सत्यमेव जयते

GJVD170003672021

RECEIVED ON : 29/07/2021
REGISTERED ON : 29/07/2021
DECIDED ON : 24/03/2025
DURATION : 03 / 07 / 24
YY MM DD

IN THE COURT OF JUDGE
SMALL CAUSE COURT
AT VADODARA

SMST-S No.105/2021
~~~~~~~~~~~~~~~

Exh.__

PLAINTIFF:

Bharat Sanchar Nigam Ltd.
Service
Having its registered office
at Bharat Sanchar Bhavan,
Harish Chandra Mathur Lane,
Janpath, New Delhi.
And having its one of the Office
at Ambalal Park, Karelibaug, Vadodara.

Versus

DEFENDANT:

Dr. T K Gopalkrishna
Panicker Chandramohan
~~~~~~~~~~~~~~~

Address at: 1, Cosmic Enclave,
Opp. SBI, Nr. GIPCL Circle,
New Sama Road, Vadodara.

Advocate:
Mr. M. C. Mehta, Ld. Advocate for plaintiff.
Mr. N. P. Shah, Ld. Advocate for defendant.

Suit for recovery of amount of Rs.2,26,314/-.

:: **J U D G M E N T** ::

1. The brief facts of plaintiff's plaint are as under:

That, the plaintiff is a public sector company registered under the Companies Act 1956 and was incorporated on 15th September 2006 and it took over the business of providing of telecom services and network management from the erstwhile Central Government Departments of Telecom Services (DTS) and Telecom Operations (DTO), with effect from 1st October 2000 on going concern basis. The plaintiff states that the defendant approached the plaintiff for providing Landline telephone connection with telephone number 0265-2785980 (BA No.1021185377). The plaintiff states that the defendant is under obligation to pay the telephone bill for its use as per the invoices raised for the same from time to time as per the conditions accepted by the defendant at the time of seeking telephone connection. The plaintiff states that they used to give bills for phone number and also they issued various bills having total amount of Rs.2,27,818/-

for period from February 2019 to May 2019 for the services availed by the defendant. The billing amount includes various usage charges but mainly charges towards the international calling facility availed and used by the defendant during the said period. The plaintiff states that they repeatedly requested the plaintiff to pay the said outstanding however the plaintiff has not made the payment. The plaintiff states that the defendant who is supposed to make payment for the services he availed within stipulated period did not pay the bills and has defaulted in making payment. The plaintiff also issued a notice by RPAD dtd.15/10/2020 through its lawyer for the recovery of Rs.2,26,314/- after adjusting credits against deposits however the defendant did not made the payment. Hence, the plaintiff has compelled to the present suit against the defendant for the recovery of aforesaid amount alongwith 18% p.a. interest from the date of invoice till realization of entire decretal amount.

2. The summons for appearance was issued upon defendant vide Exh.5 which was returned served. Thereafter, Ld. Advocate of defendant made their appearance before the Court vide Exh.6 and filed their written statement vide Exh.7 to controvert the claim of plaintiff. In the written statement the defendant denied all the suggested facts narrated by plaintiff in the plaint. The defendant stated the the plaintiff has filed false and

