

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

Dated : May 9, 2011

M.A. No.70 of 2011 in Petition No.222(C) of 2010

Television Eighteen India Ltd. & Anr. ...Petitioners

Vs.

Star Den Media Services Pvt. Ltd. ...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 Petitioners : Mr.Arun Kathpalia & Mr. Kunal Tandon,
Advocates

For Respondent : Mr.Amit S. Chadha, Senior Advocate with Mr.
Gaurav Juneja, Advocate

J U D G M E N T

S.B. Sinha

The petitioner herein on or about 16.7.2010 has filed this petition.

The respondent, after taking three adjournments had filed its reply to the main petition on or about 28.7.2010.

Indisputably another application for amendment was filed by the petitioner on 14.9.2010 which was allowed by this Tribunal by an order dated 27.10.2010.

In the main petition the prayers of the petitioner are as under:

- a) "Restrain the Respondents from directly or indirectly interfering with the distribution and marketing the said channels of the petitioner either by petitioner itself or in alliance and direct the respondent to

make all regulatory filings within seven (7) days of 13th August, 2010 and deleting the said Channels of the Petitioner from the Respondent's bouquets.

- b) Restrain the Respondent from representing the Petitioner after the termination of the Deal Memo on 13-Jul-2010 except for transition period till 13 August, 2010.
- c) Pass any such other further order/orders which this Hon'ble Tribunal may deem fit and proper in the interest of justice.

The respondent herein with whom the petitioner entered into a deal agreement on or about 1.4.2008 has also filed a separate petition claiming damages which was marked as Petition No.240(C) of 2010 on 27.7.2010.

Both the petitions were directed to be consolidated by an order dated 19.8.2010.

The petitioner herein filed an application for passing a 'decree on admission' as envisaged under Order XII Rule 6 of the Code of Civil Procedure, 1908 (The Code) on 23.2.2011, which was rejected by an order dated 31.3.2011.

This application for amendment has been filed on 23.2.2011, wherein the petitioner has, inter alia, claimed for damages under the following heads:

“(a) CLAIM FOR DAMAGES ON ACCOUNT OF WRONGFUL AND DISHONEST COLLECTION OF SUBSCRIPTION REVENUE FOR THE PERIOD AUGUST 13, 2010 UNTIL DECEMBER 31,2010.”

(B) CLAIM FOR DAMAGES ON ACCOUNT OF NON-SHARING OF THE REVENUES WITH RESPECT TO FIC CHANNELS FOR PERIOD FEBRUARY 1, 2010 UNTIL MARCH 31, 2010.

(C) CLAIM FOR DAMAGES ON ACCOUNT OF WRONG TIERING AND WRONG PACKAGING OF THE PETITIONERS’ CHANNELS, GIVING PRIORITY TO ITS OWN CHANNELS, LOSS OF BUSINESS OPPORTUNITY AND LOSS OF GOODWILL.”

The respondent has filed a reply to the said application for amendment, inter alia, contending:

- (1) The present application has been filed by way of an afterthought.
- (2) It is barred under the provisions of Order II Rule 2 of the Code.
- (3) It has been filed by way of a counter blast to respondent’s petition for grant of a decree for damages against the petitioner.

(4) It will change the nature and character of the Petition and, thus, does not satisfy the tests laid down under Order VI Rule 17 of the Code.

We may also place on record that learned counsel appearing for the respondent has also raised the plea of `delay' in filing the application.

Order II Rule 2 Issue

We fail to see as to how Order II Rule 2 of the Code which provides for a bar in filing a second suit can be invoked in resisting an application for amendment of the petition particularly when, save and except, in a case where a special direction is issued by the Court, amendment of pleadings when allowed, would relate back to the filing of the plaint or written statement, as the case may be.

This aspect of the matter is covered by a decision of the Calcutta High Court in Upendra Narain Roy vs. Janaki Nath Roy & Ors., 47 Ind. Cas. 129 as also a decision of this Tribunal dated 16.12.2010 in Petition No.220(C) of 2010 with M.A. No.285 of 2010, Viacom 18 Media Pvt. Ltd. vs. MSM Discovery Pvt. Ltd. In Viacom (supra) this Tribunal has held as under:

“Indisputably, the object of the aforementioned provision is to prevent further litigation between the same parties. It is for that purpose only, it has been provided that every suit shall include whole of

the claim which the plaintiff is entitled to make should be in respect of the whole of the claim.

The bar contained in Sub-rule 3 that the plaintiff would not afterwards file a fresh suit, does not apply to the suits which are simultaneous and not successive.

