



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2977 OF 2018

Bindu Narang

401/2 Sheetalnath, Sudha Park,

Shani Path, Ghatkopar East,

Mumbai 400 077

...Petitioner

(Original Respondent)

Versus

1.Matrix Cellular (International)

Services Pvt. Ltd.

Nariman Kendra, 604/605, 6th Floor,

Famous Studio Lane, Mahalaxmi.

2. State of Maharashtra,

High Court, Bombay,

Through Government Pleader

...Respondent

(Original Applicant)

Mr. Huzefa Khokhawala i/b M/s. Nankani & Associates, for
the Petitioner..

CORAM

M. S. Sonak &

Jitendra Jain, JJ.

Reserved on :

10 JULY 2025

Pronounced on :

14 JULY 2025

JUDGMENT: (Per Jitendra Jain, J.)

1. This petition filed under Article 226 and 227 of the Constitution of India challenges an order dated 27 December 2017 passed by the Permanent Lok Adalat, Mumbai District, Bandra, Mumbai allowing the respondent's application



seeking recovery of Rs.23,981/- on account of the bill dated 30 December 2014 raised by the respondent on the petitioner.

BRIEF FACTS:

2. On 14 December 2014, the petitioner was travelling to Dubai with her son. At the airport, the petitioner purchased sim card for a fixed plan of Rs.3,500/- from the respondent. The duration of the sim card was for a period beginning from 14 December 2014 to 21 December 2014.

3. The petitioner was shocked to receive a bill dated 30 December 2014 from the respondent calling upon the petitioner to make payment of Rs.28,543/- on or before 31 January 2015 and on failure, the said amount payable after 31 January 2015 was Rs.29,143/-.

4. Since, the amount was not paid, the respondent filed Application No. 8343 of 2015 before the Permanent Lok Adalat ('PLA') claiming Rs.23,981/-. In February 2016, the petitioner filed her written statement opposing the application on various grounds mentioned therein including the ground that "Customer Agreement Form" does not bear the signature of the petitioner and also the documents annexed to the application does not bear the photograph of the petitioner etc.

5. In June 2017, the petitioner made an application for cross- examination of the witness of the respondent, but same was rejected by an order dated 26 September 2017. The said rejection order was passed by only one member although the PLA consisted of three members.

6. The parties concluded their submissions and impugned



order came to be passed on 27 December 2017 allowing the application of the respondent and directing the petitioner to pay a sum of Rs.23,981/- with interest thereon at 6 % p.a. from the date of filing the application till its realization.

7. It is on the above backdrop, that the present petition was filed challenging the impugned order dated 27 December 2017. On 29 March 2019, ad-interim relief was granted to the petitioner subject to the condition that the petitioner deposits the amount due and payable as per the impugned order. Petitioner has deposited the said amount as per order dated 29 March 2019.

8. On 17 July 2019, the Co-ordinate Bench of this Court admitted the petition and directed that the amount deposited by the petitioner shall be returned on the condition that, the petitioner shall file an undertaking, that if ultimately the petition is dismissed the petitioner will pay the said sum. However, petitioner has not withdrawn amount deposited under the above orders dated 29 March 2019.

9. The petition is now before us for final hearing. From various orders passed in the present petition, it appears that respondent No.1 the Cellular Company has not appeared although notice was served on 14 June 2019.

10. We have heard Mr. Khokhawala, learned counsel for the petitioner and with his assistance perused the documents annexed to the petition.

11. The impugned order is passed by the PLA under the Legal Services Authorities Act, 1987. The PLA in the impugned order has observed that efforts to settle the dispute



amicably failed and, therefore, the dispute was decided on merits.

12. The PLA has allowed the application of the respondent on the ground that receipt of service is not disputed by the petitioner. The respondent has produced computerised data by complying with the provisions of Section 65B of the Indian Evidence Act, 1872. The said document shows use of data by the petitioner since data services was activated on the phone and unless data activated is switched off, the constant use has resulted into charge being levied by the respondent. The PLA has also observed that the bill amount is in consonance with the agreement, tariff and data used by the petitioner and therefore, allowed the claim of the respondent with interest.

