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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 19426 OF 2022
IN
FIRST APPEAL NO. 1216 OF 2022

Just Dial Ltd	...Applicant
<i>In the matter between</i>	
Just Dial Ltd	...Appellant
<i>Versus</i>	
IndiaMart Intermesh Ltd & Ors	...Respondents

Mr Sanjay Jain, *with Anoshak Daver, Harsh Behany, Neena Shah, Gaurav Gandhi & Saloni Manjrekar i/b Harsh L Behany for the Applicant.*

Dr Birendra Saraf, Senior Advocate, *with Vikrant Singh Negi, Ekta Tyagi & Pratik Thakkar i/b DSK Legal for the Respondent No.1*

CORAM G.S. Patel &
Gauri Godse, JJ.
DATED: 10th November 2022

PC:-

1. The Appeal stands admitted. It is ready for final disposal.

2. The Appeal is directed against an Order dated 6th December 2021 passed by the Telecom Disputes Settlement and Appellate Tribunal (“TDSAT”) in New Delhi. By the impugned order, passed in Cyber Appeal No. 2 of 2021, the TDSAT set aside two of the four directions passed by the Adjudicating Officer (“AO”) on a

complaint made by the present Appellant, Just Dial Limited. The Appeal was filed by the Respondent to the complaint, the present Respondent to the First Appeal, IndiaMART InterMESH Limited (“IndiaMART”).

3. The details of Just Dial’s original complaint before the AO, (the Principal Secretary (Information Technology) of the Government of Maharashtra) in Case No. 1 of 2021 need not be set out in detail. It is sufficient to note that Just Dial’s case was that IndiaMART had illegally and unauthorisedly accessed Just Dial’s online database by various methods and technologies. On 5th March 2021, the AO passed an Order with the following four directions:

“1. Rule 9 of the Enquiry Rules states that, “When an adjudication into a matter of contravention is pending before an Adjudicating Officer, same matter shall not be pursued before any court or Tribunal or Authority in any proceeding whatsoever and if there is already filed a report in relation to the same matter, the proceedings before such other court, Tribunal or Authority shall be deemed to be withdrawn.

Pursuant to the above-mentioned Rule, till the instant case is pending before this forum, if the same subject matter is being pursued by the parties before any other forum, the same shall be withdrawn from such other forum;

2. As the interim relief sought by the Complainant cannot be granted without adjudicating upon the instant matter in its entirety, Order on the Interim application shall constitute part of the Final Order;

3. The Respondents are directed to submit the relevant documents in order to enable the Complainant to calculate damages in the current matter and are also directed to

submit the acknowledgement of the delivery of the documents before this forum either through the e-mail ID or registered post;

4. Basis the submissions advanced by the parties and documents produced on record, there is sufficient cause to hold enquiry against the Respondents under Rule 4(g) of the Enquiry Rules. In view of the same, a Hearing Notice specifying the date and manner of hearing shall be issued to the parties in due course of time.”

4. Indiamart filed Cyber Appeal No. 2 of 2021 against this order. There was no challenge to directions 1 and 2 of the AO.

5. Rule 9 of the Information Technology (Qualification and Experience of Adjudication Officers and Manner of Holding Enquiry) Rules 2003 reads thus:

“9. **Duplicity Avoided** :When an adjudication into a matter of contravention is pending before an Adjudicating Officer, same matter shall not be pursued before any court or Tribunal or Authority in any proceeding whatsoever and if there is already filed a report in relation to the same matter, the proceedings before such other court, Tribunal or Authority shall be deemed to be withdrawn”.

6. On a plain reading what this means is that once a complaint is filed before the AO, the complainant cannot bring another proceeding regarding “*the same matter*” before another court, Tribunal or Authority. If a report has been filed in the same matter then the subsequent case before such other Court, Tribunal, or Authority is, by a deeming fiction, to stand withdrawn. The clause,

reproduced above, despite the unfortunate wording of its heading, is quite unambiguous.

7. As a general principle what such a clause says is that the same matter cannot be pursued simultaneously in two different forums. It intends to prevent forum shopping and to prevent conflicting orders by two different adjudicating authorities or tribunals. But this does not mean that what a complainant says in one forum cannot be relied on in a properly contested proceeding in another forum. What is to be made of that pleading or application is a matter left to the decision making authority.

8. This is of some significance, because, according to Mr Jain for the Appellant the TDSAT has quite impermissibly interfered with the AO's order in regard to Direction No.1, although this was never a ground of Appeal. He says so because in Paragraph 16 TDSAT observed as follows:

“16. It is useful to indicate that when some related issues are pending before Constitutional Courts such as High Court, the orders passed by such courts, more so between the parties deserve highest respect despite the provisions in Rule 9. This should also be kept in mind while passing order in accordance with law”.

9. With respect we do not read this paragraph as meaning that the TDSAT directed the AO to function in contravention of Rule 9. All that the TDSAT has done is to say that a proceeding in the High Court cannot be simply ignored in its entirety.

10. This is important because it is Just Dial, the complainant, which not only filed a complaint before the AO under the Information Technology Act, 2000 but also filed a suit against Indiamart on the Original Side of this Court relating to the same data. An Interim Application in that matter was moved before one of us, GS Patel, J sitting singly. On 2nd February 2021, ad interim relief was refused.

11. This, therefore, is a very strange situation. Just Dial is the Applicant before the AO. It is also the Plaintiff before this Court. What it seeks before the AO is that its own subsequently filed suit in this court be ignored by virtue of Rule 9. All that TDSAT said is that orders passed by the High Court should be taken into account and cannot be entirely ignored when considering an application before the AO, whether for interim relief or otherwise. There is nothing exceptionable in the approach of the TDSAT. In fact, we believe it is the correct approach. That the subsequent proceeding is deemed to be withdrawn cannot and does not mean that orders of the other Court, especially the High Court, are non-est or void.

12. Then TDSAT set aside the AO's directions 3 and 4. These have been extracted above. We believe that TDSAT was completely correct in its approach. Direction 3 asked for the production of documents by IndiaMART "to calculate damages in the current matter". But that inquiry or order of forcible discovery "to calculate damages" can only follow a conclusion arrived at in a reasoned manner that there is in fact a cause of action and that IndiaMART in fact is liable under that cause of action. First liability is to be

ascertained, and only then will come question of computation of damages. Whether or not damages can be computed on the basis of documents compelled from IndiaMART is also another matter to be taken into account, that is to say whether it is Just Dial that should first be asked to establish its own case on damages or whether it can do so simply by compelling documents from its opponent.

13. Direction 4 of the AO was correctly set aside by TDSAT as being entirely unreasoned. We agree. There are simply no reasons provided by the AO to hold that there is sufficient cause made out.

14. The TDSAT did not do anything more then remit the matter to the AO for a decision afresh on directions 3 and 4 in accordance with law. It also gave Just Dial an opportunity to file an appropriate application for discovery in a different fashion if thought fit.

15. As regards Rule 9, it is sufficient for us to clarify that the TDSAT order, correctly read, does not require the AO to reject an application for interim relief merely because ad-interim relief has been refused by this court in Just Dial's aforesaid suit. All contentions in that regard are obviously kept open on both sides before the AO.

16. It is undoubtedly open to both sides to rely on the papers and proceedings in the High Court suit for their respective purposes.

17. We have expressed no opinion in regard to merits of the application before the AO. For that matter neither has the TDSAT.

18. In our view, the impugned order of the TDSAT calls for no interference. For the reasons set out above, and with the clarifications we have made, the Appeal is dismissed.

(Gauri Godse, J)

(G. S. Patel, J)