

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

Dated: 26/07/2022

RA/7/2022

IN

BROADCASTING PETITION/57/2022

Fastway Transmission Pvt. Ltd.Petitioner(s)

Versus

Shiva Cable Network And Anr.Respondent(s)

BEFORE

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

For Petitioner

Mr Vibhav Srivastava, Advocate

For Respondent/Applicant

Mr Vineet Bhagat, Advocate

Mr Mohit Gulati, Advocate

ORDER

1. This Review Application (RA) has been preferred by the original respondent no. 1 for review of our order dated **18.5.2022 in B.P. No. 57 of 2022** (Annexure A/1 to the Memo of this RA). Counsel for the applicant (original respondent no. 1) submitted that Set Top Boxes (STBs) were supplied by the original petitioner to the original respondent in the year 2013-14 and, therefore, those STBs are older than 7-8 years. It is also submitted by the applicant (original respondent no. 1) that as per the Annexure B-1 of the reply in this RA filed by the original petitioner, once the rent is paid for three years STBs automatically become the property of the subscribers. It is also submitted by counsel for the

applicant (original respondent no. 1) that as per Annexure -1 to Annexure B-2 of the reply filed in this RA for silver, gold, platinum and HD rates are inclusive with STBs rent. Thus the rent was already paid for more than three years and the STBS become the property of subscribers and hence an order passed by this Tribunal dated 18.5.2022 in B.P. No. 57 of 2022 which directs the original respondent no. 1 to deposit Rs. 24 lakhs before the Registrar of this Tribunal requires to be modified.

2. We have heard counsel appearing for the respondent in this RA (original petitioner of B.P. No. 57 of 2022). It submitted by counsel of the original petitioner that as per Tariff Order, 2013 (Annexure A/3) to the Memo of this RA as per Clause 4 thereof every Multi System Operator (MSO), shall without prejudice to the provisions of the **Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010**, offer to every ordinary subscriber the standard tariff package, for supply and installation of the STB confirming with Indian standard. Therefore, it is submitted by the counsel for the original petitioner that as per Clause 7 of Tariff Order, 2010 original petitioner – MSO can always give his own scheme.

3. It is further submitted by counsel of the original petitioner that a detailed reply has been filed by the original petitioner in the present RA. As per Annexure B-1, five options were available to the original

respondent/Applicant. The original respondent has chosen option number V and as per the option number V, the monthly rent of STB was Rs. 31.15, with taxes which comes to Rs. 35 per month per STB and it is further submitted by the counsel for the original petitioner that as per Annexure 1 of Annexure B-2 to the Memo of the reply filed in this RA, as per Clause 3 under the heading “special notes” STB rent applicable as per policy, for details log on to www.fastway.in. Thus, the rent was to be paid separately as per option-V which has been accepted by the original respondent. It is also submitted by the counsel for the original petitioner that detailed calculation of the amount due and payable by the original respondent has already been pointed out in the Broadcasting Petition which is at Annexure P-2.

4. Moreover, notice for the outstanding amount and the fact that the original respondent has not returned the STBs was given on 28.1.2022 which is at Annexure P-3 given to the original respondent and the said notice was never replied by the original respondent who is the applicant in this RA.

5. It is also submitted by the counsel for the original petitioner that in RA certain documents which are annexed in Punjabi language especially at page no. 241 and the translation whereof has been supplied by the applicant of RA (original respondent no. 1 in the Broadcasting Petition) is at page no. 255 (Annexure A/10, to the memo of the RA. This translation is absolutely

misleading and it is not a correct translation of the Punjabi language which is at page no. 241. It is submitted by the counsel for the original petitioner that if the original Punjabi language is read it says that subscriber has returned the STB to the original respondent no. 1 but if we read the English translation at Annexure A/10 to the memo of this RA (page no. 255) it says that "I wish to return the STB of Fastway" meaning thereby the original subscribers have already returned the STBs to the applicant of this RA (original respondent no. 1 of Broadcasting Petition) and the original respondent thereafter has not returned the STBs to the original petitioner and, therefore, no error has been committed by this Tribunal while passing order dated 18.5.2022 in B.P. No. 57 of 2022 whereby the original respondent was directed to deposit Rs. 24 Lakhs before Registrar of this Tribunal and giving further direction to the Registrar of this Tribunal to deposit the aforesaid amount as a Fixed Deposit in a Nationalized Bank initially for the period of 12 months so that the Broadcasting Petition can be heard finally and looking to the final order and liability, if any, of the respondent, the amount deposited by the original respondent can be set off and the balance amount can be returned to the respondent looking to the final order passed in the Broadcasting Petition.

6. Having heard the counsel for both the sides and looking to the facts and circumstances of the case, it appears from the facts of the case that the

original petitioner – Fastway Transmission Pvt. Ltd. is a Multi System Operator (MSO) and as per Clause 7 Tariff Order, 2010 to be heard with provisions of Tariff Order 2013 five options were given by the original petitioner which are at Annexure B-1 to the memo of reply filed by the original petitioner in the present RA.

7. Looking to the Annexure B/1 of the reply in this RA and also looking to the Annexure 1 of Annexure B-2 of the memo of the reply, prima facie it appears that the rent for STBs was to be paid by the original respondent no. 1. Moreover, customer has to pay rent to the original respondent no. 1 and they have to pass on this rent to the original petitioner.

8. Prima facie, the respondent no. 1 is unable to satisfy this Tribunal that they have deposited rent for STBs with the original petitioner. Prima facie, it appears that the case is in favour of the original petitioner and balance of convenience is also in favour of the petitioner and irreparable loss will be caused to the petitioner if Rs. 24 Lakhs is not ordered to be deposited. Looking to the nature of the demand of the original petitioner to be read with various annexures of the Broadcasting Petition as well as looking to the various annexures of the reply filed by the original petitioner in this RA. Original respondent is unable to satisfy us the payment of rent deposited by the original respondent no. 1 with the petitioner. Hence, we see no reason to

review our order dated 18.5.2022 in Broadcasting Petition as there is no prima facie error committed by this Tribunal.

9. It has been held by the Hon'ble The Supreme Court that: -

“(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 Tuleshwar 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 Tuleswar 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)

(iii) AJIT KUMAR RATH V. STATE OF ORISSA, (1999) 9 SCC 596, paras 30 and 31:-

30. *The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any*

elaborate argument being needed for establishing it. It may be pointed out that the expression “any other sufficient reason” used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule.

31. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment.

(Emphasis Supplied)

10. Hence, in view of the aforesaid provisions of law and the agreement entered into between the parties to the Broadcasting Petition to be read with the notice given by the original petitioner which is at annexure P-1 to the memo of this Broadcasting Petition which is never replied by the original respondent and also looking to the fact that respondent no. 1 is unable to point out to this Tribunal that the rent for the STBs have already been paid, we see no reason to alter our order dated 18.5.2022 in the Broadcasting Petition.

11. Hence, this R.A. is hereby dismissed.

12. We hereby extend the time to deposit Rs. 24 Lakhs before the Registrar of this Tribunal by the respondent by way of Bank Draft on or before 31.8.2022.

13. The matter is, therefore, adjourned to 2.9.2022.

(JUSTICE D. N. PATEL)
CHAIRPERSON

(SUBODH KUMAR GUPTA)
MEMBER

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