13. It is important to note from the perusal of the Roznama that on 8 August 2017, the petitioner made an application for cross-examination of the officer of the respondent Mr. Kalpesh Tankaria who had filed affidavit of claim on behalf of the applicant and along with the said affidavit he had also filed various documents namely, Customer Agreement Form, photocopies of the confirmation mail, passport, visa, tariff plan, bills, ledger, etc. As per the Roznama, the said application for cross-examination was rejected on 26 September 2017. We may however, note that the Roznama only states the application Exhibit 'M'-rejected without giving any reasons whatsoever.

14. The impugned order dated 27 December 2017 also does not make any reference of the petitioner having made an application for cross-examination which was rejected. There



are no reasons given in the impugned order also, as to why the application for cross-examination of the witness was rejected.

15. Section 22-D of the Legal Services Authorities Act, 1987 provides for procedure to be adopted by the PLA while conducting conciliation proceedings or deciding the disputes on merit. The said Section provides that the PLA shall be guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice and shall not be bound by the Code of Civil Procedure, 1908 and the Indian Evidence Act 1872.

16. The Supreme Court in the case of ***Adaman Timber Industries Vs. Commissioner of Central Excise, Kolkata-II***¹ has observed that denial of cross-examination would render the order a nullity and same would be violative of principles of natural justice and fair play.

17. The issue of effect of denial of cross-examination by the PLA came up for consideration before the Rajasthan High Court in the case of ***Jodhpur Vidyut Vitaran Nigam Limited Vs. Suresh Kumar & Anr.***² wherein the order passed denying cross-examination was held to be bad. The relevant paragraphs of the said decisions read as under :-

“29. Now, the question before this Court is in the case of disputing claims exist between the parties with regard to the points in issue before the Permanent Lok Adalat, and each party files an affidavit of evidence in proof or disprove the points or issues in the application, is it necessary to afford

1 (2016) 15 SCC 785

2 2025 (2) RLW 1549 (Raj)



an opportunity to opposite party to cross-examine the witness.

30. The Hon'ble Supreme Court in the case of K.L. Tripathi vs. State Bank of India, reported in (1984) 1 SCC 43 held as follows:-

"32. The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitably for part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version or the credibility of the statement."

31. It is needless to say that the right of cross-examination is a part of fair play in action, and if the Indian Evidence Act is applicable, the procedure for recording evidence in the Evidence Act must be followed. However, if the Evidence Act is not



applicable, what would the procedure? In summary proceedings, the elaborate procedures enumerated under the Indian Evidence Act need not be followed when the application of the Evidence Act is excluded. In such proceedings, when the questions of fact are not seriously in dispute, no real prejudice would be caused to a party merely because the right of cross-examination is denied. The absence of any formal opportunity for cross-examination, per se, does not invalidate or vitiate the decision arrived at fairly. This means that when the facts are not seriously in dispute, the Presiding Officer of the Permanent Lok Adalat is not required to compulsorily give a party the opportunity to cross-examine the witnesses. It all depends upon the claims and counter-claims. If serious disputes are involved in the proof of facts in issue, and if each party files an affidavit, fair play requires granting of the opportunity to test the veracity of such witnesses. No doubt, such a right must be invoked in the context of the pleadings and evidence produced on record and it is within the discretion of the Presiding Officer to decide whether to grant a party the right to cross-examine or not. If there is a serious dispute, parties shall be given the right to cross examine the witness to test the veracity of a witness whose affidavit evidence is filed before the Tribunal even though the Indian Evidence Act is inapplicable. Though Section 22-D of the Act of 1987 excludes the application of the Indian Evidence Act and the Civil Procedure Code, the Tribunal is still guided by the



principles of natural justice, objectivity, fair play, equity, and other principles of justice. The right of cross-examination is part of fair play, and whether such right to be granted or not depends on the pleadings and evidence of each party with regard to facts in issue.

34. In the present case, affidavits from each party have been filed. Without affording any opportunity to cross examine such witness how Tribunal will weigh the evidence of affidavits submitted by each party. When conflicting evidence is presented by the applicant and the respondents, in the absence of an opportunity to test the veracity of such witnesses, it is improper for a presiding officer to give weightage to one affidavit and exclude weightage to other affidavit. In the decision-making process, the adjudicator would be deprived of the opportunity to test the credibility of such evidence. Therefore, when conflicting claims are made by the applicant and the respondents with regard to the facts in issue, based on the affidavits, the right of cross-examination should be afforded. However, this is not the case in all matters; it depends on the existence of evidence before the Tribunal, including documentary evidence and the facts in dispute. In the said backdrop of the 2025(2) RLW State of Rajasthan Vs. Vishnu @ Wisanu & Anr. (Dr. Bhati, J.)1565 facts in hand, the Tribunal should have given opportunity to parties to test veracity of witness. Thus, the impugned award of the Permanent Lok Adalat is unsustainable and deserves to be set aside.



