

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

Dated: 15/07/2022

RA/1/2020
(Arising out of order dated 13.01.2020)
IN
BROADCASTING PETITION No. 877/2012

Indusind Media & Communications Ltd.....	Petitioner(s)
Versus	
Allied Infotainment Distribution Ltd.....	Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE DHIRUBHAI NARANBHAI PATEL, CHAIRPERSON
HON'BLE MR. SUBODH KUMAR GUPTA (MEMBER)
HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM (MEMBER)

For Appellant/Petitioner	For Respondent/Applicant
MS. VANDANA D JAISINGH, Advocate	MR. ABHISHEK MALHOTRA, Advocate
MS. KANUPRIYA GUPTA, Advocate	

ORDER

- 1. This review application has been preferred for review of judgment and order delivered by this Tribunal dated 13.1.2020 in B.P. No. 877 of 2012.**
- 2. We have heard the counsel for this applicant who is original respondent. Counsel appearing for this applicant submitted that the calculation of the dues paid by the original respondent has not been properly appreciated by this**

Tribunal. Initially the original petitioner pointed out the dues are for Rs. 4,02,81,354/- along with interest @ 18%. Thereafter, the said amount has been reduced by the original petitioner which is at Rs. 2,34,11,552/- and during the course of the arguments the original petitioner has pointed out that now dues to be paid by the original respondent is Rs. 1,33,40,902/-. This amount has already been paid by this applicant (original respondent) but the petitioner had not properly adjusted the said amount towards the dues of the original respondent. The amount paid by the respondent has been adjusted towards the dues of the sister concern of the original respondent. This aspect of the matter has not been properly appreciated by the learned Tribunal by deciding the B.P. No. 877 of 2012 vide judgment and order dated 13.1.2020. It is further submitted by the counsel for this applicant (original respondent) that the details of the bank account are also presented before this Tribunal by M.A. No. 145 of 2016 in B.P. No. 877 of 2012. This was the application preferred by the original respondent under Order 6 Rule 17 of the Code of Civil Procedure (CPC) for amendment of the pleadings to be read with Section 14A of the TRAI Act. The details of the accounts have already been given by the original respondent before this Tribunal and the amount demanded by the original petitioner has already been paid by the respondent but wrongly part of the

payment made by the respondent is adjusted towards the dues of the sister concern and therefore petitioner cannot demand further amount from the respondent, they could have filed Broadcasting Petition against the sister concern of the respondent for recovery of the dues.

3. Counsel appearing for the original petitioner submitted that this Review Petition is not an appeal in disguise. The contentions raised by the respondent were never proved before this Tribunal. This aspect of the matter has already noted by this Tribunal in the impugned judgment and order of this Tribunal in B.P. No. 877 of 2012. The respondent has failed to prove the payment of the dues to the petitioner. This factual aspect has already attained its finality. It is further submitted by the counsel for the original petitioner that bare assertion has got no value in the Court of Law. The facts are bound to be proved by the respondent. Unless the facts (detailed accounts of the payment of the dues) are proved by the respondent no cognizance can be taken as bare assumption by this Tribunal. Even the amendment has not been carried out in the pleadings by the respondent.
4. It is further submitted by the counsel for the original petitioner that this Tribunal cannot enter into the merit of the matter in this Review Petition.

Counsel for the petitioner has relied upon the decisions of Hon'ble The Supreme Court in:

- (i) **Shanti Conductors Pvt. Ltd. Vs. Assam SEB (2020) 2 SCC 677**
- (ii) **Aribam Tuleshwar Sharma Vs. Aibum Pishak Sharma (1979) 4 SCC 389**
- (iii) **Sow Chandra Kante & Anr. Vs. Sheikh Habib 1975(1) SCC 674**
- (iv) **In chief Constable of North Wales Police Vs. Evans (1982) 3 ALL ER141, 154**

5. Having heard the counsel for both the sides and looking to the facts and circumstances of the case, we see no reason to entertain this review petition for the following facts and reasons: -

- (i) **This Review Application cannot be an appeal in disguise.** Several factual aspects have been reargued by the counsel for the original respondent/Applicant who has preferred this review petition especially about the calculation of the dues and the payments made by the respondent.
- (ii) This argument of the dues claimed by the petitioner and payment made by the original respondent, has already been appreciated in detail by this Tribunal while finally disposing of the B.P. No. 877 of 2012 by the judgment and order dated 13.1.2020 especially in paragraphs nos. 4,5,6,7 and 8 which are reproduced below for ready reference.

