

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO. 40 OF 2017**

Richard Cable Network
Sole proprietary firm of
Mr. Richard D'Costa
Businessman, aged 37 years, married
son of Thomas Aquino D'Costa
with office/shop at IInd Floor,
Florida II, Abeda Faria Road
Margao, Salcete Goa. ... Appellant

Versus

Star India Pvt. Ltd.,
A company incorporated under the
Companies Act, 1956
with registered address
at Star House,
Off. Dr. E. Moses Road
Mahalaxmi,
Mumbai 400 011, India. ... Respondent

Mr. C. A. Coutinho, Advocate for the appellant.

Mr. Raunaq Rao, Advocate for the respondent.

Coram:- F. M. REIS, J.

Date:- 28th April, 2017

ORAL JUDGMENT

Heard Mr. C. A. Coutinho, learned counsel appearing
for the appellant and Mr. R. Rao, learned counsel appearing for the

respondent.

2. Admit.

3. Heard forthwith with the consent of the learned counsel.

4. Mr. R. Rao, learned counsel waives service on behalf of the respondent.

5. Upon hearing the learned counsel appearing for the appellant and the respondent, a short point for consideration is whether the learned Judge was justified to come to the conclusion that there is a bar of jurisdiction for the Civil Court to entertain the suit in view of Section 14 read with Section 27 of the Telecom Regulatory Authority of India Act, 1997 (herein after referred to as “the said Act of 1997”)

6. Mr. Coutinho, learned counsel appearing for the appellant minutely took me through the relevant provisions of the said Act of 1997 and submitted that the dispute to be examined by such Tribunal does not encompass the dispute raised by the

appellant in the civil suit. The learned counsel further pointed out that this aspect was not pointed out to the learned Judge while passing the impugned order. The learned counsel further submits that the Civil Court as such has jurisdiction to decide the suit based on the claim put forward by the appellant.

7. On the other hand, Mr. Rao, learned counsel appearing for the respondent upon instructions has submitted that in exercise of powers conferred under the said Act, the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations, 2004 have been enacted whereby the cable operator as well as the broadcaster have been duly specified. It is further pointed out that the respondent is a broadcaster and the appellant is a cable operator and as such according to him the Tribunal has jurisdiction to decide the dispute raised by the appellant. The learned counsel has also brought to my notice that the appellant has also approached the said Tribunal by filing Petition bearing No.226(C) of 2007 raising similar dispute which came to be disposed of by an order dated 13.08.2008. The learned counsel has also brought to my notice the

Clause IX(b) of the agreement dated 01.01.2007 executed between the parties to point out that the parties have also agreed that any dispute between the parties would be raised before the Telecom Disputes Settlement and Appellate Tribunal at New Delhi. The learned counsel as such points out that the appeal be accordingly dismissed.

8. Based on the rival contentions, as the appellant had already approached the said Appellate Tribunal in the earlier occasion in connection with a similar dispute, I find that the dispute raised in the suit can be decided by such Appellate Tribunal considering the clause in the agreement between the parties. The said provisions of the Regulations as well as the Act were not brought to the notice of the learned Judge nor the terms of the agreement while passing the impugned order. The appellant in reply to the application filed by the respondent under Order VII Rule 11 of the Civil Procedure Code in the alternative prayed that the plaint be returned to the appellant to enable them to file proceedings before the Appellate Tribunal. As the Court has come to the

conclusion that the Civil Court has no jurisdiction to decide the dispute, the appropriate procedure would be to return the plaint to enable the appellant to file before the Appellate Tribunal. Mr. Rao, learned counsel appearing for the respondent has no objection in case the plaint is returned to the appellant to enable them to present before the Appellate Tribunal in accordance with law. Hence, I pass the following :

ORDER

- (i) The impugned order dated 23.04.2012 stands modified and the plaint filed by the appellant shall be returned to the appellant.
- (ii) The learned Judge is accordingly directed to return the plaint filed by the appellant to enable them to file the appropriate proceedings before the Appellate Authority in accordance with law.
- (iii) All contentions of both the parties are left open.
- (iv) The appeal stands disposed of accordingly.

F. M. REIS, J.

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