

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/02/2003

CORAM

THE HON'BLE MR.JUSTICE E.PADMANABHAN

WRIT PETITION NO. 12389 OF 1999

and

WMP.No.17679 of 1999

Mrs.R.Kailash Bai ..Petitioner

-Vs-

1. The General Manager

Chennai Telephones

G.R.Complex

407/408, Anna Salai

Nandanam, Chennai-35

2. The Divisional Engineer

(operation)

Chennai Telephones

G.R.Complex

407/408, Anna Salai

Nandanam, Chennai-35

3. The Accounts Manager SE-V

Chennai Telephones

G.R.Complex

407/408, Anna Salai

Nandanam, Chennai-35

4. Mr.B.Dhanraj Jain ..Respondents

Petition filed under Article 226 of The Constitution of India praying for the issue of a writ of mandamus, as stated therein.

For petitioner:: Mr. A.Muthuraman for

M/s.K.Venkataraman

S.D.Venkateswaran

For respondents: Mrs.Meera Gupta ACGSC

for R.4 NA

:O R D E R

The petitioner has prayed for the issue of a writ of mandamus

forbearing the respondents 1 to 3 from disconnecting the petitioner's Telephone No.8242052 installed at Flat No.508, 5th floor, Kaveri Complex, 96/104, Nungambakkam High Road, Nungambakkam, Chennai-34.

2. According to the petitioner she is carrying on a proprietary business under the name and style of M/s.Sree Mahaveer Electrical at Shop No.4, Premises No.1, Appu Street, Nungambakkam, Chennai-34 and she is an income-tax assessee. The petitioner alleges that Mr.B. Dhanraj Jain, the 4th respondent herein a friend of her husband compelled her husband to use his telephone bearing No.5956042 which was installed at No.65, G.A.Road, Old Washermanpet, Chennai-21 The said telephone was shifted to petitioner's residence at No.55, Ellemman Colony, Teynampet, Chennai-86. It is admitted that the telephone was being used by the petitioner and her husband at her residence. A bill for Rs.1,28,206, dated 11.3.1998 was received in the name of B.Dhanraj Jain, the 4th respondent herein. When contacted the 4th respondent informed the petitioner's husband that something is seriously wrong in the billing. On an average bill was at the rate of Rs.2700. The 4th respondent was requested to take up the matter with the Telephones as the bill was excessive. Once again another bill was received in the name of the 4th respondent for the same telephone connection demanding Rs.12,18,645/=. The said Dhanraj Jain was contacted and he was requested to take up the matter with the telephones. The 4th respondent kept silent. It is stated that though the Telephone subscriber is 4th respondent the second respondent herein has been continuously demanding payment for the said two bills amounting to a sum of Rs.13,46,851/= from the petitioner's husband. The petitioner's husband issued a notice and pointed out that the subscriber alone could be proceeded and no action could be taken against him. The petitioner's husband sought for shifting of the petitioner's telephone No.4346740 from Ellemman Colony, Teynampet to the business premises. The telephone department assigned a new number, but they have not effected shifting. It is added that the 4th respondent is highly influential and therefore no action is being taken against the 4th respondent. On 19.7.1999 it is alleged that the petitioner's husband received a telegram from the third respondent stating that if the payment due for the telephone No.4339327 is not paid on or before 22.7.1999, the petitioner's telephone No.8242052 will be disconnected and legal action would be taken. It is contended that for the dues payable by the 4th respondent, the petitioner's telephone connection cannot be disconnected, nor she could be proceeded against. The threatened disconnection against the petitioner's telephone connection is illegal. Hence the present writ petition.

3. The 4th respondent filed a counter affidavit contending that it is the petitioner's husband, who sought for transfer of his telephone on account of his non availability at Madras for three years. Therefore he has given a consent letter for shifting to Ellemman Colony, the place of petitioner's residence and her husband. The 4th respondent declared that he has not received any consideration and that he has consented for shifting at the request of the petitioner and her husband. Since 1994, the petitioner's husband is using his telephone on being shifted to Door No.55, Ellemman Colony, Teynampet. The 4th respondent asserts that he was away from the City continuously on account of certain family disputes at his native place in the

State of Maharashtra. The petitioner or her husband having used the telephone and made calls the petitioner cannot shift the liability or fasten the liability on the 4th respondent. It is further stated that the petitioner and her husband had used the telephone since 1974 till date of disconnection and it is located in their residence and therefore it is they who are liable to pay the telephone bill.

