

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

Date of decision: 10th APRIL, 2023

IN THE MATTER OF:

+ **LPA 187/2023 & CM APPLs. 12974/2023 & 12977/2023**

DEEPA M

..... Appellant

Through: Mr. Anirudh Wadhwa, Mr. Atul
Shankar Vinod, Mr. Keshav Gulati,
Mr. Kanishk Garg, Advocates

versus

SATLINKS & ANR.

..... Respondents

Through:

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The instant LPA arises out of an Order dated 20.02.2023 passed by the learned Single Judge in W.P.(C) 2153/2023 whereby the learned Single Judge has dismissed the writ petition challenging the Order dated 14.02.2022 passed by the learned Telecom Disputes Settlement and Appellate Tribunal (*hereinafter referred to as the 'TDSAT'*) in Execution Application No.7/2019.

2. The facts, in brief, leading to the instant LPA are as under:-

- i. The Appellant herein is the sole proprietor of M/s Satellite Cable Vision which entered into an oral agreement with

Respondent No.1 for receiving signals and distributing it among its customers.

- ii. It is stated that disputes arose between the parties relating to payments made for set top boxes purchased by Satellite Cable Vision from Respondent No.1.
- iii. It is stated that on 29.10.2015, Respondent No.1 filed Broadcasting Petition No.605/2015 before the learned TDSAT against Satellite Cable Vision through its proprietor, i.e., the Appellant herein, praying for the following reliefs:-

"A. Not to transmit the signals of any other MSO other than the Petitioner MSO until the dues of the Petitioner is cleared and no objection is obtained from the Petitioner.

B. Pass an order directing the Respondent to clear the balance dues of Rs. 27,000/- per month (monthly subscription charges agreed by the Respondents) from MAY 2013 till.

C. Pass an order directing the Respondent to act in accordance with the terms and conditions agreement dated 20.04.2014."

- iv. On 04.10.2018, learned TDSAT passed an order against the Satellite Cable Vision holding that Respondent No.1 is entitled to a decree for Rs.3,44,250/- and the aforesaid amount decreed should be paid by Respondent No.1/ Satellite Cable Vision within two months from 04.10.2018.
- v. Thereafter, on 26.03.2019, Respondent No.1 filed Execution Application No.7/2019 before the learned TDSAT for execution

of the Order dated 04.10.2018, praying for the following reliefs:-

" i. Allow this Execution Application and direct the Respondent to comply with the directions issued by this Hon'ble Court vide order dated 04.10.2018;

ii. Initiate appropriate proceedings and pass appropriate orders including appropriate penalty under Section 20 of the Act, for wilful and deliberate non-compliance of the order and directions dated 04.10.2018 of this Hon'ble Tribunal by the Respondents;

iii. Pass appropriate order in terms of Order 21 Rule 32 of Code of Civil Procedure read with Section 19 and Section 16 of the TRAI Act directing compliance of order/judgment dated 04.10.2018 passed by this Hon'ble Tribunal;"

- vi. Before the learned TDSAT, the Appellant herein argued that her non-compliance with the Order dated 04.10.2018 was neither deliberate nor wilful as her financial condition was extremely poor. On 29.05.2019, the learned TDSAT passed an order in Execution Application No.7/2019 directing the Appellant to furnish details of all her assets, moveable and immovable, through an affidavit. In the meanwhile, on 01.07.2019, the Appellant herein had preferred an appeal before the Hon'ble Supreme Court against the Order dated 04.10.2018 passed by the learned TDSAT.

- vii. On 01.07.2019, the Hon'ble Supreme Court dismissed the said appeal observing that no case is made out to interfere with the order passed by the Tribunal.
- viii. On 22.07.2019, the Appellant herein in compliance of the Order dated 29.05.2019 passed by the learned TDSAT had filed an affidavit furnishing details of all her assets in her name.
- ix. On 14.11.2022, the learned TDSAT passed an order by which bailable warrants were issued against the Appellant. The relevant portion of the said order reads as under:-

"Appeal preferred against this Judgment and decree in B.P. No. 605 of 2015 was preferred by the respondent. Appeal was preferred by the respondent before the Hon'ble the Supreme Court of India bearing Diary No. 47789 of 2018 and the said appeal was dismissed by Hon'ble the Supreme Court vide order dated 1.7.2019. For ready reference the said order reads as under:

" 1. Delay Condoned.

2. No case is made out to interfere with the impugned judgment and order passed by the Tribunal. The appeal is, accordingly, dismissed.

3. Pending application(s), if any, shall stands disposed of. Despite the dismissal the appeal preferred by the respondent, the decretal amount has not been paid by the respondent to the Petitioner. The judgment and the decree of this Tribunal in B.P. No. 605 of 2015 has attained finality."

