

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated the 6th November, 2020

E.A. No.4/2017

(Arising out of Broadcasting Petition No.369/2010, Decided on 01.02.2011)

IN

Broadcasting Petition No.369 of 2010

Den Network Ltd.

... Petitioner

Vs

M/s. MQ Networks Private Limited

... Respondent

BEFORE:

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH (CHAIRPERSON)

For Petitioner

: Mr. Vibhav Srivastava, Advocate

For Respondent

: Mr. Sanjay Kumar Singh, Advocate

ORDER

By S. K. Singh, Chairperson - Parties have been heard in respect of objection to the execution filed on behalf of the respondent on 10.7.2020. According to the learned counsel for the Judgment Debtor / Applicant the objection is based upon materials which show an error of jurisdiction that has vitiated the judgment and order under execution dated 1.2.2011 passed by this Tribunal in Petition No.369(C) of 2010. According to him, the agreement between

the parties had a material clause – 7.2.1 which the Tribunal failed to consider although the agreement was on record and had been noticed by the Tribunal. According to the learned counsel, the said error of jurisdiction in failing to take into account a particular clause in the agreement is an error of jurisdiction apparent on the face of the record and, hence, the order and judgment is a nullity which cannot be executed. Hence, the execution proceeding should be closed.

In support of the aforesaid submission, learned counsel Mr. Sanjay Kumar Singh has placed strong reliance upon paragraph 144 of the judgment in the case of Mafatlal Industries and Ors Vs. Union of India and Ors, (1997) 5 SCC 536 in which Justice K.S. Paripoornam has extracted 3 propositions available at page 475 of 6th Edition (1996) of the book “Principles of Statutory Interpretation” by Justice G.P. Singh. The principles, as evident from the first sentence of the paragraph as well as the last sentence, relate to the scope of the exclusionary clauses in various statutes. The conclusion in that paragraph is that the jurisdiction of the ordinary courts will not be ousted in the circumstances covered by the 3 legal principles noted from the book of Justice G.P.Singh. Those principles, as to when the jurisdiction of courts can be ousted by clauses in the statutes, have evolved for doing justice when a Tribunal or a Court, though having inherent jurisdiction to deal with the matter, may pass orders with such gross illegalities which are by

judicial pronouncements treated as orders lacking in jurisdiction. But these classes of orders or judgments are not a nullity. These require further challenge before the Civil Court or a Constitutional Court having competent jurisdiction so that the alleged gross defects / lack of jurisdiction may be adjudicated. Paragraph 144 does not deal with execution proceedings and does not hold that an executing court has the power to go behind the decree and examine the judgment and decree on merits.

As per learned counsel for the respondent, Mr. Vibhav Srivastava, errors like lack of jurisdiction to decide a case in gross violation of principles of natural justice etc. need to be challenged by taking the matter to Civil Courts or Constitutional Courts in spite of exclusionary clauses in the statutes but the situation in an execution proceeding is not the same. The situation before an executing court, as contended by learned counsel for the Decree holder, is quite different. The executing court can treat a judgment or decree as a nullity and ignore the same by refusing to execute it only when the Court or Tribunal which has passed judgment and decree, on the face of the record lacks inherent jurisdiction to deal with and decide the dispute or the lis.

Mr. Vibhav Srivastava has placed reliance upon the following judgments in support of his submission already noted above –

- i) AIR 1970 SC 1475 (Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman & Ors)
- ii) (2004) on SCC 287 (Rafiq Bibi (Dead) Vs Syed Waliuddin & Ors.)
- iii) (2004) 8 SCC 706 (Balwant N. Viswamitra & Ors. Vs. Yadav Sadashiv Mule & Ors.); and
- iv) Judgment of Madras High Court dated 12.9.2018 by a learned Single Judge in a Civil Revision Petition bearing CRP (NPD) (MD) No.885 of 2013 (S. Muthu Narayanan & Ors. Vs. Paulraj Naicker).

In the aforesaid judgments a clear distinction has been drawn between a decree which is null and void and a decree which is wrong, incorrect, irregular or not in accordance with law. Only when “a defect of jurisdiction of the court goes to the root of the matter and strikes at the very authority of the court to pass a decree or order, it can be treated as basic and fundamental.” In such a case, the court suffers from inherent lack of jurisdiction and its decree or orders can be treated as a nullity. Such decree or order alone can be challenged at any stage, even in execution or collateral proceedings. Another principle which complements the aforesaid principle of law has also been well stated in the case of Vasudev Dhanjibhai Modi. It was held that a decree even if erroneous is still binding between the parties and a court executing the decree cannot go behind

the same. Jurisdictional defects in judicial orders, thus can be of various nature. Only when there is inherent lack of jurisdiction in the court passing the decree and such a defect is patent on the face of record, the execution court can take cognizance of the same and treat the decree as a nullity. In all other situation, the normal rule is that an executing court cannot go behind the decree. These aspects have been well brought out in the judgment of the Madras High Court noted above which takes note of various other judgments including the judgments of Supreme Court, noted above.

The difference between an ordinary jurisdictional error and an inherent lack of jurisdiction can be highlighted further by applying a simple test. In a case of an inherent lack of jurisdiction, a superior court while examine a challenge to such an order cannot remand the matter for fresh consideration. In other situations, if the facts of the case and justice require, the superior court can set aside the order suffering from other defects of jurisdiction and require the concerned Court or Tribunal to rehear or redecide the case as per law.

The objection to the execution raised on behalf of Judgment Debtor is found to be meritless because even if the contention is accepted that a particular clause in the agreement has not been considered in the ex parte judgment and

order under execution, it will not render the judgment a nullity. It is not a case where this Tribunal for a patent or obvious reason did not have jurisdiction to decide the case between the parties. In the facts of this case, while executing the Judgment and decree as an executing court exercising power under section 19 under TRAI Act, this Tribunal cannot go behind the decree for deciding the issue raised.

For satisfying the judicial conscience, the particular clause pointed out on behalf of Judgment Debtor was perused. Prima facie, it does not make the judgment even illegal because there are several other clauses which need to be read together including a provision for charging of interest in case of delay in payment. In many situations, the word "shall" may be justly read as "may" depending upon facts. Hence, the objection made on behalf of Judgment Debtor is found to be of no merit. It is accordingly rejected.

Post the matter on 24.11.2020 for disposal of execution application in accordance with law.

(S. K. Singh)
Chairperson