

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI****DATED 13TH APRIL, 2010****M.A. No. 208 of 2008****in****Petition No. 82 (C) OF 2007**

Hathway Mysore Cable Network Private Limited ... Petitioner

V.

Zee Turner Limited ... Respondent

BEFORE :**HON'BLE MR. JUSTICE S.B. SINHA, CHAIRPERSON****HON'BLE MR. G.D. GAIHA, MEMBER****HON'BLE MR. P.K. RASTOGI, MEMBER**

For Petitioner : Mr. Nasir Hussain, Advocate

For Respondent : Mr. Maninder Singh, Senior Advocate with
Mrs. Prathiba M. Singh, Advocate
Mr. Arjun Natarajan, Advocate
Ms. Nitya Thakur, Advocate**ORDER****P.K. Rastogi**

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The petitioner and the respondent had an agreement for supply of signals of its bouquet of channels as per an agreement entered into by and between the parties hereto. However, a dispute arose in regard to the total amount to be paid thereunder to the

respondent, wherefor the respondent company published a notice on 7.3.2007 in local newspapers in regional language threatening to disconnect the signals of its Zee Channels after 21 days from the said date on the ground of alleged outstanding payable by the petitioner to the respondent. In the main petition, the petitioner had prayed for an interim order of injunction restraining the respondent from disconnecting the signals supplied to the petitioner's head end.

This Tribunal passed an order on 3.4.2007 after hearing learned counsel for both the parties directing the respondent to restore the signals to the petitioner. The said order reads as under :

“There are two aspects : one is about payment of dues and the other is about the subscriber base. On the issue of subscriber base, this Tribunal has already directed the petitioner to supply all the relevant information regarding the affiliate cable operators and the subscriber base to the respondent to enable negotiations in this behalf.

So far as the question of payment is concerned, fortunately, there is an agreement between the parties and this is an admitted fact. As per the agreement, the number of subscriber mentioned therein is 4550 and the monthly rate is mentioned as Rs.2,67,768/- for bouquet-I and Rs.1,36,500/- for bouquets-II & III besides service tax. Learned counsel for the respondent submits that there are some arrears regarding payment of the amounts by the petitioner to the respondent. As an interim measure and for the purpose of this order, we direct the petitioner to pay the entire amount as per the agreement including arrears, if any, within two days from today. The petitioner will also continue to pay regularly as per the agreement.”

This Tribunal issued an interim direction on 03.04.2007 to restore signals of its channels that were being supplied to the petitioner. The respondent complied with the said order restoring the signals of the channels to the petitioner, but the petitioner has not made the payment of monthly subscription amount to the respondent. According to the applicant (respondent herein) it was not obliged to provide signals of its channel to the petitioner but he has been doing so by virtue of the above interim order passed by this Tribunal.

After the interim order of this Tribunal on 3.4.2007, the case has been listed number of times. The counsel of both the parties had submitted that the discussions were going on between the parties for settlement. We see that almost two years are over, since when the interim order was passed by this Tribunal but the settlement has not been arrived at between the parties so far.

It is on the aforementioned premise, the respondent has filed this application claiming inter alia for the following reliefs :

- (a) pass an order vacating the stay order dated 03.04.07 passed by this Hon'ble Tribunal;
- (b) hold the petitioner guilty of willful non-compliance of the orders passed by this Hon'ble Tribunal;
- (c) direct the petitioner to clear its previous outstanding in terms of the order dated 03.04.07 passed by this Hon'ble Tribunal;

The original petitioner has not filed any reply to the said application. The factual aspect of the matter, thus, is not in dispute. There cannot be any doubt or dispute that the original petitioner was required to make payments for obtaining signals from the Respondent/Applicant pursuant to the said interim order dated 3.4.2007.

The learned counsel for the applicant-respondent, Mr. Maninder Singh submitted that the petitioner has not been making full payment for obtaining signals as a result of which huge amount has become due from the petitioner and in view of the interim order of this Tribunal even that amount, which is based on admitted subscriber number by the petitioner in his affidavit, is not being paid.

The learned counsel for the applicant-respondent further argued that the petitioner in this case had moved the Tribunal against the action of disconnecting the signals by it having regard to the certain disputes arising out of subscription base and non-payment of dues.

We have heard the learned counsel for the parties. It has been noticed earlier that the case was getting adjourned from time to time basically on the premise that negotiations had been going on between the parties.

Non-compliance of this Tribunal's order on the part of the petitioner would amount to the breach thereof. This Tribunal in exercise of its inherent jurisdiction which is akin to Section 151 of the Code of Civil Procedure and Section 20 of the Act may punish a party who has committed the breach. Such a power can be exercised inter alia to put the parties to the same position as if the order has been complied with. Such an order even in mandatory form can be passed in favour of a defendant.

In *B.F. Varghese v. Joseph Thomas* AIR (1957) Trav. Co. 286 it has been observed as under :

“The main argument addressed by learned counsel is that the Court below had no jurisdiction to pass an interlocutory mandatory injunction in the manner adopted and that at the instance of a defendant in a case. According to Mr. K. T. Ninan, learned counsel for the plaintiff Revision petitioner an injunction can be granted in favour of a defendant only in a case coming under O. 39, R. 1 and that was not the case here and that a mandatory injunction in interlocutory proceedings is an exceptional remedy that could be granted under the inherent powers of Court only to the plaintiff in a suit contemplated by O. 39, R. 2.

