

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 08 August, 2017

M.A. No.459 of 2016

IN

Broadcasting Petition No. 407 of 2013

Honey Sky Vision

Vs

Viacom 18 Media Pvt. Ltd.

...Petitioner

...Respondent

M.A. No.460 of 2016

IN

Broadcasting Petition No. 408 of 2013

Honey Sky Vision

Vs

India Cast Media Distribution Pvt. Ltd.

...Petitioner

...Respondent

BEFORE:

HON'BLE MR.BIPIN BIHARI SRIVASTAVA, MEMBER

HON'BLE MR. A.K. BHARGAVA, MEMBER

For Petitioner : Mr. Sharath Sampath, Advocate

For Respondent (in P. No. 407 of 2013) : Mr. Azmat Ammanullah, Advocate

For Respondent (in P. No. 408 of 2013) : Mr. Kunal Tandon, Advocate
Mr. Shashank Shekher, Advocate

ORDER

By B.B. Srivastava

M.A. Nos. 459 of 2016 and 460 of 2016 have been filed respectively in
B.P. No. 407 of 2013 and B.P. No. 408 of 2013.

The common prayer in both the M.As. is to summon Mr. Saurabh Mehra, 422, Haveli Haider Kuli, Near Fatepuri Chowk, Chandni Chowk, Delhi – 110 006 as witness on behalf of the petitioner.

It is worth mention, at this stage that both Petition Nos. 407 of 2013 and 408 of 2013 have been filed praying ineralia as hereunder: -

Petition No. 407 of 2013

- (a) "Order/decrece in favour of the petitioner and against the respondent for an amount of Rs.5,92,329/- being the outstanding amount due from the respondent payable by the respondent on account of carriage fee/channel placement charges for carrying channels – MTV, Nick, VH1, Colours, and Comedy Central for the period 15.05.2012 to 30.06.2012 on petitioner's TV network.
- (b) An order awarding interest @18% in favour of the petitioner on the aforesaid payment of Rs. 5,92,329/- till date.

Petition No. 408 of 2013

- (a) "Order/decrece in favour of the petitioner and against the respondent for an amount of Rs.15,50,137/- being the outstanding amount due from the respondent payable by the respondent on account of carriage fee/channel placement charges for carrying channels – MTV, Nick, VH1, Colours, and Comedy Central for the period 01.07.2012 to 31.10.2012 on petitioner's TV network.
- (b) An order awarding interest @18% in favour of the petitioner on the aforesaid payment of Rs. 15,50,137/- till date.

Both these petitions, after admission, were directed to be listed before the Registrar's Court for completion of pleadings, framing of issues, taking

evidences on affidavit and examination of witnesses. Perusal of orders passed on various dates clearly indicates that these matters have been hanging fire for close to three years; before the two Miscellaneous Applications were listed for the consideration of the Tribunal. It is also worth mention that, after framing of issues on 10.3.2014, it was directed by the Tribunal on 14.3.2014 as hereunder: -

“The petitioner is directed to file its evidence on affidavit within three weeks from today and to produce its witness before the Assistant Registrar on 17.04.2014 for his cross examination by the other side.

Once the evidence of the petitioner is closed, the Assistant Registrar shall assign a date for filing evidence on affidavit by the respondent and for appearance of its witness for cross examination by the other side.”

However, both the parties have indulged in delaying tactics; and the situation as it stands today, although the petitioner closed its evidence in January, 2015 in petition no. 407 of 2013 i.e. almost 10 months after the aforementioned order of the Tribunal it has filed the aforementioned application for summoning a new witness almost two years thereafter. In so far as the respondent is concerned its evidence on affidavit has been filed in Petition No. 408 of 2013 but it was yet to be filed, till January, 2017, in Petition No. 407 of 2013.

