

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

Dated 1st November, 2018

Cyber Appeal No. 19 of 2015

Mr Bodhiratna Gautam Fulzele

...Appellant

Versus

Mr. K M Acharya & Ors.

...Respondents

BEFORE:

**HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON
HON'BLE MR. A.K. BHARGAVA, MEMBER**

For Appellant : Mr. Mahendra Limaye, Advocate

For Respondent No.5 : Mr. M.M.Abbasi, Advocate

ORDER

By S.K. Singh, Chairperson – This appeal under Section 57 of the Information Technology Act, 2000 (IT Act) is directed against the order dated 15.01.2015 passed by the learned Adjudicating Officer, Maharashtra in Complaint No.46 of 2014.

2. The Appellant as the complainant, in his complaint disclosed the relevant facts in support of his case that Respondents Nos.1, 2 and 3 in collusion with each other created a website with features which created a wrong impression that it was website of a governmental agency, Respondent No.5. In this manner, the Appellant was subjected to a fraud and made to part with a cheque for Rs.4 lakhs that was transferred to account of Respondent No.2. Appellant allegedly suffered a loss of further amount of Rs.17,000/-. On account of police action, the concerned account was frozen. The only allegation against Respondent No.5 is that it failed in protecting its data and initiating action against the fraudulent web portal of Respondents Nos.1, 2 and 3.

3. A perusal of the impugned order discloses that the learned Adjudicating Officer by issuing interim orders ensured that the Complainant/Appellant received back Rs.4 lakhs into his SBI account. However, in the last paragraph of the order, he held that he saw no breach of provisions of IT Act, 2000 and hence, he dismissed the case without granting the prayer for damages of Rs.6 lakhs including the amount of Rs.4 lakhs fraudulently withdrawn. Since the Appellant did not get the additional Rs.2 lakhs by way of damages, he has preferred this appeal.

4. We have gone through the complaint petition dated 11.08.2014 and also the copy of FIR dated 26.06.2014 as well as other relevant materials. In that

light, on careful perusal of the impugned order, we find no error of fact or law so as to require interference. Admittedly, Respondent No.5 has not lost any data, valuable or otherwise of the Complainant/Appellant. The information available on the website of Respondent No.5 has been misused by the other respondents to commit a fraud upon the Complainant/Appellant. In creating a fraudulent website portal similar in appearance to that of Respondent No.5, certain symbols and slogans appear to have been used which were property of Respondent No.5 but these materials were already available in public domain and therefore, the argument that Respondent No.5 should be held guilty under provisions of the IT Act and subjected to penalty payable to the Appellant by way of damages even for loss of data belonging to Respondent No.5 has absolutely no merit. We, therefore, find no merit in this appeal and it is dismissed accordingly. However, in the facts of the case, we refrain from subjecting the Appellant to costs.

5. Before parting with the appeal, it is relevant to record that in spite of efforts, notices issued in regular manner upon Respondents Nos.1, 2 and 3 (the alleged fraudsters) could not be served. However, the appeal was heard on the request of the Appellant because learned counsel submitted that he is seeking relief only against Respondent No.5 and not against any other respondents. He also pointed out that the alleged fraudsters have absconded and there is no

question of their responding to notices and appearing in this case. In such circumstances, the appeal has been heard *qua* Respondent No.5.

6. Since, we found no merit in the appeal it has been accordingly dismissed as indicated above.

.....
(S. K. Singh, J)
Chairperson

.....
(A.K. Bhargava)
Member

sks