It only applies to cases where the suit has been filed and the plaintiff omits in such suits to make claim in respect of any portion of the same.

It, however, appears from a judgment of the Calcutta High Court in Upendra Vs. Janaki 1918 Calcutta page 305 that even a second suit would not be barred so long a decree is not passed and thus the plaint may be allowed to be amended.

8. Relinquishment of a portion of the claim (sic) however, ipso facto is not barred but what is not permitted is to relinquish a claim, so as to take away the jurisdiction of the court. Such was the position in Sobhag Singh (Supra). In that case, the suit was heard by the Subordinate Judge upon representation of the plaint in the said court, which had been returned from the court of the Additional District Judge."

This Tribunal, thus, distinguished the decision rendered by the Nagpur High Court in Sobhagsingh Yashwantsingh Bhilala Jaminder vs. Rranjitsingh Bhairasosingh Bhilala Jamindar reported in AIR 1943 Nagpur 293.

Mr. Amit Chadha, learned senior counsel appearing on behalf of respondent would submit that the claim of the petitioner as it stands now is more or less a money claim in the garb of claim for damages and, thus, should not be allowed.

We fail to see any logic in the said argument. Whether the amount claimed is damages being an unquantified amount or a money claim being quantified may not be of any significance for the purpose of consideration of an application for amendment of the pleadings.

It has not been shown before us that any legal bar exists in making claim of damages under different heads. If an amount is found to be payable, a decree in respect thereof can be passed irrespective of the fact as to whether the claim in question is a money claim or claim for damages. Moreover, the petitioner had earlier filed a petition for grant of an order of injunction. If a claim for damages also arises, the same should be allowed having regard to the provisions of the Specific Relief Act, 1963.

The petitioner has contended that only after filing of the petition it has discovered that the respondent had collected the amount payable to it in terms of the Deal Memo dated 1.4.2008.

The respondent denies and disputes the said contention.

It, therefore, raises an issue between the parties which requires adjudication and, thus, in our opinion there is no legal impediment in allowing the application for amendment of petition.

Mr. Chadha urged that the petitioner must be held to be aware of the quantum of damages suffered by it by way of loss of profit on the date of filing of the original petition. Even assuming, that for one reason or other the petitioner has not raised any claim for damages either by way of profit or loss of reputation in the petition, it should be borne in mind that the object of considering an application for amendment of the petition being that all endeavours should be made to avoid multiplicity of proceedings, in our opinion, the application for amendment should not be rejected on that ground.

We may notice that the Allahabad High Court in Fertilizer

Corporation of India Ltd. vs. Prabha Kirana Stores reported in AIR 2004 Allahabad page All 82, stated the law, thus:

“11. It is a settled law that at the time of allowing of amendment, the Court has only to look as to

whether the Ingredients of Order VI, Rule. 17 are satisfied or not. Rule 17 is very much clear. It provides that amendment can be allowed at any stage of proceedings on such terms as may be just, there is no quarrel with the proposition that the amendment was sought at the trial stage and that too without changing the nature of the suit.

12. Order 6, Rule 17 has been interpreted by the Hon'ble Supreme Court in various decisions and the Apex Court has given guidelines for the law Courts that the Courts while deciding such prayers should not adopt a hypertechnical view. Aforesaid guidelines have been given by the Apex Court in B. K. Narayan Filial v. [Parameswaran Pillai](#) MANU/SC/0775/1999 : AIR2000SC614 . It has also been emphasized in the aforesaid decision that technicalities of law should not be permitted to hamper the Court in administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled multiplicities of litigation.

13. In the case of Ragu Thilak D. John v. [S. Rayappan](#) reported in MANU/SC/0057/2001 : AIR2001SC699 . The suit was filed against the respondent for permanent injunction restraining them from demolishing his compound wall. It has been alleged that during the pendency of the suit, respondents entered his property and demolished the wall on northern, eastern and western sides. The appellant filed the application for amendment of the plaint including incorporation of relief of recovery of damages. The trial Court rejected the application and the revision filed against that order

was dismissed by the High Court. The Apex Court observed as follows (Paras 4, 5 and 6 of AIR) :

"In view of the subsequent developments, the appellant filed an application under Order 6, Rule 17 for the amendment of the plaint for adding paras 8 (a) to 8 (f) in his plaint. The trial Court rejected his prayer and the revision petition filed against that order was dismissed by the High Court vide order impugned in this appeal, mainly on the ground that the amendment, if allowed, would result in introducing a new case and cause of action. It was further held that as the appellant was seeking recovery of damages, the amendment could not be allowed, as it would allegedly change the nature of the suit. It was also observed that the amendment sought was barred by limitation.

