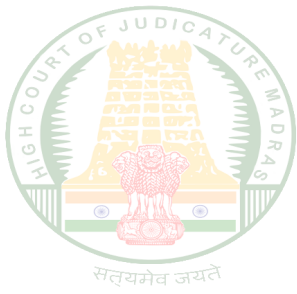
... Appellant/Defendant

Vs.

Bharat Sanchar Nigam Limited,
Through its Deputy General Manager Telecom,
Office at W.G.C.Road,
Thoothukudi-1.

... Respondent/Plaintiff

PRAYER : First Appeal filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree dated 18.11.2016 passed in O.S.No.73 of 2015 on the file of II Additional District Judge, Thoothukudi.



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For Appellant : Mr.M.Muthugeethaiyan

For Respondent : Mr.K.R.Laxman

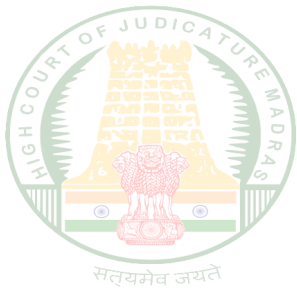
JUDGMENT

(Judgment of this Court was delivered by **M.JOTHIRAMAN J.**)

The appellant/defendant herein has preferred the present appeal as against the judgement and decree dated 18.11.2016 passed in O.S.No.73 of 2015 on the file of the learned II Additional District Judge, Thoothukudi. For the sake of convenience, the parties are referred to as their rank before the trial Court.

2.Brief case of the plaintiff is as follows:-

The plaintiff has provided Single Fiber Connectivity to the defendant for Tamilnadu Arasu Cable TV MS-O at six locations wherein the defendant had running cable TV connection, namely, Aswin Cable. The Single Fiber Connectivity have been provided on 24.05.2012, 29.05.2012, 20.03.2012, 10.05.2012 and 20.06.2012 and closed on 29.12.2012 due to non-payment of Telephone bills as detailed below:-



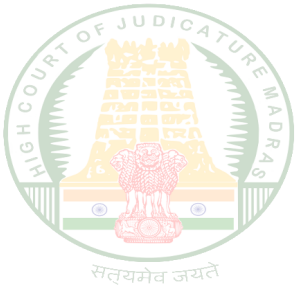
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Phone No.	Date of Closure	Bill Date	Bill No.	Amount in Rs.	Period
TTPN 865	29.12.12	12.09.12	48432967	84,746.00	24.08.12 to 29.12.12
TTPN 866	29.12.12	12.09.12	48432973	7,46,716.00	24.08.12 to 29.12.12
TTPN 867	29.12.12	12.09.12	48432980	1,04,231.00	29.08.12 to 29.12.12
TTPN 868	29.12.12	12.09.12	48432996	4,74,373.00	30.06.12 to 30.09.12
	29.12.12	17.11.12	48434245	4,59,135.00	01.10.12 to 29.12.12
TTPN 869	29.12.12	12.09.12	48433004	3,69,186.00	10.08.12 to 29.12.12
TTPN 982	29.12.12	19.11.12	48434268	95,275.00	20.09.12 to 29.12.12
Total					23,33,662.00

The plaintiff has sent a legal notice to the defendant on 27.04.2013 demanding payment of outstanding amount. The defendant received the notice on 02.05.2013 and sent a reply on 10.05.2013. He did not take any steps to pay the amount. Hence, the suit.

3. Brief case of the defendant is as follows:-



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The plaintiff has provided Single Fiber Connectivity to run cable TV network only on advanced payment through execution of demand notes for three months and thereafter only the plaintiff will provide the connection to the cable TV network. On execution of demand notes only for the period of three months, the plaintiff provided the Single Fiber Connectivity for six locations. After the expiry of the above said three months, the defendant has not executed any demand note seeking for single fiber cable connection from the plaintiff for six locations. Non-execution of demand notice for subsequent period shows that providing service connection comes to end. But the plaintiff demanded a sum of Rs.23,33,662/- with 12% interest, which is legally not maintainable and the plaintiff is in deficiency of service and prayed for dismissal of the suit.