fabricated case against him. The defendant stated that the plaintiff is being represented and the plaint is verified and signed by one Mr. Kaushalendra Kumar Jha, claiming to be the Chief Accounts Officer (TR) of the plaintiff company, however, no document is produced alongwith the plaint regarding the authority vested in Mr. Kaushalendra Kumar Jha to represent the plaintiff, hence, the suit is liable to be dismissed for this sole reason. With reference to para 1 of the plaint, it is submitted that the averments made therein are the internal matters of the plaintiff and they are required to be proven at the relevant time. However, it is submitted that the plaintiff being a company registered and incorporated under the Companies Act 1956 is a separate legal entity and cannot be represented by its employee. Though, the plaintiff claims to be a major service provide in the licensed area, as reported by the country's leading business daily business standard, the plaintiff is a loss making undertaking and had posted a lost of Rs.15,499.58 crore in 2019-20, mainly due to lack of integrity, honesty and transparency as per the defendant's belief. With reference to para 2 of the plaint, it is submitted that at the time of obtaining the landline telephone connection sometime in 1999, the plaintiff was enjoying absolute monopoly being the only service provider and that too backed by the government. Anyone desiring a landline telephone connection had to sign on the dotted line and had to agree to the terms, even though they were unreasonable and illegal. It is further submitted that the defendant has never failed to meet his obligation to pay the telephone bill for its use. The defendant not only admits his obligation to pay the bills for the services utilized by him but has actually paid all bills within the stipulated period. The defendant has disputed the invoices in which the amount was billed for calls not made by the defendant. the defendant cannot be compelled to pay for calls that have not been made. With reference to para 3 of the plaint, it is submitted that the bills issued by the plaintiff were not as per the actual use of the defendant but include the amount for unauthorized overseas calls, which the defendant never made. The defendant has never a single call to the countries to which the unauthorized calls were made. The defendant vehemently denies that he was under contractual obligation to use the facility provided by the plaintiff for preventing the unauthorized use of the telephone. The plaintiff is required to prove the allegation with cogent evidences that the defendant was made aware of such condition at the time of availing the telephone connection. It seems that the plaintiff is trying to justify the theft by a thief on the ground that the car owner did not lock his car. However, by making such averments, the plaintiff has admitted that there is a strong possibility of misuse of the telephone and the plaintiff has miserably failed to address such an issue even after the lapse o decades. With reference to para 4 and 5 of the plaint, it is submitted that since the defendant is not liable to pay for the calls not actually made by him, the plaintiff is not entitled to the amount. However, the plaintiff ought to appreciate that the defendant has made the payment of Rs.2009/- vide cheque no.449 dtd.21/08/2019 for the services actually used by him. With reference to para no.6 of the plaint, it is submitted that there does not exist any cause of action in favour of the plaintiff to institute a suit of the present nature. The plaintiff cannot make the defendant responsible for its own wrong.

The defendant further stated that the defendant uses the telephone no.0265-2785980 for his office use, having working hour from 09.30 am to 6.30 pm. The defendant paid all the bills for the usage made by him through the service provided by the plaintiff was not at all satisfactory and far from the claims made by the plaintiff at the time of inducing the defendant to subscribe to the service of the plaintiff. The average monthly bill of the defendant prior to February 2019 was approx Rs.600/- inclusive of GST. However, the defendant received a bill of Rs.74,539/- for the period from 01/02/2019 to 28/02/2019. A perusal of the call details of the said bill revealed that a few overseas calls were made using the telephone line of the defendant during the night hours, when the office of the defendant was closed. There is a security guard posted at the premises of the defendant which negates the chance of anybody entering the office after its closure and the use of the telephone under reference. The defendant also submitted CCTV footage to the plaintiff in support of his claim that on the days of the fraudulent and unauthorized phone calls made from the telephone number of the defendant, the office premises was closed and nobody entered the premises. The defendant, immediately upon receipt of the bill, brought to the notice of the plaintiff the nefarious activity being carried out with the involvement of the staff of the plaintiff vide a letter dtd.12/03/2019 and also requested the plaintiff to suspend ISD facility. The defendant also addressed his grievances to the Vigilance Department of the plaintiff with a hope that at least it would investigate the incident thoroughly and find out the culprit but to no avail. The defendant reported the incident to the local police, a copy of the letter is also annexed. Thereafter, again a bill of Rs.1,49,730/- was issued by the plaintiff to the defendant for the period from 01/03/2019 to 31/03/2019 with the fraudulent, unauthorized overseas calls during the night hours i.e. after office hours of the defendant. The defendant against brought it to the notice of the plaintiff but for reasons best known to the plaintiff it neglected and failed to take any action. It is pertinent to note that the executive of plaintiff who visited the defendant's premises and prepared a visit report also confirms that the possibility of unauthorized use from the premises is ruled out. The defendant also brought to these facts to the notice of the plaintiff while replying to the legal notice. The closure of the defendant's office on the dates and at the time of the disputed calls is an undisputed fact as it is proved by the fact that no person can enter the premises after closure because of the deployment of the security guard at the premises and the CCTV footage screened by the Officer of the plaintiff. This leads to only one logical conclusion that a person trained to make calls through the junction box and having the required instrument issued by the plaintiff has made such unauthorized calls. Unless an employee of the plaintiff who has access to the system discloses the fact that a particular telephone number is not having dynamic lock, an attempt of unauthorized calls would not be made. Thus, the involvement of the employees of the plaintiff in the offence is evident making the plaintiff vicariously liable for the same. For this sole reason, the plaintiff and its vigilance department preferred not to investigate into the incident. This also amounts to breach of privacy of the defendant, which is now a fundamental right of the defendant as held by the Hon'ble Supreme Court. The plaintiff has instituted the present against the defendant without any cause of action surviving and which is entirely against the law only with a view to cover up the wrong done by its employees and also to extract money illegally from an innocent subscriber to reduce its mounting losses. Hence, the suit be dismissed with exemplary costs.

