



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 22<sup>nd</sup> JANUARY, 2024

IN THE MATTER OF:

+ **W.P.(C) 14182/2023 & CM APPL. 56130/2023**

M/S DEORA CABLE NETWORKS

..... Petitioner

Through: Mr. Vikram Singh and Mr. Rakesh  
Pandit, Advocates.

versus

DEN NETWORK LTD

..... Respondent

Through:

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

1. The instant writ petition under Article 227 of the Constitution of India has been filed challenging the Order dated 13.09.2023 passed by the Telecom Disputes Settlement and Appellate Tribunal (TDSAT).
2. The Respondent herein is a Cable Television Distribution/Multi-System Operator in India. The Petitioner herein is a registered Local Cable Operator and is authorized to carry business as a Cable Operator. The Respondent has a licence to re-transmit the digital cable TV signals of various broadcasters in the territory in which the Petitioner operates and the Petitioner receives signals of television channels and transfer the same through its cable television network to the subscribers.
3. An Interconnection Agreement was executed between the Petitioner and the Respondent on 08.08.2013. On 26.02.2020, the Respondent, which



has a licence to re-transmit the digital cable TV signals of various broadcasters in the territory in the Petitioner operates, issued a Legal Demand Notice for a sum of Rs.15,55,222/-. Since the amount was not paid by the Petitioner, the Respondent filed a recovery petition before TDSAT, New Delhi for recovery of the said amount and for the return of 778 Set Top Boxes (STBs). Issues were framed and evidence by way of affidavits has been filed by both the Petitioner and the Respondent. It is stated that when the matter was listed for filing of written arguments, the Respondent filed an application under Order VII Rule 14(3) seeking permission to file some additional documents, which are: (1) Copy of the Inventory List of STBs issued by the Respondent herein to the Petitioner herein; (2) Copy of the Order Request Form cum Receipt 'ORFR' for STBs; (3) Copy of the TRAI Letter dated 13.12.2013 and the Reply on behalf of the Petitioner therein dated 27.12.2013; (4) Copy of the Certificate under section 65-B of the Indian Evidence Act, 1872; and (5) Copy of Board Resolution in favour of Mr. Vikas Rawat.

4. The said application was objected to by the Petitioner herein contending that the said documents ought to have been placed along with the recovery petition and the same cannot be accepted after evidence are concluded and the matter has been kept for filing written arguments by the parties. Reply to the said application states that the said application of the Respondent ought not to be allowed because the Respondent has not disclosed as to whether the documents which are sought to be placed on record were in the power and control of the Respondent or not and why these documents were not disclosed earlier and mentioned in the recovery



petition.

5. The TDSAT by the Impugned Order dated 13.09.2023 allowed the application of the Respondent with costs of Rs.2,000/-. The TDSAT was of the opinion that these documents are necessary for adjudication of the dispute between the Parties.

6. Being aggrieved by allowing the application of the Respondent (Petitioner therein) filed under Order VII Rule 14(3) by the TDSAT *vide* Impugned Order dated 13.09.2023, the Petitioner (Respondent therein) has approached this Court.

7. Learned Counsel for the Petitioner states that the ingredients of Order VII Rule 14 has not been satisfied and the application ought to have been dismissed. He states that the application filed by the Respondent is nothing but an abuse of the process of law for delaying the dispute between the parties. He states that if all the documents were in the possession of the Respondent, then the same ought to have been filed with the plaint and the documents cannot be accepted after issues have been framed and more particularly when the matter has been placed for filing written arguments.

8. Heard learned Counsel appearing for the Petitioner and perused the material on record.

9. Order VII Rule 14 of the CPC reads as under:

***"14. Production of document on which plaintiff sues or relies.—(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the***



*plaint.*

*(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.*

*[(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.]*

*(4) Nothing in this rule shall apply to document produced for the cross-examination of the plaintiffs witnesses, or handed over to a witness merely to refresh his memory.]"*

10. The TDSAT while hearing the application was of the opinion that the Petition which has been filed by the Respondent is with a prayer for a direction to the Petitioner for return of 778 Set Top Boxes (STBs) in good and working condition, which had been issued to the Petitioner or to make payment for those STBs @ Rs. 1999/- per STB amounting to Rs. 15,55,222/-. The Petitioner contended that the documents or evidence supporting the claim of 778 STBs, said to be supplied by the Respondent, have not been filed by Respondent. It was categorically stated in Para 3 of reply, that as per records of the Petition, the business relations of parties remained in existence for 06 years and 04 months approximately. It was alleged that the Respondent herein supplied 778 STBs to the Petitioner herein, but no supporting document was filed with petition to support the said statement made in the Petition.



11. The TDSAT was of the opinion that the documents which are sought to be placed on record by the Respondent are necessary for adjudication of the dispute between the Parties. View of the Tribunal cannot be said to be so perverse which would require interference under Article 227 of the Constitution of India. The Tribunal was aware of the fact that there is a delay in filing of the documents on the part of the Respondent. The Tribunal was aware of the fact that the said documents could have been in the possession of the Respondent but the Tribunal was of the opinion that the procedural lapses cannot defeat the substantial justice and more particularly as mentioned in the TRAI Act that strict adherence of Code of Civil Procedure is not to be made rather Principal of Natural Justice is to be observed.

12. Section 16(1) of the TRAI Act reads as under:

***“16. Procedure and powers of Appellate Tribunal.—***

*(1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.”*

13. On the basis of the said legal proposition and the facts before it, the Tribunal was of the opinion that the application should be allowed and the Petitioner should be compensated by costs.

14. The present writ petition has been filed under Article 227 of the Constitution of India. It is well settled by the Hon'ble Supreme Court that High Court should not ordinarily interfere under Article 227 of the



Constitution of India in Orders made by a Court or a Tribunal during the proceedings pending before it.

15. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they perform the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to [Refer: Estralla Rubber v. Dass Estate (P) Ltd., (2001) 8 SCC 97].

16. The Apex Court in Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand, (1972) 1 SCC 898 has held that the powers under Article



227 of the Constitution of India is intended to be used sparingly.

17. This Court does not find any patent error in the Order of the Tribunal nor does the Order of the Tribunal is so perverse that it requires interference under Article 227 of the Constitution of India which is an appellate remedy.

18. The writ petition is dismissed, along with pending application(s), if any.

**SUBRAMONIUM PRASAD, J**

**JANUARY 22, 2024**

*S. Zakir*