

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

Pronounced on: 04th December, 2014

+ CS (OS) NO. 383/ 2013

K.T. HOLIDAYS PVT LTD. Plaintiff

Through: Mr. Nikhil Rohatgi, Advocate

versus

JAPAN INTERNATIONAL CO-OPERATION AGENCY

.... Defendant

Through: Mr. Amit Dhingra, Advocate

CORAM:

HON'BLE MR. JUSTICE G.P. MITTAL

CS (OS) NO. 383/ 2013 AND I.A. NO. 14388/ 2014

1. This suit for recovery of ₹ 79,53,634/- has been filed by the Plaintiff against the Defendant (₹ 69,53,634/- being the price of air tickets; interest @ 24% per annum from the month of February, 2010 and ₹ 10,00,000/- towards damages) with the allegation that the Defendant approached the Plaintiff for supply of air tickets (for the officers and employees of the Defendant) and a Travel Desk Agreement (TDA) dated 01.04.2009 was entered into between the parties whereby the Plaintiff was required to provide services like renting cars, booking hotels, air tickets *etc.* to the Defendant. For this purpose, one employee of the Plaintiff was also required to be permanently deputed

in the Defendant's office and whenever need would arise, the Defendant would place orders through the deputed employee. According to the TDA, the Plaintiff was required to raise the invoices in respect of services availed by the Defendant on the same or the next day and also send to the Defendant, consolidated statement of accounts at the end of each month. The Defendant was required to make the payment in respect of the monthly amount on 15th day of each succeeding month failing which, interest @ 24% per annum was liable to be paid by the Defendant to the Plaintiff. It is averred that the business was going on smoothly between the Plaintiff and the Defendant. In November, 2009, the Defendant wanted to send two groups of its employees to Japan for which the Defendant requested the Plaintiff to provide price quotation. The quote provided by the Plaintiff was unconditionally accepted by the Defendant. The Plaintiff booked tickets in Thai and Japan Airways and the Defendant duly availed the services. Invoices were raised. However, the Defendant failed to pay the amount of the tickets of Thai Airways and kept on delaying the matter on one pretext or the other.

2. It is averred that by a letter dated 11.01.2010, the Defendant disputed some invoices issued by the Plaintiff. The Defendant dishonestly

stated that the tickets booked on Japan Airways were purchased at discounted rates but were sold to it by the Plaintiff at higher rates without offering the benefit of discount. It is the case of the Plaintiff that the Plaintiff being a member of IATA (International Air Transport Association) was at liberty to purchase the tickets at negotiated rates and neither the TDA nor the industry practice made it mandatory for the Plaintiff to provide the availed discount to the customer *i.e.* the Defendant. The Plaintiff was only obliged to provide the best price to the Defendant.

3. It is further averred that by a letter dated 13.01.2010, the Defendant without giving any opportunity to the Plaintiff to provide an explanation, unilaterally terminated the TDA on frivolous ground that the representative of the Plaintiff had threatened the officials of the Defendant. The Defendant, for the first time, in a letter dated 25.01.2010 alleged that the Plaintiff had booked different class of tickets than what was requested which is completely false. In February, 2010, the Defendant completely stopped placing orders with the Plaintiff and the TDA expired on 31.03.2001. Hence this suit for recovery.

4. Since the requisite court fee was not filed along with the suit by the Plaintiff, extensions were granted by the Joint Registrar to file the requisite court fee from time to time *w.e.f.* 26.02.2013. Ultimately, by an order dated 26.03.2014, the Joint Registrar granted two weeks time as a last and final opportunity to pay the court fee and subject to taking steps, summons were ordered to be issued to the Defendant returnable on 15.07.2014. The order dated 26.03.2014 passed by the Joint Registrar is extracted hereunder:

“Steps have not been taken for filing the deficit court fee and PF.

Perusal of the records shows that the case is almost one year old, but plaintiff has not taken steps for depositing the court fee, despite opportunity being given.

Ld. Counsel for plaintiff submits that he has recently engaged and he will take steps within 2-3 weeks, as per the instructions to the plaintiff. The plaintiff is not taking serious steps for prosecuting the case, hence he is imposed cost of Rs. 10,000/- to be deposited Delhi High Court Legal Aid Committee.