3. To the above pleadings of plaintiff, the following issues have been framed by my Ld. Predecessor for the determination of this case vide Exh.9 on dtd.29/01/2022:

1) Whether the plaintiffs prove that they are entitled to recover suit amount from the defendant?
2) Whether the suit notice is legal and valid?
3) What amount is actually due to defendant?
3A) Whether the defendant proves that the plaint is verified by a person on behalf of the plaintiff, who has no authority and hence the suit is required to be dismissed?
4) Whether the defendant proves that he is not legally liable to pay the telephone bills as claimed under the present suit as alleged?
5) Whether there is no cause of action has arisen to file the present suit?
6) Whether the present suit is not maintainable due to non-joinder and mis-joinder of necessary parties?
7) Whether the present suit is time barred?
8) Whether the plaintiffs are entitled for the relief or reliefs as prayed for?

9) What order and decree?

4. My answers to the above issues are as under:

1) In the affirmative.
2) In the affirmative.
3) As per final order.
3A) In the affirmative.
4) In the negative.
5) In the negative.
6) In the negative.
7) In the negative.
8) As per final order.
9) As per final order.

5. **Production of evidence by parties**:

(A) Oral/Documentary evidence adduced by plaintiff:

Sr.	Particulars	Exh.
	Oral Evidence:	
1.	Examination-in-chief in form of affidavit of evidence of Plaintiff – Mr. Kaushlendra Kumar Jha	17
	Documentary Evidence:	
1.	Landline no.0265-2785980 invoice for the period 01/02/2019 to 28/02/2019 (office copy) dtd.03/03/2019	19
2.	Landline no.0265-2785980 invoice for the period 01/03/2019 to 31/03/2019 (office copy)	20

	dtd.04/04/2019	
3.	Landline no.0265-2785980 invoice for the period 01/04/2019 to 30/04/2019 (office copy) dtd.04/05/2019	21
4.	Landline no.0265-2785980 invoice for the period 01/05/2019 to 13/05/2019 (connection suspended on 13/05/2019) (office copy) dtd.04/06/2019	22
5.	Landline no.0265-2785980 invoice for the period 01/06/2019 to 30/06/2019 (office copy) dtd.04/07/2019	23
6.	Landline no.0265-2785980 invoice for the period 01/07/2019 to 31/07/2019 (office copy) dtd.04/08/2019	24
7.	Copy of system generated report regarding payment received	25
8.	Office copy of detailed statement of defendant Landline number	26
9.	Legal Notice reply received from defendant	27

(B) Oral/Documentary evidence adduced by defendant:

