

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Date: 21.10.2011

Petition No.396 (C)/2010

Eswara Communications (S Channel)

... Petitioner

vs.

Sun Network

... Respondent

BEFORE:

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

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

For Petitioner : Mr.Tushar Singh, Advocate
for Mr.Navin Chawla, Advocate

For Respondent : Mr.Nitin Bhatia, Advocate

J U D G M E N T

S.B. Sinha

This petition was dismissed by a judgment and order dated
16.5.2011.

A review application, however, has been filed by the petitioner herein inter alia contending that this Tribunal has committed an error apparent on the face of the record insofar as it was held that it had not been able to prove service of the letter of request dated 22.6.2010 asking the respondent to supply signal of its channels to its network.

In the review application, it was pointed out that, although, in the copies supplied to the Members of the Tribunal, the photocopy of the stamp of the respondent did not properly appear, in the original it did, which was filed alongwith the affidavit of PW-1 Mr.Yeleswarupa Naga Kanaka Jagan Mohan. The said review application was allowed to the aforementioned extent on the premise that this Tribunal did not have any occasion to see the original acknowledgement due, which was in the original file.

That part of the finding was, therefore, set aside.

Learned counsel for the parties, therefore, have argued the matter afresh. A purported letter of request dated 26.2.2010 was addressed to the Managing Director of Sun Network.

It is not denied that the Distributors of the Sun Group of Channels at the relevant point of time was Sun Direct Services Ltd., which is succeeded by Sun 18 Distribution Services South Pvt. Ltd. (the present respondent).

The petitioner, however, did not file the original postal registration receipt showing dispatch of the said request.

It furthermore did not prove the signature of the person who is said to have received the said letter.

Mr. Tushar Singh, learned counsel appearing on behalf of the petitioner would contend that even otherwise the service of the said letter should be presumed in terms of Section 114 (g) of the Indian Evidence Act.

In support of the said contention reliance has been placed upon *M/s Green View Radio Service vs. Laxmibai Ramji* reported in AIR 1990 SC 2156 and *Samitri Devi & Anr. vs. Sampuran Singh & Anr.* reported in (2011) 3 SCC 556.

In *M/s Green View Radio Service (supra)*, the Supreme Court was dealing with the provisions of Section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. Therein not only the registration receipt but also the 'Acknowledgement Due' containing the signature of the addressee himself was proved.

Having regard to the provisions contained in the said Act, it was opined that the respondent had complied with the legal requirements as the notice had been sent by registered post.

It was furthermore held :-

"Thus in our view the presumption of service of a letter sent by registered post can be rebutted by the addressee by appearing as witness and stating that he never received such letter. If the acknowledgment due receipt contains the signatures of the addressee himself and the addressee as a witness states that he never received such letter and the acknowledgment due does not bear his signature and such statement of the addressee is believed then

it would be a sufficient rebuttal of the presumption drawn against him. The burden would then shift on the plaintiff who wants to rely on such presumption to satisfy the court by leading oral or documentary evidence to prove the service of such letter on the addressee. This rebuttal by the defendant of the presumption drawn against him would of course depend on the veracity of his statement. The court in the facts and circumstances of a case may not consider such denial by the defendant as truthful and in that case such denial alone would not be sufficient. But if there is nothing to disbelieve the statement of the defendant then it would be sufficient rebuttal of the presumption of service of such letter or notice sent to him by registered post."

Almost to the similar effect is the decision of the Supreme Court in M/s Madan and Company vs. Wazir Jaiveer Chand reported in 1989 (1) SCC 264 wherein interpretation of Section 11 of the Jammu and Kashmir Houses and Shops Rent Control Act was involved.

This Tribunal in M/s Mahesh Channel vs. Star Den Media Services Pvt. Ltd. being Petition No.152 (C)/2009 disposed of on 18.4.2011 stated the law thus:

"In terms of the aforementioned provision, therefore, a default which is committed, is after the service of notice.

Ranganathan J., in the aforementioned legal situation, stated the law thus :-

"We are of opinion that the conclusion arrived at by the courts below is correct and should be upheld. It is true that the proviso to Clause (i) of Section 11(1) and the proviso to Section 12(3) are intended for the protection of the

tenant. Nevertheless it will be easy to see that too strict and literal a compliance of their language would be impractical and unworkable. The proviso insists that before any amount of rent can be said to be in arrears, a notice has to be served through posts. All that a landlord can do to comply with this provision is to post a prepaid registered letter (acknowledgement due or otherwise) containing the tenant's correct address. Once he does this and the letter is delivered to the post office, he has no control over it. It is then presumed to have been delivered to the addressee Under Section 27 of the General Clauses Act. Under the rules of the post office, the letter is to be delivered to the addressee or a person authorised by him. Such a person may either accept the letter or decline to accept it. In either case, there is no difficulty, for the acceptance or refusal can be treated as a service on, and receipt by, the addressee. The difficulty is where the postman calls at the address mentioned and is unable to contact the addressee or a person authorised to receive the letter. All that he can then do is to return it to the sender. The Indian Post Office Rules do not prescribe any detailed procedure regarding the delivery of such registered letters. When the postman is unable to deliver it on his first visit, the general practice is for the postman to attempt to deliver it on the next one or two days also before returning it to the sender. However, he has neither the power nor the time to make enquiries regarding the whereabouts of the addressee; he is not expected to detain the letter until the addressee chooses to return and accept it; and he is not authorised to affix the letter on the premises because of the assessee's absence." (underlining is by us)

The said decision is, therefore, not an authority for the proposition as to on which date, the service of a notice would be deemed to have been effected.

