

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATIONS (ST) NO.31505 OF 2015,

Den Networks Ltd and Ors ..Applicants

Vs

Winner Cable Network and Ors .. Respondents

WITH

CIVIL REVISION APPLICATIONS (ST) NO.31222 OF 2015,

Den Networks Ltd and Ors ..Applicants

Vs

M/s. Sky Light Cable Network and Ors .. Respondents

WITH

CIVIL REVISION APPLICATIONS (ST) NO.31229 OF 2015,

Den Networks Ltd and Ors ..Applicants

Vs

M/s Ashitosh Cable Network and Ors .. Respondents

WITH

CIVIL REVISION APPLICATIONS (ST) NO.31236 OF 2015,

Den Networks Ltd and Ors ..Applicants

Vs

Om Sai Cable Network and Ors .. Respondents

WITH

CIVIL REVISION APPLICATIONS (ST) NO.31466 OF 2015,

Den Networks Ltd and Ors ..Applicants

Vs

M/s Sigma Cable Network and Ors .. Respondents

WITH

CIVIL REVISION APPLICATIONS (ST) NO.31472 OF 2015,

Den Networks Ltd and Ors ..Applicants

Vs

M/s Vision Cable Network .. Respondents
Enterprises and Ors

WITH

CIVIL REVISION APPLICATIONS (ST) NO.31474 OF 2015,

Den Networks Ltd and Ors ..Applicants

Vs

M/s Trimurti Cable Network and .. Respondents
Ors

WITH

CIVIL REVISION APPLICATIONS (ST) NO.31477 OF 2015,

Den Networks Ltd and Ors ..Applicants

Vs

M/s Vicky Cable Network and Ors .. Respondents

WITH

CIVIL REVISION APPLICATIONS (ST) NO.31480 OF 2015,

Den Networks Ltd and Ors ..Applicants

Vs

Shri Ganesh Enterprises and Ors .. Respondents

WITH

CIVIL REVISION APPLICATIONS (ST) NO.31482 OF 2015,

Den Networks Ltd and Ors ..Applicants

Vs

M/s Shrikrushna Cable Network .. Respondents
and Ors

WITH

CIVIL REVISION APPLICATIONS (ST) NO.31490 OF 2015,

Den Networks Ltd and Ors ..Applicants

Vs

A.S.Cable Network and Ors .. Respondents

WITH

CIVIL REVISION APPLICATIONS (ST) NO.31498 OF 2015,

Den Networks Ltd and Ors ..Applicants

Vs

Adarsh Cable Network and Ors .. Respondents

Mr. Prashant Chavan a/w Rajmani Varma, Namrata Bharot i/b Navdeep Vora and Associates, Advocates for Applicants.

Mr. Kamal Khata, Advocate a/w Kunal Damle, a/w Akshay Tikekar, N.R.Gandhi, Advocates for Respondent no.1.

Ms. Sonu Tandan, Advocate for Respondents no.2 to 7.

CORAM : R.G.KETKAR,J.

DATE : 03/12/2015

PC:

1. Heard Mr. Prashant Chavan, learned counsel for the applicants, Mr. Kamal Khata, learned counsel for respondent no.1 and Ms. Sonu Tandan, learned counsel for respondents no. 2 to 7 at length.

2. Rule. Learned counsel for the respective respondents waive service. At the request and by consent of the parties, Rule is made returnable forthwith and Applications are taken up for final hearing.

3. By this Application under Section 115 of the Code of Civil Procedure, 1908, (for short, 'C.P.C.'), original defendant no.1 has

challenged the Judgments and orders 13.10.2015 passed by the learned Jt. Civil Judge, Sr. Division, Nashik on applications taken out by the defendants under Order VII, Rule 11 (d) of C.P.C. for rejection of the plaint on the ground that suits instituted by respondent no.1-plaintiff are barred in view of provisions of Sections 15 and 27 of the Telecom Regulatory Authority of India, Act, 1997 (for short, 'Act').

4. Mr. Chavan submitted that the respondent no.1-original plaintiff is a cable operator and in view of regulation 2(y) (page 337) of the Telecommunication (Broadcasting And Cable Services) Interconnection (Digital Addressable Cable Television Systems)Regulations, 2012 (for short, 'Regulations') he is a 'service provider' as defined in Section 2(1)(j) of the Act. He has taken me through the provisions of the Act and in particular Section 2(1), (aa), (b), (i), (j), (k). He submitted that in terms of proviso to Section 2(1)(k) of the Act, the Central Government has issued Notification on 9.1.2004. He has also invited my attention to Section 14(a)(ii) and Sections 15 and 27 to contend that the Act is a self-contained Code and jurisdiction of the Civil Court is expressly ousted. He has also invited my attention to the Sections 36 and 37 of the Act and submitted that as respondent no.1-plaintiff is a cable operator, he is a 'service provider'. In view of the scheme of the Act and Regulations, the Civil Court has no

jurisdiction to entertain and try the suit. In support of this submission, he relied upon the decision dated 24.8.2005 rendered by Telecom Disputes Settlement and Appellate Tribunal, New Delhi in Petition No. 41(C) of 2005 (M.A.N.152 of 2005). He submitted that the decision of the Tribunal was carried to the Apex Court. By order dated 3.4.2007, the Apex Court dismissed the Appeal and maintained the decision of the Tribunal. He fairly submitted that the decisions of the Tribunal and the Apex Court were not cited before the trial Court.

5. On the other hand, Mr. Khata supported the impugned orders. He submitted that basically the definition of service provider in section 2(1)(k) does not include cable operator. Section 2(1)(j) defines the expression 'service provider' to mean the Government as a service provider and includes a licensee. The expression 'licensee' is defined in section 2(1)(e) to mean any person licensed under sub-section (1) of section 4 of the Indian Telegraph Act, 1885 for providing specified public telecommunication services. He submitted that respondent no.1-plaintiff is not a licensee under section 4(1) of the Indian Telegraph Act, 1885. In short, he submitted that the definition of expression of 'service provider' in section 2(1)(j) cannot be enlarged by Regulations and in particular Regulation 2(y). He also accepted that the decisions of the Tribunal and the Apex

Court were not cited before the trial Court. He, therefore, submitted that by consent of respondent no.1, the impugned orders may be set aside and the trial Court may be directed to consider the decisions of the Tribunal and the apex court, referred herein above and all the contentions of the parties maybe kept open. He further submits that the trial Court may be directed to dispose of the applications within one week from the date of appearance of the parties.

6. In view thereof, by consent of respondent no.1-plaintiff, Civil Revision Applications are disposed of in the following terms:

(i) The impugned orders are quashed and set aside and the Applications filed under Order VII, Rule 11(d) are restored to the file of the trial Court.

(ii) Parties agree that they will appear before the trial court on 7.12.2015 and for that purpose fresh notice need not be issued to them. In view thereof, the parties are directed to appear before the trial Court on 7.12.2015.

(iii) The learned trial Judge is requested to decide the Applications under O.7, R.11(d) within one week from the date of appearance of the parties. The learned trial Judge will consider the contentions recorded herein and any other contentions that maybe advanced before him. All the contentions of the parties on merits are expressly kept open.

(iv) Rule is made absolute in the aforesaid terms with no order as to costs.

(v) Parties including the trial Court to act on the authenticated copy of this order.

(R.G.KETKAR, J.)