Sr.	Particulars	Exh.
	Oral Evidence:	
1.	Examination-in-chief in form of affidavit of evidence of defendant – Dr. T. K. Gopalkrishna Panicker Chandramohan	34
	Documentary Evidence:	
1.	Letter by plaintiff to defendant dtd.12/03/2019	46
2.	Letter to Vigilance Officer dtd.12/03/2019	47
3.	Letter to Police dtd.14/03/2019	48
4.	Police Complaint dtd.15/03/2019	49

5.	Visit Report dtd.16/03/2019	50

6. The plaintiff has filed their examination-in-chief on affidavit at Exh.17 in which he has reiterated the facts narrated by him in their plaint. The plaintiff has been cross-examined in which he has stated that he has been working in the company since 2003 and joined as Junior Account Officer from dt.01/02/2020 and initially he used to work in the office near Jalaram Mandir. It is true that the plaintiff company is registered under the Companies Act. It is true that the plaintiff company is managed by a board of directors but he does not know for sure how many directors there in the plaintiff company. It is not true that he had never met the director of the plaintiff company. It is true that he would meet with the director of finance sometime during his visit. The plaintiff claimed an outstanding amount regarding a telephone number, but the exact date of its connection is unclear to him at present. It is not true that he was not involved in the recovery of this telephone bill when it was issued to defendant. While providing ISD facility on a telephone number, the company does not compulsorily inform the customer that dynamic lock facility will have to be installed and he is unsure if any written signature is taken regarding this. It is true that he has stated in his affidavit that the plaintiff company is the largest telecom service

provider in India and at present the company has been running in loss for more than five years. It is true that only the system operator of the plaintiff company or the person connected to it knows whether the dynamic lock facility has been used on a telephone number or not. It is not true that the line operator can call any person from the junction box. It is not true that the operator can call any person to an unauthorized person. It is true that six months before the bill was given to the present defendant, the average bill was around Rs.1000-1500/-. It is true that after giving the bill to the defendant, they had given an application in writing. It is true that the plaintiff company investigated the application. I am shown a report with mark 8/5 seeing which I say that in that report it is not mentioned that any unauthorized call was made by the defendant from the defendant's premises which is given as Exh.28. The witness voluntarily states that the ISD facility which was used by EPBX and EPBX had a separate password. It is true that after that plaintiff company also investigated. The report of this investigation was submitted to our recovery team for further action. He is not aware of the fact that this report was given to the defendant or not. He is not aware of the fact that any other report was prepared except the visit report at exh.28. Very few complaints, regarding unauthorized ISD calls or unauthorized access to ISD telephones, are received in our area annually. It is true that the defendant was paying the regular bill before the disputed bill. It is true that the defendant has objected to the ISD call so that the bill amount was not paid. It is not true that I have filed the present suit to get additional money from the defendant. It is not true that I am giving false testimony on oath by stating false facts and filing the present false suit against the defendant.

7. The defendant has filed his examination-in-chief on affidavit at Exh.34 in which he has reiterated the facts narrated by him in his written statement. He has been cross-examined by the advocate of plaintiff in which he has stated; it is true that he is not aware of the facts stated in para no.1 of his cross-examination. Witness voluntarily states that he was informed about it through a newspaper. It is true that he is currently doing business under the name and style of Indobio Care & Scientific Remedies. It is true that he was using the connection with telephone no.2785980 for business purposes. It is true that this connection is made in his personal name. It is true that he had taken an EPBX machine on this number for his business purpose. It is not true that employees can make phone calls fro EPBX machines. The EPBX machine was being handled by an authorized employee responsible for its operation. It is true that if a person calls on this telephone number, it is through this EPBX machine that the employee can be contacted. It is true