4. Based on the above pleadings, the trial Court has framed the following issues:-

1. Whether the plaintiff is entitled for the relief of recovery of amount of Rs.23,33,662/- with interest as prayed for?

2. What other relief is entitled?



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On the side of the plaintiff, one Thiru.Sornaraj was examined as P.W.1, one Thiru.Valan was examined as P.W.2 and Ex.A1 to Ex.A14 were marked. On the side of the defendant, the defendant himself was examined as D.W.1 and no documents were marked.

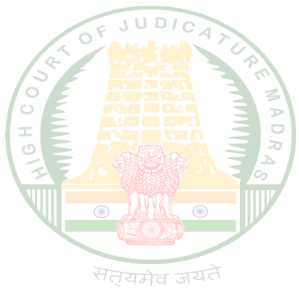
5.Findings of the trial Court:-

(i)The single fiber cable connection granted to the defendant is not a prepaid scheme and it is not restricted only for three months.

(ii)The defendant did not file any documents to show that after a lapse of three months, the defendant did not use the service connection from the plaintiff and the defendant himself in-directly admitted the fact that the defendant has utilised the network service from the plaintiff and therefore, the trial Court decreed the suit in favour of the plaintiff and directed the defendant to pay a sum of Rs.23,33,662/- with 7.5% interest to the plaintiff, within three months.

6.Points for determination in this appeal is that:-

1.Whether the single fiber cable connection granted to the defendant is prepaid scheme and it is restricted only for three months or not?



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2. Whether the plaintiff is entitled to get the relief as sought for in the plaintiff?

7. The learned counsel appearing for the defendant would submit that P.W.1 and P.W.2 have categorically deposed that the single fiber cable connection provided to the defendant is a prepaid scheme and the said connection is provided only on execution of demand note for the period of three months alone and the bills have been issued on 12.09.12, but the rent claim has been made up to 29.12.2012. P.W.2 also deposed that only for the period of three months, temporary permission is given and there is no agreement between the parties for fiber cable TV connection. The learned trial Court has not appreciated and considered the evidence deposed by P.W.1, P.W.2 and D.W.1 and decreed the suit. He would further submit that Ex.A13 is only a letter to the plaintiff and no connection is provided by the plaintiff for the said area as per Ex.A13 and the same reveals from Ex.A.14. The learned Trial Court has not properly appreciated the contents of Ex.A13 and Ex.A14.

8. The learned counsel appearing for the plaintiff would submit

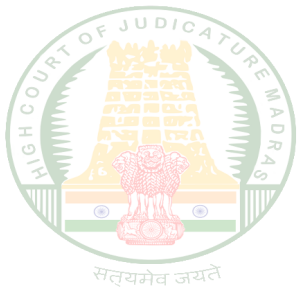


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that the plaintiff has provided with single fiber connectivity to the defendant/ Tamilnadu Arasu Cable TV MS-O at six locations on various places and for non-payment of Telephone bills, the suit has been filed for recovery of money by producing Ex.A1 to Ex.A7. He would further submit that the service provided to the defendant is not a prepaid scheme and therefore bills claimed up to 29.12.2012. The defendant had submitted an application to the plaintiff requesting to provide single fiber connection for Tamilnadu Arasu Cable TV MS-O at six locations, wherein, it is also stated that the defendant is ready and willing to pay the amount as fixed by the plaintiff. Thereafter, Tamilnadu Arasu Cable TV Corporation vide its letter dated 21.03.2012, addressed to the General Manager, BSNL, Chennai, permitted the defendant to avail the service of BSNL. The rent and other expenses towards BSNL have to be borne by the defendant.

9.It is seen from the records that under Ex.A11 a letter dated 22.03.2012 addressed by the Sub Divisional Engineer (Enterprise Business), O/o General Manager, BSNL, Tuticorin, which reads as under:-



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Approval General Manager, BSNL TT is hereby conveyed for provision of single fiber to Mr.N.Paramaguru, Tamilnadu Arasu Cable TV MS-O, ASWIN Cable, Tuticorin throughout the district@rs. 30000/-per km with tax. The distance from TT-TCH & Mukkani-Eral is 55 km. The distance from TCH-CHG is 18 km. You are hereby requested to issue two D/N accordingly.

