

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI**

DATED 28th MAY, 2010

M.A. No. 142 of 2010

In

Petition No. 122(C) of 2009

M/s Indusind Media & Communications Ltd.,
New Delhi & Mumbai

... Petitioner

Vs.

M/s. Polly Cable

.... Respondent

M.A. No. 145 of 2010

In

Petition No. 123(C) of 2009

M/s Indusind Media & Communications Ltd.,
New Delhi & Mumbai

... Petitioner

Vs.

M/s. Hansa Cable, Mumbai

.... Respondent

M.A. No. 144 of 2010

In

Petition No.124 (C) of 2009

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M/s Indusind Media & Communications Ltd.,
New Delhi & Mumbai

... Petitioner

Vs.

Three Star Network, Mumbai and
In Cable Communication, Mumbai

... Respondent

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BEFORE:

HON'BLE MR. JUSTICE S.B.SINHA, CHAIRPERSON

HON'BLE MR. G.D.GAIHA, MEMBER

HON'BLE MR. P.K.RASTOGI, MEMBER

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For Petitioner : Ms. Vandana Jai Singh, Advocates

For Respondent : Mr. Tejveer Singh Bhatia, Advocate

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JUDGMENT

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S.B. Sinha

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1. These Miscellaneous Applications have been filed by the petitioner herein for amendment of the verification portion in the affidavit of Shri V.B. Sharma.
2. In Misc. Applicatios arising out of P. No. 122(C) of 2009 and P.No. 124(C) of 2009, we may notice that the judgment in the main matters were reserved.

3. The learned counsel appearing on behalf of the respondent had pointed out that these affidavits filed do not conform to the Rules framed by this Tribunal as also the provisions of the Code of Civil Procedure and as such it should be held that petitioner has failed to prove its case.
4. The verification in respect of the said affidavits was as under:-

“I, Mr. V.B. Sharma S/o Shri B.D. Sharma age about 37 years working as Deputy Manager –Finance in the office of the Petitioner at Delhi, do hereby verify that the contents of the paragraph 1 are true to my personal knowledge (derived from official records) and paragraphs 2 to 14 believed to be true on legal advice and that I have not suppressed any material facts.”

5. The present applications have been filed for amendment of the said verification initially which read as under:-

“Verification Clause – I Mr. V.B. Sharma S/o Shri B.D. Sharma working as Deputy General Manager-Finance in the office of the petitioner at Delhi, do hereby verify that the contents of paragraph 1-14 are true to my personal knowledge (derived from official records) and that I have not suppressed any material facts.”

A further affidavit was filed by Shri V.B. Sharma wherein again an amendment was sought to be made, being as under:-

“Verification Clause – I Mr. V.B. Sharma S/o Shri B.D. Sharma working as Deputy General Manager – Finance in the office of the petitioner at Delhi, do hereby verify that the contents of paragraph 1-14 are true to my

personal knowledge & derived from official records and are true and correct to the best of my knowledge and belief that I have not suppressed any material facts.”

- 6.** Ms. Vandana Jai Singh, the learned counsel appearing on behalf of the petitioner would contend that the affidavit of Shri Sharma in the verification portion contained a typographical error and as by a reason thereof, the respondent shall not be prejudiced as parties have adduced their respective evidences on merit of the matter.
- 7.** Mr. Bhatia, the learned counsel appearing on behalf of the respondent, on the other hand, would contend :-
- (i) Amendment in the verification of an affidavit filed in terms of Order 18 rule 4 of the CPC cannot be directed to be amended.
 - (ii) There does not exist any provision in the CPC to amend evidence and for the said purpose, the provisions of Order VI Rule 17 of the CPC would not be applicable.
 - (iii) In any event, in terms of the proviso appended to Order VI Rule 17 of the CPC, no amendment in the pleadings is permissible after the trial has begun.
 - (iv) The witness examined on behalf of the petitioner, therefore, having not deposed the facts, which was true to his personal knowledge, his evidence being wholly inadmissible, this Tribunal should not permit the petitioner to fill up lacuna.
- 8.** In this case, the petitioner having not prayed for amendment in the pleadings, evidently, Order VI Rule 17 of the CPC will have no application.

Verification of pleading is contemplated under Order VI Rule 15 of the CPC.

So far as the evidence by way of affidavit is concerned, the verification thereof should ordinarily be made in terms of Order XIX Rule 3 of the CPC. The said provisions state:-

Order VI Rule 15 of the CPC

“R.15. Verification of pleadings. – (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.”

Order XIX Rule 3

“R.3 Matters to which affidavits shall be confined – (1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statement of his belief may be admitted :

Provided that the grounds thereof are stated.”

However, defect in the verification or omission to verify is an irregularity. Such an irregularity would be covered by Section 99 of the CPC.

9. Wrong or defective verification of the pleading, per se, do not affect the merit of the case or jurisdiction of the court.