Mr. Maninder Singh would contend that handing over of the letter to the postal authorities which is an agent of the sender should be treated to be the date of service.

We do not think that the said contention is correct. Apart from the fact that although in a given case actual tendering of the letter to the addressee may not be possible, as has been noticed heretofore, the postal authority is obligated to maintain the records."

In this case, the respondent in its reply has categorically stated:-

"... Further, this petition is premature, since this is the first time through the present petition that the Petitioner is seeking supply of decoders, which demand has never been made in the past.

xxx

The contents of paragraphs 6 and 7 of the petition with regard to the Petitioner addressing a letter dated June 22, 2010 to the Respondent are wrong and denied. It is denied that the Respondent has received the alleged letter dated June 22, 2010. A bare perusal of the documents filed by the Petitioner makes it clear that the alleged letter, even if sent by the Petitioner, was not sent to the Respondent."

In this case, moreover, neither the name of the distributor was correctly stated nor was the address to which the purported request was sent.

Service of a notice making request for supply of signal creates a legal right in the Distributor of a TV channel and a corresponding

legal obligation on the Broadcaster to offer supply of signal on reasonable terms within a period of sixty days.

The Regulations provide for a 'must provide' clause which is contrary to the common law principles of contract as also the provisions of the Indian Contract Act.

Service of notice as also compliance of the Statutory provisions must be held to be imperative in character for obtaining supply of signal without the intervention of this Tribunal. The names and addresses of the Broadcasters for whose channel the supply of signal is sought for are well known to the distributor of TV channel.

In *Sumriti* (supra) the Supreme Court held :-

"Thus, it will all depend on the facts of each case whether the presumption of service of a notice sent under postal certificate should be drawn. It is true that as observed by the Privy Council in its above referred judgment, the presumption would apply with greater force to letters which are sent by registered post, yet, when facts so justify, such a presumption is expected to be drawn even in the case of a letter sent under postal certificate."

It is, therefore, trite that presumption of service will have to be raised having regard to the fact situation involved in each case.

Indisputably the name of the company has not correctly been stated in the letter. Even this petition has also not been filed

against the proper party as would appear from the original cause
title :-

“Sun Network
Through its Manager
Sun Distribution Services
A Division of Kal Comm Pvt. Ltd.
No.4, Norton Road
Mandaveli
Chennai – 600 028”

The distributor of the broadcaster, thus, was not originally
sued.

Apart from the specific denial made by the respondent that
the said letter was received by its office in its reply, Mr.K. Srinivas,
Area Manager of the Chennai office of the respondent, who was
examined on its behalf, stated :-

“The petitioner has made a false averment about
sending the alleged letter dated June 22, 2010 and
July 27, 2010 to the Respondent. I say that the
Petitioner has failed to provide any
acknowledgement about the receipt of the said
letters.”

Moreover, the petitioner has also failed to prove the actual
service of the so-called second request dated 27.7.2010, as even
Mr.Yeleswarupa Naga Kanaka Jagan Mohan Raju in his evidence
could not disclose the name of the officer to whom he had handed
over this request. He also failed to establish that he had visited the
office of the respondent.

In any event, the petitioner has not annexed any document with the aforementioned purported letter of request. No name of the proposed LCOs to whom it intended to retransmit signals of the channels of the respondent was disclosed. Even no pole permission was shown to have been obtained. Moreover, its area of operation also was not stated. Even the postal registration certificate of the petitioner was annexed for the first time with the petition only.

This Tribunal in its judgment dated 16.5.2011 has held:-

“By an order dated 29.03.2011, this Tribunal noticed :-

“It appears that the parties have been exchanging correspondence for the purpose of seeking and supplying informations in terms of our order dated 17.2.2011. It appears that whereas the petitioner has, by a letter dated 25.2.2011, furnished the addresses and phone numbers of the Local Cable Operators, the respondent is insisting on the subscriber details. However, such subscriber details, in our opinion, would not be necessary to be supplied in the event the petitioner has direct connectivity.”

We, therefore, are of the opinion that the petitioner having failed to establish that it had made any request to the respondent and/or in any event a valid request as is necessary in terms of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations, 2004 as amended from time to time the petition ^{was} ~~is~~ right held to be premature.

However, the petitioner may make a fresh request to the respondent for supply of signals of its channels, which, there cannot be any doubt or dispute, shall be considered on its own merits.

This petition is, therefore, dismissed with no order as to costs.

(S.B. Sinha)
Chairperson

(P.K. Rastogi)
Member

October 21, 2011

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