We have heard the counsel appearing for the Petitioner at length who has as per Section 16 of the TRAI Act, 1997 this Tribunal is not bound by the provisions of CPC. This Tribunal can have for its own procedure. The counsel appearing for the Respondent has read over the Section 16 at length and has submitted that warrant be issued upon the owner of the Respondent so that the decretal amount can be paid or some settlement may take place.

In view of these submissions and also looking to the facts and circumstances of the case and also looking to the provisions of Section 16 of the TRAI Act, 1997, we hereby issue Bailable Warrant upon Mrs. Deepa M – owner of the respondent in the sum of Rs. 50,000/- whose address is as under along with the address of the Police Station.:-

- 1. This Petition has been filed for the recovery of Rs. 3 lakhs (approximately) from the respondent.*
- 2. We have also issued a notice to the respondent, but they have not appeared. We have again issued notice through the concerned Police Station. Despite these facts, nobody appears for the Respondent.*
- 3. We hereby issue Bailable Warrant upon Ms. Deepa M W/o. Sajith U., Proprietor of the respondent in the sum of Rs. 50,000/-. Dasti/Direct service upto Head of aforesaid Police Station(s). The details furnished by the petitioner are as under:-*

Address of the Police Station

*Ottapalam Police Station R.S. Road Ottapalam,
Palakkad – 679101*

*Name of person upon whom Bailable Warrant
is to be served: -*

*Ms. Deepa M W/o. Sajith U, Unniyambath
House Paalarmangalam, Palapuram,
Ottapalam, Kerala – 679103*

*4. The Head of the aforesaid Police Station will
serve the Bailable Warrant upon the aforesaid
person(s) of the respondent and after
completing the formalities of grant of Bail and
after taking his signatures, the paper will be
returned to this Tribunal immediately."*

- x. On 07.12.2022, in pursuance of the Order dated 14.11.2022 passed by the learned TDSAT, the Registrar, TDSAT addressed a letter to the Officer-in-Charge (SHO) of the Ottapalam Police Station, Palakkad, Kerala directing him to serve bailable warrants upon the Appellant for her personal appearance before the learned TDSAT on 23.03.2023. It was directed that if the Appellant fails to give a bond in the sum of Rs.50,000/- to attend the Court on 23.03.2023, she be arrested and produced before the Tribunal on the said date.
- xi. Aggrieved by the said Order, the Appellant preferred W.P.(C) No. 2153/2023 praying for quashing of the Order dated 14.11.2022 passed by the learned TDSAT in Execution Application No. 7/2019 and all consequent action taken by the Respondents pursuant to the same. The learned Single Judge

vide Order dated 20.02.2023 dismissed the said writ petition on the following terms:-

"6. This order of the TDSAT has also been upheld by the Supreme Court in its order dated 1st July, 2019. A perusal of the impugned order would show that the Respondent has moved execution proceedings and accordingly bailable warrants have been issued by the TDSAT.

7. Considering the fact that the Petitioner was running a cable operator business and the TDSAT has issued bailable warrants, this Court is not inclined to interfere in the present proceedings. Needless to add, if there are any legal grounds to be urged, the Petitioner is free to urge the same before the TDSAT. "

xii. Aggrieved by the said Order, the Appellant has filed the instant LPA.

3. Learned Counsel for the Appellant submits that the learned Single Judge has erred in upholding the order passed by the learned TDSAT as the learned TDSAT does not have any express power to arrest an individual and direct for bailable warrants to be issued against an individual for enforcement of a decree. He submits that the learned TDSAT in its order has erroneously noted that notices were issued to the Appellant and the Appellant neglected to appear. He states that no such notices were ever issued to the Appellant.

4. Learned Counsel for the Appellant submits that as per Section 56 of Code of Civil Procedure, arrest or detention of a woman in execution of a

decree for money is prohibited and, therefore, the learned TDSAT did not have the power to issue a bailable warrant against the Appellant.

5. The said contention cannot be accepted. Section 16 of the Telecom Regulatory Authority of India Act, 1997 reads as under:-

" (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.

(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or a copy of such record or document, from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing an application for default or deciding it, ex parte;

(h) setting aside any order of dismissal of any application for default or any order passed by it, ex parte; and

(i) any other matter which may be prescribed.

(3) Every proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860) and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)."

6. A perusal of Section 16 of the TRAI Act shows that the learned TDSAT is not bound by the procedure laid down by the Code of Civil Procedure and has got its own power to regulate its own procedure. In any event the Order passed by the learned TDSAT is not one of arrest or detention. The relevant portion of the Order passed by the learned TDSAT reads as under:-

" In view of these submissions and also looking to the facts and circumstances of the case and also looking to the provisions of Section 16 of the TRAI Act, 1997, we hereby issue Bailable Warrant upon Mrs. Deepa M – owner of the respondent in the sum of Rs. 50,000/- whose address is as under along with the address of the Police Station.:-

1. This Petition has been filed for the recovery of Rs. 3 lakhs (approximately) from the respondent.

2. We have also issued a notice to the respondent, but they have not appeared. We have again issued notice through the concerned Police Station. Despite these facts, nobody appears for the Respondent.