The Court below got over the difficulty by saying that if inherent powers of the Court could be exercised in exceptional circumstances on behalf of the plaintiff there was no reason to extend the same jurisdiction in similar circumstances on behalf of the defendant and it went on to find that the circumstances here were sufficiently exceptional as to require its intervention. I entirely agree with this reasoning. It is observed in Mulla's C.P.C. 12th Edition p. 1160 “The Courts in

England have the power to grant mandatory injunction on interlocutory applications. And so have chartered High Courts in the exercise of their ordinary original jurisdiction.”

In Smt. Indrawati Devi Vs. Bulu Ghosh and Ors. (AIR 1990 Pat I) it has been observed as under :

“In view of the decision of the Supreme Court, it cannot be disputed as a proposition of law that in exceptional circumstances, the inherent powers of the Court can extend to issuing an order of interim injunction. But it was contended on behalf of the petitioner that no mandatory injunction can be granted at the instance of a defendant in the suit. This precise question came up for decision before the High Court of Travancore Cochin and the decision rendered is reported in AIR 1957 Trav. Co. 286. The learned Judge agreed with the reasoning that if inherent powers of the Court can be exercised in exceptional circumstances on behalf of the plaintiff, there was no reason not to extend the same jurisdiction in similar circumstances on behalf of the defendant. I am also in respectful agreement with the opinion of the learned Judge.

I have, therefore, come to the conclusion that in the exercise of its inherent powers, the Court can in exceptional circumstances not covered by the situations envisaged under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure grant temporary injunction, which includes not only a prohibitory but also a mandatory injunction. I have also come to the conclusion on that in the exercise of its inherent powers, no distinction can be drawn on the ground that such an order is passed at the instance of the plaintiff or the defendant since the justification for the exercise of such power is the existence of exceptional circumstances and in the interest of justice. Consequently the inherent power of the Court can be exercised in favour of either of the parties. Needless to say that the exercise of inherent powers must be in exceptional circumstances and not contrary to any provisions of law.”

An inherent power can also be exercised even as a measure of restitution as no party should be allowed to take advantage or benefit of an order passed by a Court of law.

In Cheni Chenchiah Vs. Sheik Ali Saheb – 1993 AP 292 it has been held as under :-

“ Therefore, on a consideration of the decisions referred to above, it can be seen that in the absence of specific provision in the Code which deals with particular situation or unless there is any prohibition either express or implied, the Court is entitled to exercise its inherent powers under S. 151 of Code of Civil Procedure.

It was furthermore observed :-

“I agree with the contention that the Court in exercise of its jurisdiction under Section 151 can grant restitution, even though Section 144 CPC may not strictly apply.”

In a decision of Division Bench of Supreme Court in State Government v. M. Jeevraj & Co. 1975 A.P. at para 12 it is stated as under :-

“It is well settled that restitution can be ordered either under S. 144 or S. 151 of the Code of Civil Procedure ... Where the ingredients of S. 144, C.P.C. are satisfied, the Court has no discretion to refuse restitution as the provisions of S. 144 are mandatory. There may be cases where the provisions of S. 144 are not strictly satisfied but at the same time it is just, proper and equitable to order restitution as no party should be allowed to take advantage or benefit of a wrong or illegal order of a court of law. In such cases, the court must step in and exercise its inherent power vested under S.151 and do real and substantial justice to the parties, the very intendment and purpose of S.151 being only to meet the ends of justice and to prevent miscarriage of justice. The power vested under S. 151 being discretionary and to be used to do real and substantial justice to the parties must be exercised fairly, reasonably and objectively, but not arbitrarily. Even assuming that the provisions of S. 144, Civil Procedure Code are not attracted, it admits of no doubt that the Court has inherent jurisdiction under S.151 to order restitution.”

There cannot furthermore be any doubt or dispute that inherent power must be exercised to meet the ends of justice and to prevent miscarriage of justice. It is trite that a party should not suffer owing to a mistake on the part of the Court.

As contended by the applicant in the M.A. that the outstanding amount to be paid on the date of filing the application was based on 4550 subscriber base as on 31.12.2008 and the subscription fee was to be for the area of Mysore would be Rs.69,21,304/- inclusive of Ten Sports; we are of the view that the petitioner having not made payment to the respondent in accordance with the interim order of

this Tribunal although the signals have been restored by the respondent. The petitioner is directed to pay the amount of Rs.69,21,304/- due to applicant within 30 days from date.

The original petitioner shall pay the said amount due from it for supply of signal till date. The interim order stands vacated. The respondent may disconnect the supply of signal to the petitioner.

The payment by the petitioner to the respondent will, however, be without prejudice to the rights and contentions of the parties in the main petition. In the event of non compliance of this order, this Tribunal may consider the desirability of initiating a proceeding against the petitioner in terms of Section 20 of the Act.

Rejoinder to the main petition be filed by the petitioner within two weeks. Let the case be listed for further hearing on 28.04.2010.

.....J
(S. B. Sinha)
Chairperson

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(G.D. Gaiha)
Member

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(P.K. Rastogi)
Member