“4. Through M.A. No. 145/2016 filed on 11.05.2016, the

respondent sought permission and brought on record a copy of amended reply to reiterate that it had made payments every month in due time as per the Placement Agreement and hence, there was no outstanding payable by the respondent. Respondent produced its own statement of accounts from 31.10.2011 to 31.03.2015 as an annexure. That document is in fact a copy of entries in the petitioner's bank account maintained by the Bank of India. The purpose of said document is to show all the money paid out of respondent's account to different MSOs including the petitioner.

5. During the course of hearing of the petition, the only issue that was found surviving between the parties was in respect of an amount of Rs.1,33,40,902/- as the principal outstanding amount. The subsequent payments after filing of the petition were admitted by the petitioner in the affidavit of evidence. The amount claimed towards interest was separated so that it could be considered by the Tribunal separately and the accounts could be understood more clearly in view of principal dues worked out separately. Learned counsel for the petitioner, on instructions, filed written submissions in July 2019 in respect of the aforesaid issue relating to Rs.1.33 crores approximately. As per observations of the Tribunal both the parties went through the exercise of reconciliation of accounts and then addressed the Tribunal on the sole surviving issue as to whether the accounts of petitioner suffered from any error.

6. Written submissions were filed in September, 2019 on behalf of the respondent also. Based upon allegation made by the respondent in an affidavit filed on its behalf on MA No.137 of 2016 that seven payments allegedly made to the petitioner as per copy of its bank account were not reflected or included in the statement of accounts filed by the petitioner. Interestingly, respondent did not produce its own statement of accounts nor it ever disputed an

entry in the statement of accounts furnished by the petitioner (Annexure 8) showing an amount of Rs.1,33,33,332/- credited in favour of the respondent on 31.03.2012 by way of transfer of amount from that of M/s BAG Newline Networks Ltd.

7. Learned counsel for the petitioner explained that M/s BAG News was another company of same group engaged in similar business as the respondent and the seven entries alleged to be not reflected in respondent's favour are duly reflected in the ledger account of M/s BAG News and this was demonstrated during the reconciliation of accounts. With the written notes a copy of statement of accounts of M/s BAG News has been produced which supports the petitioner's case and shows that on 31.03.2012 an amount of Rs.1.33 crores, found in excess was credited to the respondent and duly reflected in Annexure 8.

8. On going through the entire materials, it is clear that respondent has not whispered a word as to how and why the amount of Rs.1.33 crores approximately was transferred from the account of M/s BAG News to its own account. The issue of seven payments not being reflected in the statement of accounts (Annexure 8) has not been pleaded or raised in any of the two replies filed on behalf of the respondent. It was apparently only to create a confusion that a misrepresentation of facts was made during arguments leading to further reconciliation of accounts. Admittedly, the defense of irregular placement has been given up as will appear from written submissions also. The only defense based upon seven payments allegedly made wrongly to M/s BAG News is clearly a defense based on no foundations in the pleadings. Further, the parties were given opportunity and still the respondent has not explained as to why a credit of Rs. 1.33 crores approximately was given to it on 31.03.2012. Such peculiar stance of respondent leaves no manner of doubt that the

defense of the respondent is fit to be rejected, both on merits as well as for lack of pleadings even though respondent brought on record even a second (amended) reply. It is also worth noticing that the respondent chose not to reply and raise any defence although notices were sent by the petitioner in April, May and September, 2012 and the respondent's witness has admitted the receipt of those notices."