18. The decision of the Rajasthan High Court supports the submissions made by the petitioner that the PLA has erroneously denied the cross-examination sought for and, therefore, consequently, the impugned order is contrary to the provisions of Section 22-D of the Legal Services Authorities Act, 1987.

19. In our view, denial of cross-examination by the PLA on an application made by the petitioner without giving any reasons would be contrary to the principles of natural justice and fair play which as per Section 22-D, the PLA is obliged to follow.

20. In the instant case, the documents annexed by the respondent along with the affidavit of Mr. Kalpesh Tankaria and the documents annexed by the petitioner to her reply shows various discrepancies. These discrepancies were brought to the notice of the PLA in the reply filed by the petitioner and in the application made for cross-examination. For e.g. the Customer Agreement Form annexed with the affidavit of Mr. Kalpesh Tankaria, in the box specifying customers' undertaking, in item 6, states that the customer authorises Matrix to block/charge credit card mentioned up to the value of unbilled amount. The said item 6 of the undertaking is not appearing in the Customer Agreement Form annexed by the petitioner to her reply. Similarly, in the Customer Agreement Form annexed to the affidavit of Kalpesh Tankaria, the photograph of the petitioner is not appearing whereas in the Customer Agreement Form annexed to the petitioner's reply, petitioner's photo appears. In one



form Account Number is appearing whereas same is missing in the other form.

21. In the affidavit of Mr. Kalpesh Tankaria, he has stated that he has personal knowledge of the facts of the case. He further stated that the terms and conditions of the tariff plan were explained to the petitioner. Mr. Kalpesh Tankaria has stated that his office is at Mahalakshmi whereas the transaction under consideration took place at the airport. We fail to understand as to how when Mr. Kalpesh Tankaria is not a person working at the respondent's counter at the airport, he could have made an averment on oath that he has a personal knowledge and the tariff plan was explained to the respondent to the petitioner. It is the petitioner's case that she had purchased a fixed data plan and, therefore, after expiry of monetary usage, there could not have been any data which she could have used whereas, it is the case of the respondent that the petitioner has used the data for which the billing is done.

22. In our view, based on the discrepancies mentioned above and the facts being disputed by each party, it was incumbent on the PLA to have granted the opportunity to cross-examine the deponent of the affidavit filed on behalf of the respondent.

23. In one of the Roznama, it is stated that the proceedings being summary in nature, there is no merit to allow the cross-examination. In our view, even if the proceedings are summary, the PLA ought to have been guided by the provisions of Section 22-D which provides for following the



principles of natural justice and fair play, moreso in the present facts of the case which we have set out above where there were discrepancies in the documents filed by both the parties.

24. If the PLA was of the opinion that such disputed facts could not have been adjudicated in summary proceedings, then they ought to have relegated the parties to regular remedies. Merely because the proceedings are summary, in the facts of the present case, the PLA was not justified in denying the cross-examination. In our view, on this very ground the impugned order dated 27 December 2017 ought to be quashed.

25. Learned counsel for the petitioner, on instructions, voluntary offers that amount deposited pursuant to the order dated 29 March 2019 with this Court may be donated to Trust running school in rural area. We appreciate the said offer made by the petitioner and request the Registry to donate the amount deposited by the petitioner under order dated 29 March 2019 and interest, if any accrued till today, to the following trust:

Padmamani Jain Shwetambar Thirth Pedhi

Bank Name: Bank of Maharashtra

Branch Name: Pabal

C.A. No.:60103465883

IFSC Code- MAHB0000173

Mobile No- 7414922152

E-mail ID-spjstp@gmail.com

26. In view of above, the impugned order dated 27 December 2017 passed by the Permanent Lok Adalat, Mumbai District and Suburban, Bandra, Mumbai is quashed and set



aside. Petition is allowed in terms of prayer clause (a) which

“(a) This Hon’ble court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction calling for papers and proceedings in Application No.8343 of 2015 and after examining the legality and validity of the First impugned order dated 26 September 2017 (Exhibit-A’ hereto) be pleased to quash and set aside the same.”

27. No order as to costs.

(Jitendra Jain, J)

(M. S. Sonak, J)