After referring to the Judgments in Charan Das v. Amir Khan AIR 1921 PC 50 L. J. Leach and Co. Ltd. v. [Jardine Skinner and Co. MANU/SC/0009/1957](#) : [1957]1SCR438 , Ganga Bai v. [Vijay Kumar MANU/SC/0020/1974](#) : [1974]3SCR882 , Ganesh Trading Co. v. [Moji Ram MANU/SC/0018/1978](#) : [1978]2SCR614 and various other authorities, this Court in B. K. Narayana Pillai v. [Parameswaran Pillai MANU/SC/0057/2001](#) : AIR2001SC699

"3, The purpose and object of Order 6, Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and

this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the Courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the Courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation."

So far as the question of delay raised by Mr. Chadha is concerned, suffice it to notice that the claim of the petitioner being upto 31.12.2010, it evidently is not barred under the law of limitation. Some delay in filing this petition, to our mind, would not by itself be a ground to reject an application for amendment, if it, otherwise, is found to be maintainable in law, as the respondent can be compensated on monetary terms.

Mr. Chadha would contend that the petitioner itself having terminated the agreement cannot maintain any action for damages. The question as to whether the petitioner has a foundation for claiming any damages from the respondent and, if so, what would be the quantum thereof, must be determined at the hearing of the petition and not at this stage.

Mr. Chadha submitted that the petitioner could have elected one way or the other, if it was of the opinion that the respondent has committed breaches of contract viz:

- (a) to condone the lapses/breaches on the part of the respondent and continue to perform the contract and claim the projected profit at the end of the term of the contract; or
- (b) to terminate the agreement.

In view of the fact that it has terminated the agreement, cannot now claim any damages on the projected loss of profit or otherwise.

We do not find any justification for accepting the said submission.

If the petitioner has suffered any damages by reason of the breach of contract on the part of the respondent, prima facie it can terminate the contract as also claim damages as the same would depend upon the nature of the breaches and/or the consequences flowing therefrom.

At this stage the merit of the respective cases of the parties cannot be gone into, which can be determined only at the stage of trial.

Mr. Chadha has drawn our attention to the fact that although the verification portion of the affidavit in support of the application for amendment of the petition although was signed on

23.12.2010, the claim was made upto 31.12.2010 and this application has been filed on 23.2.2011 and, thus, it must be held to be an act of mala fide on the part of the petitioner. Mr. Kathpalia pointed out that the date 23.12.2010 was a typographical error and the affidavit has been affirmed before the notary public only on 23.2.2011 whereafter only this application has been filed.

We, therefore, do not think that the application on that ground can be said to be mala fide.

Mr. Chadha submitted that although the petitioner was aware of the nature of its claim, it had filed this application only by way of an after thought and in any event the amendments sought for herein could have been prayed for in the first application for amendment of the petition.

We would assume that to be so but that itself may not be a ground to reject the application for amendment of the petition. Submission was made by senior counsel that this application has been filed only to delay the disposal of the trial as the parties on these issues would have to adduce volume of evidences in support of their respective cases.

Only because evidences to be adduced by the parties would be voluminous, the same, in our opinion, by itself may not be a ground to reject the application for amendment of the petition.

Even if the petitioner is driven to file a separate petition, evidence will have to be adduced by the parties. Moreover, the petitioner has raised certain contentions with regard to the some events which are said to have taken place subsequent to the filing of the main petition.

Keeping in view the principles contained in Order VII Rule 17 of the Code, we are of the opinion that this Tribunal should take into consideration the subsequent events.

We are furthermore of the opinion that the respondent shall not be prejudiced in any manner whatsoever, if the application for amendment of the petition is allowed subject to certain terms.

We, therefore allow this application for amendment of the petition subject to the following conditions:

1. The petitioner would pay a sum of Rs.25,000/- by way of costs to the respondent.
2. Such costs be deposited within one week from date.
3. The petitioner must file the amended petition within one week from date.
4. The respondent may file a reply thereto within two weeks thereafter.

Let the matter appear for framing of additional issues, if any, on 23.5.2011.

The parties must also file affidavits of admission and denial of documents by the said date.

The parties shall also file affidavits of their witnesses in support of their respective cases by 20.6.2011.

Let the matter to appear under the heading 'For Directions' on 4.7.2011.

(S.B. Sinha)

Chairperson

(G.D. Gaiha)

Member

(P.K. Rastogi)

Member

May 9, 2011

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