(Emphasis Supplied)

(iii) Thus, in view of the aforesaid observations of this Tribunal while passing the final order in B.P. No. 877 of 2012 it has already been observed by this Tribunal that the facts of the payment of the dues as alleged by the respondent have not been proved. Now the counsel appearing for the respondent who has preferred this Review Application submits that this factual aspect may be reopened by this Tribunal. We see no reason to entertain this contention of the original respondent. The facts of the payment of the dues have not been proved by the original respondent/Applicant. Hence, no error has been committed by this Tribunal while passing the judgment an order dated 13.1.2020 in B.P. No. 877 of 2012.

6. Moreover, it has been held by Hon'ble The Supreme Court: -

“(i) In the case of PARSION DEVI V. SUMITRI DEVI, reported in (1997) 8 SCC 715, the Hon'ble Supreme Court in Para – 7 to 9 held as under:

7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In Thungabhadra Industries Ltd. v. Govt. of A.P. (SCR at p. 186) this Court opined: “What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an ‘error apparent on the face of the record’). The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an ‘error apparent on the face of the record’, for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by ‘error apparent’. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.”

(Emphasis ours)

8. Again, in Meera Bhanja v. Nirmala Kumari Choudhury while quoting with approval a passage from Aribam Tuleswar Sharma v. Aribam Pishak Sharma this Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be “reheard and corrected”. A review petition, it must be remembered has a limited purpose and cannot be allowed to be “an appeal in disguise”.

(Emphasis Supplied)

(ii) In the case of HARIDAS DAS V. USHAL RANI BANKIK, reported in (2006) 4 SCC 78, the Hon'ble Supreme Court in Para – 13 to 18 held as under:

*13. In order to appreciate the scope of a review, Section 114 CPC has to be read, but this section does not even adumbrate the ambit of interference expected of the court since it merely states that it "may make such order thereon as it thinks fit". The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing "on account of some mistake or error apparent on the face of the records or for any other sufficient reason". The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict. This is amply evident from the Explanation to Rule 1 of Order 47 which states that the fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the court should exercise the power to review its order with the greatest circumspection. This Court in *Thungabhadra Industries Ltd. v. Govt. of A.P.* held as follows:*

(SCR p. 186)

"[T]here is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by 'error apparent'. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. ... where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two

opinions entertained about it, a clear case of error apparent on the face of the record would be made out.”

14. In *Meera Bhanja v. Nirmala Kumari Choudhury* it was held that:

“8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. In connection with the limitation of the powers of the court under Order 47 Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution, this Court, in *Aribam Tuleswar Sharma v. Aribam Pishak Sharma* speaking through *Chinnappa Reddy, J.* has made the following pertinent observations: ‘It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.’ ” (SCC pp. 172-73, para 8)

15. A perusal of Order 47 Rule 1 shows that review of a judgment or an order could be sought: (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of the record or any other sufficient reason.

16. In Aribam Tuleshwar Sharma v. Aribam Pishak Sharma this Court held that there are definite limits to the exercise of power of review. In that case, an application under Order 47 Rule 1 read with Section 151 of the Code was filed which was allowed and the order passed by the Judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to this Court it was held as under: (SCC p. 390, para 3) "It is true as observed by this Court in Shivdeo Singh v. State of Punjab there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

17. The judgment in Aribam case has been followed in Meera Bhanja. In that case, it has been reiterated that an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any long-drawn process of reasoning. The following observations in connection with an error apparent on the face of the record in Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale were also noted: (AIR p. 137) "An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated

arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ.” (SCR pp. 901-02)

18. It is also pertinent to mention the observations of this Court in Parsion Devi v. Sumitri Devi. Relying upon the judgments in Aribam and Meera Bhanja it was observed as under: (SCC p. 719, para 9)

“9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be ‘reheard and corrected’. A review petition, it must be remembered has a limited purpose and cannot be allowed to be ‘an appeal in disguise’.”

(Emphasis Supplied)

7. In view of the aforesaid facts, reasons and judicial pronouncements, there is no substance in this Review Application and the same is hereby dismissed.

**(JUSTICE D. N. PATEL)
CHAIRPERSON**

**(SUBODH KUMAR GUPTA)
MEMBER**

**(JUSTICE RAM KRISHNA GAUTAM)
MEMBER**

/NS/