TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI
Dated: 28/09/2022

R A/8/2022

IN

BROADCASTING PETITION/61/2022

Fastway Transmission Pvt. Ltd. ....Petitioner(s)

Versus

OM Cable Network And Anr. ....Respondent(s)

BEFORE

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

For Petitioner	**For Respondent/Applicant**
Mr Vibhav Srivastava, Advocate	Mr Vineet Bhagat, Advocate Mr Mohit Gulati, Advocate

ORDER

1. This Review Application (R.A.) has been preferred by the Original Respondent no. 1/Applicant for reviewing our order dated **18.5.2022** which are at **Annexure A1 (Colly).**

2. Having heard the counsels for both the sides and looking to the facts and circumstances of the case, it appears that this petitioner has preferred this Broadcasting Petition for **recovery of subscription amount of Rs. 27,905.74/-** and for **recovery of STBs which are 231 in number or in lieu thereof Rs. 4,62,000/-.**

3. We had passed an order on 18.5.2022 that respondent no. 1 shall deposit Rs. 5 Lakhs before the Registrar of this Tribunal. The amount to be deposited by

respondent no. 1 shall be treated as a deposit before the Registrar and the same will be deposited in a Nationalised Bank in a Fixed Deposit for a period of 12 months. The amount shall be adjusted towards the final liability, if any, of the respondent.

4. As the aforesaid amount was not deposited, we passed further order on 22.8.2022 for disconnection of electricity supply of the respondent and to seal the premises of the respondent.

5. Counsel for the applicant in this R.A. (Original Respondent no. 1) has placed reliance upon paragraph 6 of the R.A. to be read with **Annexure R/2 and Annexure R/4.**

6. We have heard the counsel for the respondent and perused the documents annexed with the reply in the Broadcasting Petition.

7. Looking to the facts and circumstances of the case, it appears that **nowhere in the whole memo of the reply, neither in paragraph 6 nor in any documents annexed with memo of the reply in the Broadcasting Petition, the original respondent has ever stated that Rs. 800/- has been deposited by the respondent before this petitioner along with the rent.** In absence of this averment and looking to the claim of the original petitioner against the total demand of the petitioner of Rs. 27,905.74/- and Rs. 4,62,000/-, we have ordered for deposition of Rs. 5 lakhs and this amount has not been given to the petitioner because at the time of final hearing if there is any liability of the respondent the same will be adjusted against the amount deposited by the respondent no. 1.

8. Moreover, counsel for the original respondent no. 1 who has preferred the R.A. has placed reliance upon **The Telecommunication (Broadcasting and Cable) Services (Fifth) (Digital Addressable Cable TV Systems) Tariff Order, 2013.**

9. We have perused this Tariff Order, 2013. Looking to **Tariff Clause No. 4(2) of the Tariff Order, 2013** it appears that this **Tariff Order of 2013** is **not superseding or repelling the earlier Tariff Order of year 2010.** It ought to be kept in mind that Clause 4(2) of the Tariff Order of 2013 is in addition the option available under the **Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010.** As this is not a final hearing stage at all, we are not going into the fine-nicety of the interpretation of Clause 4(2) of the Tariff, 2013, upon which the reliance is placed by the applicant of this R.A. (original respondent no. 1 of the Broadcasting Petition). Suffice it to say that options available under the Tariff Order, 2010 are also enforceable and applicable and over and above the options available under Tariff Order, 2013. This aspect of the matter has been dealt with in detail and at length in our judgement and order dated 26.7.2022 in R.A. No. 7 of 2022. Moreover, the relevant part of the aforesaid order dated 26.7.2022 in R.A. No. 7 of 2022 reads as under: -

> **"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 Tuleshwar 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 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)

(iii) ***AJIT KUMAR RATH V. STATE OF ORISSA, (1999) 9 SCC 596, paras 30and 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. Counsel appearing for the applicant submitted that they have already paid Rs. 800/- for each STB and also placed reliance upon paragraph 5 of the R.A.

11. In view of the aforesaid facts, reasons and judicial pronouncements, there is no substance in this R.A. and the same is, therefore, dismissed.

12. Nonetheless, looking to the facts stated by the petitioner that respondent is not able to deposit Rs. 5 Lakhs within the time limit granted by this Tribunal, we, hereby direct the respondent to deposit Rs. 5 Lakhs in two equal instalments. **Rs. 2.5 Lakhs will be deposited by way of Bank Draft in favour of "Registrar TDSAT" within a period of four weeks from today and further Rs. 2.5 Lakhs will be deposited by way of Bank Draft in favour of "Registrar, TDSAT" within a further period of four weeks thereafter.**

13. The **R.A. No. 8 of 2022** is hereby dismissed.

(JUSTICE D. N. PATEL)
CHAIRPERSON

(SUBODH KUMAR GUPTA)
MEMBER

/NS/