3. We hereby issue Bailable Warrant upon Ms. Deepa M W/o. Sajith U., Proprietor of the respondent in the sum of Rs. 50,000/-. Dasti/Direct service upto Head of aforesaid Police Station(s). The details furnished by the petitioner are as under:-

Address of the Police Station

*Ottapalam Police Station R.S. Road Ottapalam,
Palakkad – 679101*

*Name of person upon whom Bailable Warrant
is to be served: -*

*Ms. Deepa M W/o. Sajith U, Unniyambath
House Paalarmangalam, Palapuram,
Ottapalam, Kerala – 679103*

4. The Head of the aforesaid Police Station will serve the Bailable Warrant upon the aforesaid person(s) of the respondent and after completing the formalities of grant of Bail and after taking his signatures, the paper will be returned to this Tribunal immediately."

7. The learned TDSAT has issued only bailable warrants to secure the presence of the Appellant. The bailable warrants are fixed at Rs.50,000/-. It does not order for arrest or detention.

8. The first contention raised by learned Counsel for the Appellant is that the Appellant has not received any notice of the learned TDSAT. The learned TDSAT in the Order dated 14.11.2022 has specifically noted that notices were issued to the Appellant but the Appellant did not appear. Notices were again served by the local Police Station yet nobody appeared for the Appellant. This shows a complete defiant attitude on behalf of the Appellant. We have no reason to disbelieve the findings of the Tribunal.

9. The Appellant has shown a defiant attitude to the proceedings before the learned TDSAT and was reluctant to appear. It is evident that and after suffering a decree, the Appellant only wants to procrastinate the proceedings by consistently failing to appear before the learned TDSAT. The order of the learned TDSAT in issuing bailable warrants on a bond in the sum of Rs.50,000/- cannot be faulted.

10. The facts of the present case show that the Appellant is liable to pay a sum of Rs.3,44,250/- to Respondent No.1. This order has been upheld right up to the Apex Court. Since the Appellant was not honouring the order of the learned TDSAT, Respondent No.1 approached the learned TDSAT by filing an application for execution. The order which was the subject matter of challenge before the learned Single Judge is an order by which bailable warrants in the sum of Rs.50,000/- were issued.

11. Pursuant to the said order, the learned TDSAT issued a notice, which reads as under:-

*" To,
The Officer- in- charge (SHO),
Head of the Police Station,
Ottapalam Police Station,
R.S. Road Ottapalam,*

Palakkad - 679101

WHEREAS, the Hon'ble Tribunal, vide order dated 14.11.2022 has directed for issuance of the bailable warrants against the non appearing respondent:

*Ms. Deepa M. W/o. Sajith U, Proprietor of
Satellite Cable Vision
Unniyambath House Paelannangalam,
Palapuram, Ottappalam,
Kerala - 679103*

and therefore, you, the Officer-in-charge and the Head of the Police Station, Ottapalam Police Station, R.S. Road Ottapalath, Palakkad — 679101 are hereby directed to serve the Bailable Warrant upon the aforesaid Ms. Deepa M W/o Sajith U, and after completing the formalities of grant of Bail in the sum of Rs.50,000/- and after taking her signature, the paper be returned to this Tribunal Immediately for her personal appearance before this Tribunal on 23rd March 2023 at 11:00 AM, when the matter will be taken up in Court (Copy of order dated 14/11/2022 is enclosed). Herein fail not.

If the aforesaid Ms. Deepa M. W/o. Sajith U, fails to give bond in the sum of Rs.50,000/- to attend the court on the 23rd March of 2023 he be arrested and produced before this Tribunal on the said date. "

12. The notice also states that the Appellant is only to give a bond in the sum of Rs.50,000/- to attend the Court on 23.03.2023. It does not even call for a surety. The bond is only to secure the presence of the Appellant.

13. Even assuming that Section 56 of the Code of Civil Procedure will not be covered under the term 'procedure', even then the order passed by the

Tribunal along with the notice are not in violation of Section 56 of the Code of Civil Procedure; it only prohibits arrest or detention.

14. Setting a condition for securing appearance in Court for the purpose of execution of a decree cannot be said to be in violation of Section 56 of the Code of Civil Procedure.

15. This Court, therefore, does not find any infirmity with the order passed by the learned Single Judge or that of the learned TDSAT. The LPA is dismissed, along with the pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

APRIL 10, 2023

hsk/arsh