4. On behalf of the respondents 1 to 3, it is asserted that Door No.55, Ellemman Colony, Teynampet is under the exclusive use and occupation of the petitioner and her husband and they are the exclusive user of the telephone No.4339327. Telephone NO.4339327 was shifted from Washermenpet and installed at No.55, Ellemman Colony, Teynampet by replacing Telephone No.5956042. For the past four years the petitioner and her husband have been using the telephone and they are liable to pay the bills, including the bills which are in dispute.

5. The telephone connection was provided with STD and ISD facilities. The bills were issued with reference to actual consumption of calls and it is on the basis of average. The telephone is connected to Electronic Exchange and the system is fool proof system and no tampering is possible. Further computer device is recording the consumption of calls and detailed dialled stations are being recorded automatically. The average bill was at the rate of Rs.3500 during some months and the petitioner has been remitting the bills for the past four years, though the 4th respondent was not staying with them. On the basis of usage two bills dated 11.3.1998 and 11.5.1998 were sent and the petitioner has not paid. The telephone was disconnected on 20 th April 1998. The petitioner and her husband were using the telephone and they are liable to pay the outstanding bills as was being paid for the earlier period. The petitioner attempts to evade the payment. The petitioner has to settle any dispute with Dhanaraj Jain and she cannot avoid the liability. She and her husband are actually using the telephone connection. The letter addressed to Dhanaraj Jain was returned with the postal remarks "left". To avoid payment, the petitioner has branded the bills as excessive. The respondents have verified and found that the bills does not cal for any change.

6. Mr.Venkataraman, learned counsel appearing for the writ petitioner sought to contend that for the arrears of telephone bill payable by the 4th respondent who is the subscriber neither the petitioner, nor her husband could be proceeded, nor their telephone connection could be disconnected. The learned counsel relied upon two pronouncements wherein it has been held that there being no contractual relationship nor the petitioner being a subscriber, her telephone connection or that of any of any her family member could be disconnected and liability if any is that of the 4th respondent.

7. Per contra, Mrs.Meera Gupta, learned counsel appearing for the respondents 1 to 3 filed a detailed typed set of papers containing the bills, consumption, meter recording to show actual and frequent calls the petitioner made and as seen from the typed set it is clear that the calls emanated from the connection which is under the control of the petitioner and her husband. Nobody else could have used the telephone except the petitioner, her husband and other family members. Concedingly, the 4th respondent was not residing at

the premises where the telephone connection is located. It is submitted that the petitioner has not approached this court with clean hands and therefore she is not entitled to the relief of mandamus prayed for. When admittedly the petitioner and her family members have used the telephone connection 4339327 they cannot avoid the liability at all. It may be that the telephone connection stood in the name of the 4th respondent. Further the 4th respondent has filed a counter stating that he has not used the telephone and at the request of the petitioner's husband it has been shifted from Washermenpet to Teynampet which was in exclusive use of the petitioner and her family members. It is contended that the petitioner having admittedly used the telephone connection cannot avoid the liability though contractual liability could be fastened on the 4th respondent.

8. The learned counsel for the respondents 1 to 3 also relied upon the circular issued by the Telephones to the effect that in case a telephone connection is shared with other parties or its use is completely transferred to other parties and not being casual, such telephone connection could be disconnected and such unauthorised user is not permissible and for such unauthorised user telephone is liable to be disconnected.

9. The only point that arise for consideration is:

Whether on facts as admitted by the petitioner a writ of a mandamus as prayed for has to be issued forbearing the respondents 1 to 3 from disconnecting the petitioner's telephone connections for non payment of bills relating to telephone connection which stood in the name of the 4th respondent?

10. Even according to the averments set out in the affidavit filed in support of the writ petition, admittedly the telephone has been used by the petitioner or her family members for the past few years and the petitioner or her husband has been remitting the telephone bills hitherto and they also claim that average was around Rs.2700/= and the bill never exceeded a particular sum. Therefore for all purposes, excepting the contractual relationship, the petitioner and her husband or their family members have been using the telephone connection continuously as subscribers and remitting the bills. As seen from the materials placed by the respondents 1 to 3, the telephone was being used and it is established that innumerable calls have been made. Therefore the two bills amounting to Rs.13,46,851/= have been issued. The 4th respondent admittedly was not residing in the premises and he was not traceable at all, though he has now entered appearance and filed a counter stating that he was not using the telephone for the past few years and it is the petitioner, her husband and family members who were actual users.