We may notice in this regard a decision of the Bombay High Court in **AIR v. Ram Shanta [AIR 1961 SC page 292,**

wherein it was held that such verification can be permitted to be rectified even after the expiry of period of limitation. Even for the said purpose, a substantive compliance would meet the requirements of law.

- 10.** Order XVIII Rule 4 was amended by reason of CPC Amendment Act, 2002. This Tribunal has also in its procedural rules laid down the said procedure.

It is true that even for the said purpose, the provisions of Order XIX Rule 3 shall be attracted .

- 11.** The Supreme Court of India, while considering the effect of insertion of the new provisions in terms of CPC 2000 Amendment Act opined in Amir Trading Corpn. Ltd Vs. Saporji Data Processing Ltd [AIR 2004 SC 355] that the said provisions are workable and directed that the same should be implemented.

- 12.** It is now well-known that procedural provisions contained in the Procedural Rules or even in the CPC should not be construed in such a manner which will cause serious injustice to a party. It is not a case where verification in a pleading in one manner as for example 'true to my information' is sought to be converted as 'true to my personal knowledge'.

The statement made in affidavit which has been tendered in evidence being in substitution of the Examination in Chief of a witness cannot be and could not have been verified on the basis of any legal advice. Evidently, some mistake had been committed, which, in our opinion, should be permitted to be rectified by a court of law.

- 13.** The matter might have been different, had the witness had not been cross examined in great details in these matters. The respondent also has examined its own witness.

The Supreme Court of India in Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal [AIR 1962 SC page 527] clearly held that a court of law has an inherent power.

14. Recently, in Tanushri Basu and Ors vs. I.P.B. & Ors [2008(4)SCC791], the Supreme Court held as under:-

“It is now a well-settled principle of law that Order 39 Rule 1 of the Code of Civil Procedure(Code) is not the sole repository of the power of the court to grant injunction. Section 151 of the Code confers power upon the court to grant injunction if the matter is not covered by Rules 1 and 2 of Order 39 of the Code. [See Manohar Lal Chopra v. Seth Hiralal and India Household and Healthcare Ltd. V. LG Household and Healthcare Ltd.]”

In Nahar Singh Enterprises Ltd v. Hongkong & Shanghai Banking Corpn [2009(8)SCC646] it has been held :

“The Supreme Court of India made a distinction between exercising the inherent power over a substantive right which any litigant possesses and those which are with respect to the procedure to be followed by the court in deciding the case before it.”

15. Mr. Bhatia, however, placed strong reliance upon Smt Savitharamma v. CECIL Naronha and Another [1988 Supp SCC Page 655], where it has been held:

“We are constrained to observe that of late affidavits are being filed in this Court in a slipshod manner without having any regard to the rules. Affidavits are being filed by persons who could have no personal knowledge about the facts stated in the affidavit. Deponents of affidavits pay no attention to verification, although this Court laid stress on this aspect as early as 1952. In State of Bombay v. Purushottam Jog Naik, a Constitution Bench considering the importance of verification of an affidavit observed :

We wish, however, to observe that the verification of the affidavits produced here is defective. The body of the affidavit discloses that certain matters were known to the Secretary who made the affidavit personally. The verification however states that everything was true to the best of his information and belief. We point this out as slipshod verification of this type might well in a given case lead to a rejection of the affidavit. Verification should invariably be modelled on the lines of Order 19, Rule 3, of the Civil Procedure Code, whether the Code applies in terms or not. And when the matter deposed to is not based on personal knowledge the sources of information should be clearly disclosed.”

“In that case, the Supreme Court further noticed that the affidavit had been filed by the office clerk of the advocate for the accused. In that fact situation, the Supreme Court opined that it would not be safe to proceed on the allegations maintained in the contempt petition.”

In that case, allegations have been made against the respondent therein for committing Contempt of Court. The Court in that case was considering as to whether any reliance should be placed on such affidavit.

16. Reliance has also been placed by Mr. Bhatia on Vidya Bai and Ors v. Padma Lata and Anr [2009(2)SCC409].

Therein, the Supreme Court was concerned with the applicability of proviso appended to Order VI Rule 17 of CPC.

We may however, take judicial notice of the fact that before this Tribunal, the parties and/or their advocates do not pay much attention to the verification portion of the pleadings and/or Affidavits by way of evidence. This is only one of such cases and that too, an extreme one, where a gross error was committed, evidently, in the office of the learned advocate. A party to a lis ordinarily should not suffer owing to an obvious error on the part of an Advocate.

- 17.** These petitions are, therefore, allowed, subject to the condition that the petitioner pays a sum of Rs. 5000/- in each case to the respondent by way of costs.
- 18.** List Petition No. 123(C) of 2009 for further directions on 2nd July, 2010.

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

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(G. D. Gaiha)
Member

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(P.K. Rastogi)
Member