(2000) 02 MP CK 0032

Madhya Pradesh High Court

Case No: Civil Revision No. 1400/99

Awadh Narayan Shrivastava		APPELLANT
	Vs	
Union of India (UOI)		RESPONDENT

Date of Decision: Feb. 29, 2000

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11, 115
- Telegraph Act, 1885 - Section 7B, 7B(1)

Citation: (2000) 3 MPHT 168 : (2000) 2 MPJR 407 : (2001) 4 MPLJ 442

Hon'ble Judges: Dipak Misra, J

Bench: Single Bench

Advocate: Masood Ali, for the Appellant; R.S. Patel, Senior Standing Counsel, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Dipak Misra, J.

Invoking the revisional jurisdiction of this Court u/s 115 of the CPC the petitioner has called in question the defensibility of the order dated 15-2-99 passed by the learned Civil Judge Class-I, Sagar whereby he has refused to reject the plaint in exercise of power conferred on him under Order 7 Rule 11 of the C.P.C. on the basis of an application moved by the sole defendant/petitioner.

Sans unnecessary details the facts as have been unfolded are that the defendant/petitioner is a subscriber of Telephone No. 2884 which is installed at his residence Itwari Ward, Sagar. The Department of Telecommunication sent three consolidated bills amounting to Rs. 45,678/-. The petitioner disputed with regard to the

quantum of the bills. The Department instead of taking any action on the dispute raised by the petitioner filed a Civil Suit No. 20-B/1996 before the competent Court for realisation of the aforesaid amount. After the suit was filed the defendant entered appearance and filed an application under Order 7 Rule 11 of C.P.C. stating that the suit being not maintainable the plaint should be rejected. The said prayer having been negatived, the present Civil Revision has been filed.

I have heard Mr. Masood Ali, learned counsel for the petitioner and Mr. R.S. Patel, learned standing counsel for Union of India. Submission of Mr. Ali is that suit of this nature is not maintainable and Department should have taken recourse to Section 7B of Indian Telegraph Act, 1885 (hereinafter referred to as "the Act"). Per contra, the submission of Mr. Patel is that it was open to the Telecommunication Department to file the suit for realisation of the amount.

To appreciate the rival submissions raised at the Bar it is apposite to refer to Section 7B of the Act. It reads as under :--

"7B. Arbitration of disputes.-- (1) Except as otherwise expressly provided in this Act, if any dispute concerning any telegraph line, appliance or apparatus arises between the telegraph authority and the person for whose benefit the line, appliance or apparatus is, or has been, provided, the dispute shall be determined by arbitration and shall, for the purposes of such determination, be referred to an arbitrator appointed by the Central Government either specially for the determination of that dispute or generally for the determination of disputes under this Section.

(2) The award of the arbitrator appointed under Sub-section (1) shall be conclusive between the parties to the dispute and shall not be questioned in any Court."

On an objective reading of the aforesaid provision it is crystal clear that the dispute relating to excess billing comes within the ambit and sweep of dispute as understood under the aforesaid provision. In the case of Orissa Vegetable Oil Complex Ltd. Vs. Union of India (UOI), a Division Bench of the Orissa High Court held as under :--

"5. That a dispute regarding false metering and excess billing is one covered u/s 7B of the Act..."

In Paragraph 6 of the said decision the Division Bench further held as under:--

"6. Section 7B makes a compulsory provision that in the event any dispute arises, "inter alia regarding the telephone, between the Telegraph Authority and the person for whose benefit the telephone apparatus has been provided, it shall be determined by arbitration and shall be referred to an arbitrator appointed by the Central Government either generally or for that specific dispute. It would follow that once a dispute exists between the subscriber and the department regarding the demand, the dispute cannot be resolved except by way of arbitration in the manner provided for under the Section. The provision

is comprehensive of all disputes and does not admit of any exception. An investigation made by the department on the dispute raised by a subscriber and the conclusions reached by it regarding the correctness of the dispute are only unilateral actions and do not have the effect of abating the dispute unless such determination by the department is accepted by the subscriber. From such premises, a further conclusion which necessarily follows is that a demand raised against a subscriber under the bill, if protested, does not achieve a finality and cannot be said to be binding upon the latter until the same has been adjudicated by an arbitrator whose award on the question has been granted a finality under the provisions of the Section."

In Paragraph 7 of the aforesaid decision it was observed by the Division Bench that to invoke the provisions of Section 7B for appointment, it also does not appear that a specific application is necessary to be moved by the subscriber before the Telegraph Authority for the purpose.

Yet, in another decision rendered in the case of Divisional Engineer, Telephones, Cuttack and Another Vs. Beharilal Shyamsundar, wherein G.B. Patnaik, J (as his Lordship then was) relying on the Full Bench decision rendered in the case of Magulu Jal and Others Vs. Bhagaban Rai and Others, came to hold as under :--

"Applying the aforesaid principles to the facts and circumstances of the present case, I have no doubt in my mind that the jurisdiction of the Civil Court will be ousted only if the dispute would be covered by Section 7B(i) of the Indian Telegraph Act, 1885." In this context I may profitably refer to the decision rendered in the case of Telecom District Manager, Goa and others Vs. V.S. Dempo and Co., and others, , wherein two Judges Bench held as follows :--

"3. A reading of Section 7B thereof would indicate that if any dispute concerning any telegraph line, appliance or apparatus arises between the telegraph authority and the person for whose benefit the line, appliance or apparatus is, or has been provided, the dispute shall be determined by an arbitrator. Such determination shall be referred to an arbitrator appointed by the Central Government either specifically for the determination of the dispute or generally for the determination of the dispute under this Section. The award of the arbitrator shall be conclusive between the parties to the dispute and its correctness is prohibited to be question in a Court of law. It would, otherwise, be clear that any dispute regarding the billing of the meter and the liability on a subscriber thereon when its correctness is disputed, should be referred to the arbitrator by the Central Government."

In view of the aforesaid enunciation of law there remains no iota of doubt that when the petitioner disputed the bills the Central Government should have appointed an arbitrator u/s 7B of the Act and should not have filed a suit for realisation of the amount. Accordingly, I am of the considered view that the suit filed by the Central Government is absolutely misconceived. It is further directed that the suit shall not proceed any further and would stand disposed of. As far as appointment of arbitrator is concerned the Central

Government shall appoint an arbitrator within a period of three month to decide the dispute keeping in view the law governing the filed. It is hereby made clear that pending adjudication the petitioner shall deposit 40% of the amount due before the Department within a period of two months from today. On deposit of the 40% of amount by the petitioner the telephone connection shall be revived.

The Civil Revision is accordingly allowed. However, there shall be no order as to costs.