11. On the sole contention that there is no contractual relationship between the petitioner and the respondents 1 to 3, in respect of the said Telephone the petitioner seeks to avoid the liability. Having admitted the user of the telephone by the petitioner and her family members and having utilised the telephone services continuously for few years, it is not open to the petitioner to avoid the last two bills merely because it is on the higher side. It is admitted that the 4th respondent has not used the telephone for the past few years, but it is the petitioner and her family members who are the actual users of the telephone and their primary liability is to reimburse

or remit call charges. When once the petitioner and her family members admit that they have been using the telephone exclusively they cannot avoid the liability to pay the bills. It is admitted that the petitioner and her family who have been using the telephone exclusively and remitting the charges also for quite some time. Under what circumstances the telephone connection came to be transferred is also not clear from the petitioner's affidavit. As it is admitted that the petitioner and her family members have been using the telephone exclusively and the 4th respondent is not residing in the premises and the user being not casual, but regular, the person who made the telephone calls is primarily responsible both in equity and morally to pay the bills though contractual relationship was between the Telephones t and the 4th respondent. The 4th respondent has also stated that he is not using the telephone. The writ petitioner has been utilising the telephone services, made ISD/STD calls running to huge amounts and cannot avoid the liability.

12. Admittedly the petitioner or her family members have been paying the telephone bills for the past four years in respect of the same connection under some arrangement between themselves and the 4th respondent. Though it is unauthorised user, the petitioner cannot avoid the liability to pay the bills on technical grounds. Primarily liability is on the user of the telephone though there is no contractual relationship and therefore the petitioner cannot avoid the liability by contending that contract was between the telephones and the 4 th respondent. The two decisions relied upon by Mr.Venkataraman, learned counsel for petitioner are factually distinguishable as there was no material in those cases that telephone was exclusively used or by the writ petitioner as against the admitted fact here that the petitioner or her family members have been using the telephone exclusive in this case. The petitioner having admitted user of the telephone which stood in the name of the 4th respondent cannot avoid the liability. Though there is no subsisting contract between the petitioner and the telephones, the liability of the petitioner arise on the basis of equitable doctrine of unjustified enrichment as well and the law could very well presume contract as there is no legal bar. The petitioner received the benefit and enjoyed the facility of making innumerable calls and therefore she is deemed to have impliedly agreed to pay call charges or make good by paying value of the services rendered by the telephones. The petitioner had enjoyed the benefit. Admittedly the telephone has been used by the petitioner or her family members and it was not intended to act gratuitously by the telephones and the petitioner had also enjoyed the benefit of it. For the services availed and utilised by the petitioner, she cannot avoid the liability to pay. When services have been rendered the petitioner is bound to pay for the services.

13. Provision of Section 71 of the Indian Contract Act is sought to be relied upon by Mrs.Meera Guptha in this respect. There is force in this contention. However, this court exercising writ jurisdiction could deny the relief if it works unequality or if it is against legal principles of equality, good conscience and if allowed it would amount to abuse or exploitation of the services availed by the petitioner which the petitioner is not entitled to. If the issue of a writ results or leads to injustice or enable the petitioner to get unjust enrichment or abuse the process of court, such a writ could very well be denied for advancement of justice.

14. The petitioner has not approached this court with clean hands, nor the petitioner could avoid the payment of telephone charges having admitted that the telephone was under the exclusive use of the petitioner and her husband. On mere technicalities this court will not be justified in granting the relief of equitable remedy of mandamus. If such a relief is granted it would amount to putting premium over the acts of the petitioner and her family members and it will work hardship to the respondent which has already rendered services and the petitioner has availed the Telephone services towards which she has been paying the bills for years together.

15. Writ of mandamus being equitable it is being normally issued only to advance justice and not to defeat the just claims and not to enable the petitioner to avoid the liability to pay for the telephone calls made by the petitioner and her family members. This court is not inclined to issue a writ of mandamus as mandamus cannot be issued on mere technicalities alone and issuance of writ of mandamus on the facts of this case will result in substantial loss to the respondent-Telephones, besides injustice.

16. In the foregoing circumstance, this court declines to issue writ of mandamus prayed for and holds that it is well open to the respondent to disconnect the petitioner's service connection or any other telephone connection of the petitioner or her husband for recovery of the bill amount accrued due in respect of the telephone connection, though stood in the name of the 4th respondent. Such an action by the respondent cannot be held to be illegal or unconscience or unjust. Therefore, the Telephones Department could very well disconnect the Telephone of the petitioner or her husband or other members, besides to effect recovery, it is also open to the respondent to initiate appropriate action against the petitioner, her family members as well as the 4th respondent herein. In the result, the Writ Petition is dismissed, but without costs. Consequently, connected WMP is also dismissed.

Internet: Yes

Index: Yes

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Copy to:-

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