that to make calls outside the company, calls were made through the EPBX machine. It is true that he has taken permission from BSNL to install this EPBX machine. It is true that he currently does not have any supporting evidence regarding the permission he has taken from BSNL to install the EPBX machine. It is true that he has not challenged anywhere that the conditions for telephone connection given by plaintiff company are unreasonable and illegal. It is true that this telephone connection had the facility of STD and ISD. It is true that through this connection one can talk in the country and abroad. The plaintiff did not provide the dynamic locking system facility for this telephone connection. The defendant is not aware whether such free facility is being provided by the plaintiff to the person availing telephone connection and facility of STD and ISD. It is true that dynamic locking system was not used for this connection of him. It is true that the telephone directory published by the plaintiff company was used by the staff of his company. He does not know if this telephone directory provides much advice and information. It is true that no supporting evidence has been presented in this case that the employees of the plaintiff company were involved in making illegal calls. Witness voluntarily states that the employees of the plaintiff company are making calls from the telephone junction box located outside his office. It is true that he had filed a Police complaint in this regard.

Upon receiving the complaint, it was determined that the matter should be escalated to the cyber cell and subsequently a formal complaint was filed with the cyber cell for further investigation and action. The cyber cell authorities informed him that they would conduct a thorough investigation into the matter and subsequently notify him of the progress and outcome of the complaint. It is true that he is not aware of the action taken on this complaint till today. It is not true that he is giving false testimony on oath by telling false facts on oath so that the he does not have to pay the bill amount of plaintiff.

:: **REASONS** ::

8. **Issue No.1 & 4:-**

The plaintiff has requested payment from the defendant for the use of the telephone service that the plaintiff gave to the defendant. According to the plaintiff, the defendant used its services and incurred fees, which the defendant is responsible for paying. The plaintiff has given the defendant bills that the defendant has yet to pay. Thus, the current lawsuit is brought. The defendant used the plaintiff-provided phone connection, as demonstrated by the documents the plaintiff supplied in Exh. 19 to 27. Additionally, it has been demonstrated that on various occasions, phone calls were placed to various foreign nations, for which bills were prepared and sent to the defendant for payment. The defendant has adopted the defense that charges against his account were falsely issued since the calls to other nations were not made by him but rather by someone else. It has been claimed that any linemen or other employees of the plaintiff's business may have made these bogus calls by changing the exchange box in some way. He has provided documentation via Exh. 46 to 50 to support his defense. The defendant has attempted to demonstrate through these documents that he was the victim of fraud, for which he had filed a complaint with the appropriate authorities at the appropriate time. However, the document does not demonstrate or prove that someone other than the defendant or someone who was not an employee of the defendant really committed such wrongdoing or fraud. Furthermore, during his cross-examination, the defendant acknowledged that he had not shown any proof that the plaintiff's employees had engaged in fraudulent and unlawful phone calls. Additionally, the plaintiff has refuted the claim that any of its employees may have been involved in making unsanctioned calls to individuals. As a result, there is no hard proof that the alleged fraudulent phone calls were made by a real person. It is insufficient for the defense to merely deny liability or to claim that someone from the plaintiff's company has cheated and that the defendant's phone account was fraudulently charged for calls that were not authorized by the defendant. As a result, issue no.1 is decided in the affirmative, and issue no.4 is decided in the negative.

8.1 **<u>Issue No.2 & 5:-</u>**

In order to recover the unpaid balance on the telephone bills that the defendant is responsible for paying, the plaintiff has issued notice to the defendant. Nothing in the record indicates that a notice like this, in which the person obligated to pay the amount is asked to pay it, was violated by any law, making it unlawful and void. As a result, the answer to issue no.2 is resolved in the affirmative. In the plaint, the plaintiff explicitly states that the defendant's failure to pay the plaintiff's unpaid debts gave rise to the cause of action. Because the reason of action is explicitly mentioned in the plaint, issue no.5 is decided in the negative accordingly.

8.2 **<u>Issue No.6:-</u>**

It has never been disputed or demonstrated which parties are not joined and how this impacts the suit's maintainability. Hence, issue no.6 is decided in the negative.

8.3 **<u>Issue No.7:-</u>**

The plaintiff tries to recover the outstanding amount from March 2019 to May 2019. The present suit is filed on

29/07/2021. The period of limitation prescribed in filing a suit for recovery of money is three years from the date it becomes due. The suit being filed within the period of three years therefore the present issue is decided in the negative.