10.The evidence deposed by P.W.2 reveals that there is no written agreement between the parties for the fiber cable TV connection. Ex.A13 is a letter addressed by the defendant to the plaintiff wherein it has been requested that Vodafone company is collecting the rent for a sum of Rs.18,000/- for one kilometre per annum and therefore, requested to consider the same amount to the defendant also. It is pertinent to mention that there is no date mentioned in the said Ex.A13 letter. Ex.A14 is the letter dated 22.11.2012 addressed by the defendant to the plaintiff wherein it has been requested that since no action has been taken on the request made by the defendant, with regard to the reduction of monthly rent imposed by the plaintiff and also the defendant has stopped



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the service connection utilised from the plaintiff and requested to waive the amount claimed by the plaintiff. Ex.A11, it reveals that initially in the month of March 2012, ie., at the time of fiber connection was commissioned, there was no dispute between the plaintiff and the defendant. As per Ex.A14, only in the month of November 2012, the defendant sent requisition to waive the amount claimed by the plaintiff. Therefore, the defendant did not raise any objection during the service period.

11.A perusal of Ex.A1 to Ex.A7 would reveal that the plaintiff has claimed charge under the head of rent for a particular period and wherein it is also mentioned about the annual rent for fiber connectivity. Therefore, Ex.A1 to Ex.A7 shows that provisioning of fiber connection involved in the permanent underground work and the service should be made available for one year for the said connections. The initial burden lies on the plaintiff has been established by way of producing Ex.A1 to Ex.A14 with the oral evidence of P.W.1 and P.W.2. It is the specific case of the defendant that the single fiber connection for the cable TV network provided by the plaintiff only for a period of three months on

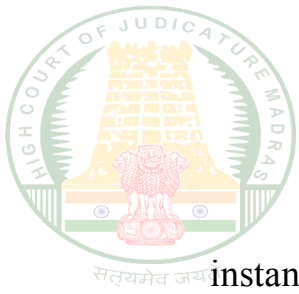


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execution of demand note and also it is only prepaid scheme. In order to prove the above said facts, except oral evidence, no documents have been placed before the trial Court.

12.P.W.1-Accounts Officer deposed in his cross examination that the service was to be provided in advance. Hence, the service provided to the defendant cannot be treated as “Prepaid”. It is pertinent to mention that Section 91 of the Indian Evidence Act states that when the terms of a contract (or) other transaction are rendered to writing, the writing is considered the primary evidence of the transaction. Documentary evidence of Ex.A11, Ex.A13 and Ex.A14 are more reliable than the oral evidence of P.W.1 & P.W.2. Section 92 of the Indian Evidence Act deals with exclusion of evidence of oral, when the terms of contract (or) other transactions are reduced to writing, no evidence of any oral statement shall be admitted to contradict. Therefore, the single fiber connection granted to the defendant is not a prepaid scheme and the single fiber connection is not restricted only for three months. It is settled law that the burden of proof is always lies on the plaintiff to make out and establish his case, as per the Section 101 of the Evidence Act. In the



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instant case, the plaintiff has discharged his burden of proof lies on them.

The grounds raised in this appeal are clearly answered by the learned trial Court and there is no reason to interfere with the judgment and decree of the learned trial Court. The points are answered, accordingly.

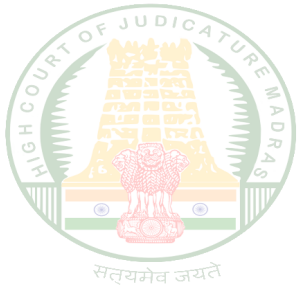
13.In the result, this First Appeal is dismissed and Judgment and Decree dated 18.11.2016 passed in O.S.No.73 of 2015 on the file of II Additional District Judge, Thoothukudi is confirmed. Consequently, connected miscellaneous petition is closed. No costs.

(G.R.S., J.) & (M.J.R., J.)
28.02.2025

NCC : Yes / No
Index : Yes / No
gns

To

II Additional District Judge, Thoothukudi.



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G.R.SWAMINATHAN,J.
and
M.JOTHIRAMAN, J.

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Pre-Delivery Judgement made in
A.S.(MD)No.35 of 2017

28.02.2025