The reply and rejoinder of the respondents and the petitioner respectively in both the Miscellaneous Applications are on record. While the respondents have vehemently opposed summoning of new witness in their

reply; the petitioner has stuck to its arguments that this is essential in view of bringing to the fore material facts; or else its interest would be seriously jeopardized. At the time of hearing also learned counsel representing petitioner and respondent have submitted essentially on the lines of pleadings in their application, replies and rejoinder. Mr. Sharath Sampath, learned counsel argued in support of the petitioner's case and have brought to our notice judgment of the Delhi High Court in CM (M) Nos. 800 of 2016 in the matter of Indian Heritage Research Foundation Vs. State and Ors. On this basis he submitted that since the respondent is yet to commence its evidence, in the interest of justice the new witness proposed by them must be summoned. He also submitted that respondents' interest is not going to be affected adversely; and it would provide them an opportunity to cross examine the witness. Mr. Kunal Tandon, learned counsel for the respondents, however, placed reliance on another order of Delhi High Court dated 10.01.2008 in CM(M) Nos. 2721-23/2005 between Mrs. Reba Mukherjee and Ors. Vs. Sh. Rajiv Behl. The "The Ratio Decidendi" in aforesaid judgement is reproduced below: -

"When parties have led their evidence and closed the same, it is impermissible to allow a party to fill up the gaps and lacuna unless compelling circumstances are brought on record as to why a particular witness could not be examined by the party while leading evidence."

Now we examine the whole issue in the light of pleadings and submissions made at the time of hearing. The history of deliberations in these two petitions before the Tribunal as well as in the court of Registrar, as mentioned above, clearly indicates that the two sides have indulged in gross delays without any substantive reason for the same. It is not at all in the interest of expeditious disposal of the matter for trial to remain pending for almost three years. In so far as the pleadings, submission made by learned counsels as well as judgment cited during hearing are concerned; the judgments cited by learned counsel for the respondent is not applicable as the respondent is yet to file its evidence on affidavit in one of the petitions. Similarly the submissions made by learned counsel for the petitioner also does not appear to be very convincing for the time being because after closure of its evidence in Petition No. 407 of 2013 after cross examination by learned counsel for the respondent on 27.1.2015 it has taken the petitioner almost two years to realize and file miscellaneous application for production of new witness. It is also worth mention that even after filing of evidence on affidavit in Petition No. 408 of 2013 its witness was cross examined by the learned counsel for the respondent and discharged on 14.3.2016; again a delay of almost 9 months in filing miscellaneous application. However, disallowance of

petitioner's prayer at this stage is likely to result in a situation where some facts, which may help in clearing the cobweb before arriving at correct decisions, may not come for fore.

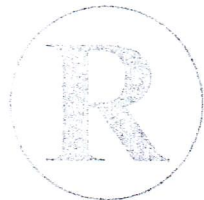
The aforesaid facts amply indicate the conduct of both sides. However, after considering the facts in the pleadings, submission as well as other facts on record, while we are persuaded that interest of justice would be adequately sub-served by allowing the new witness to depose; a serious view is required to be taken regarding conduct of the parties. In so far as the respondents' interest is concerned it would have an opportunity to cross examine the witness. Accordingly we direct as hereunder: -

1. M.A. Nos. 459 of 2016 and 460 of 2016 in B.P. No. 407 of 2013 and B.P. No. 408 of 2013 are allowed. The petitioner is directed to file the evidence on affidavit within two weeks from today and produce the witness for cross-examination thereafter which shall be completed within further two weeks thereafter. The evidence on affidavit with regard to the new witness has to be in consonance with the pleadings in the main petitions, replies and rejoinder thereto.

2. The respondent will file its evidence on affidavit in Petition No. 407 of 2013 and complete the process of examination in chief and cross examination in further two weeks thereafter. The entire process of filing evidence on affidavit and examination of witnesses must be completed in both the petitions within eight weeks from today.
3. Both the petitioner and the respondent in petition no. 407 of 2013 are awarded a cost of Rs.20,000/- each; payable to TDSAT Employees Welfare Society for indulging in gross delays without any substantive reason and impeding the process of adjudication.

List the matter on .12.12.2017 before the court of Deputy Registrar for initiating further action as per direction and time frame indicated above.

(B.B. Srivastava)
Member



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(A.K. Bhargava)
Member

/NS/