8.4 **Issue No.3 & 8 :-**

As the plaintiff has proved the case and his entitlement of recovery of the outstanding amount as claimed in the plaint. The plaintiff is entitled to receive the relief prayed in the suit he is entitled to get Rs.2,26,314/- from the defendant and issue no.2 is hereby answered as above. The plaintiff has claimed interest at the rate of 18% but there appears no agreement or document do show that the plaintiff and defendant did agree to pay interest at such rate on account of default. Therefore taking into consideration the general principle of grant of interest as provided under Section 34 of CPC, it would be justified that plaintiff be given interest rate @6% p.a., on the outstanding amount to be calculated from the filing of the suit till realization of the decretal amount.

8.5 **Issue No.3A:-**

The defendant has argued that the individual who initiated the lawsuit and provided deposition evidence supporting the plaintiff's case is not permitted to do so, and the suit should be dismissed because the plaint was signed and validated by someone not authorized by the plaintiff company. The plaintiff has cited the Supreme Court's ruling in United Bank of India v. Naresh Kumar & Others 1996 AIR SCW 4149 SUPREME COURT, which held that an individual may be granted extreme authority to sign pleadings on behalf of the company, for instance, by a resolution passed by the board of directors or by a power of attorney executed in the name of any individual. In the event that it does not, and if one of its officers has signed pleadings, a company may nevertheless approve of the officer's behavior. This kind of ratification can be express or implied. The court can conclude that the corporation had approved the act of its officer signing the pleading based on the evidence that is on file and after considering all the circumstances of the case, including those related to the trial's conduct. The defendant's advocate, however, has cited the ruling in State Bank of Travancore v. Kingston Computers India Private Limited (2011) 11 Supreme Court Cases 524, which held that the respondent had not provided any proof that he was appointed as a director of the company and that the respondent company's board of directors had not passed a resolution allowing him to sue the appellant. As a result, after carefully examining the case's facts and circumstances, the Trial Court correctly dismissed the suit on the aforementioned point. The defendant in this instance raised this argument in his written statement from the very beginning. In the plaint, the defendant has made it clear that the individual who signed and confirmed the document was not allowed by the plaintiff's business to do so. Despite the fact that the defendant raised this objection as soon as possible, the plaintiff has not bothered to provide any proof that the individual who signed and confirmed the plaint was, in fact, given permission by the plaintiff's business to do so. The plaintiff has not presented any such authorization letter or power of attorney, despite a specific question being raised for the same purpose. Therefore, there is no proof that the individual who signed the plaint was truly permitted by the plaintiff corporation to do so according to the judgment of State Bank of Travancore v. Kingston Computers India Private Limited relied upon. According to the ruling in United Bank of India v. Naresh Kumar & Others, the plaintiff corporation had the opportunity to ratify such a procedural fault. However, as was previously mentioned, there isn't a letter that can be considered to ratify the actions of the individual who filed the lawsuit on the plaintiff company's behalf. Therefore, in the absence of such ratification it cannot be claimed that the plaintiff corporation has approved of his officer's actions Additionally, the plaintiff corporation has not provided a justification for its failure to produce such ratification. Because the claim was filed by someone not authorized by the plaintiff company, it is required to be dismissed. Therefore, the present issue is decided in the affirmative.

9. Looking to the entire facts and circumstances of the present case, the plaintiff failed to prove its case and the suit of plaintiff requires to be dismissed. Hence, following final order towards Issue No.9 is passed in the interest of justice.

:: **O R D E R** ::

- The plaintiff's suit bearing SMST-S No.105/2021 is hereby dismissed.
- Plaintiff shall bear the cost of its own.
- Decree be drawn accordingly.

Signed and pronounced in the open Court on this **24th day** of **March**, **2025**.

Date: 24/03/2025
Vadodara.

(Jitendrakumar Narsinhbhai Patel)
Judge, Small Cause Court,
Vadodara.
[Code No.GJ01088]

MM ASHIF