Steps be taken within two weeks for deposit for court fees and filing of PF for service of defendant by way of last and final opportunity.

It is made clear that in case plaintiff fails to take steps within the said period, no further adjournment is being given at this stage.

Put up for service of defendant on 15th July, 2014.”

5. Although summons were ordered to be issued subject to filing of the deficient court fee and taking steps, it appears that the summons were issued to the Defendant without court fee and the application (I.A. No. 14388/ 2014) was moved by the Plaintiff seeking further extension of time to pay the court fee.
6. When the case was listed for hearing arguments on this application, the learned counsel for the Defendant urged that although there is no genuine ground for grant of extension of time in depositing the court fee, but even if the Court prefers to grant extension, the suit on the day it was filed was barred by limitation and the plaint is therefore, liable to be rejected.
7. I have heard the learned counsel for the parties on the application (I.A. No. 14388/ 2014) as also on the point whether the suit is within limitation or not.
8. Admittedly, a TDA was entered into between the parties which was valid from 01.04.2009 to 31.03.2010 (for a period of one year). As per the terms of the TDA, the Defendant was required to make the payment in respect of the services provided by 15th day of each succeeding month. It would be apposite to extract the relevant clause of the TDA hereunder for ready reference:

“Service Payment

K T shall send the invoice for issuing the ticket or other services like charge for refund of air travel, car rental, hotel etc. for each individual at the time of issuing the tickets and send the same immediately to JICA within the same day or latest by next day. JICA shall make payment for the same by the 15th of each month.”

9. The learned counsel for the Defendant has taken me through the various invoices placed on record by the Plaintiff (from pages 14 to 31 in the Documents File) and filed by the Plaintiff with the suit on 22.02.2013. It is urged that the dispute is with regard to the invoices for the month of November, 2009. The amount in respect of these invoices in terms of TDA was payable by 15.12.2009. Thus, the limitation to file the suit for recovery of this amount would start on 16.12.2009 and would end on 16.12.2012. It is urged that the suit of the Plaintiff being filed in February, 2013 is hopelessly barred by limitation.
10. The learned counsel for the Plaintiff, however, refers to the letter dated 09.06.2010 (written by the Defendant to the Plaintiff) and contends that it was only on 09.06.2010 that the Defendant had finally denied its liability and therefore, the limitation would start only on

receipt of this letter. The suit being filed in February, 2013 is clearly within limitation, argues the learned counsel for the Plaintiff.

11. It is not in dispute that the amounts of invoices relate to the month of November, 2009. A letter dated 11.01.2010 was written by the Defendant to the Plaintiff whereby certain issues were raised by the Defendant regarding inflated invoices being furnished. A reference was made to the tickets issued from November 08, 2009 to November 22, 2009. The Plaintiff was requested to correct the invoices raised on the Defendant. The Plaintiff was further informed that the Defendant was investigating other similar transactions and was therefore, withholding the payment under pending invoices. The relevant paragraphs of the letter dated 11.01.2010 are extracted hereunder:

“JICA also demands that KT should correct the invoices raised on JICA and provide details of the calculations thereof. Further JICA demands that KT should charge only the cancellation charges leviable on a full fare economy ticket.

Please also note that JICA is still in the process of investigating other similar transactions and therefore shall withhold payment under pending invoices or for other services rendered by KT till the issues mentioned in this notice and other discrepancies which may be brought to light during the ongoing investigation are resolved or corrected to the satisfaction of JICA.

.....

In the event KT is unable to provide satisfactory and adequate replies to JICA's aforesaid demands and/or does not refund the excess amount and/or makes good the loss incurred by JICA mentioned above within 7 days from the date of this notice, JICA will be constrained to take appropriate action against KT as permissible under applicable laws or otherwise.

This notice is without prejudice to right of JICA to take any other action against KT as may be deemed necessary and proper."

12. Another letter dated 13.01.2010 was written by the Defendant to the Plaintiff which recorded misbehaviour of Mr. Gautam Sapra, Director of the Plaintiff and terminated the TDA. The letter dated 13.01.2010 reads as under:

"I hereby refer to the notice dated 11th January, 2010 issued by JICA to KT ("Notice"), pursuant to which you had sought an appointment with the undersigned to explain the irregularities pointed out by JICA in the notice. In response to your request I had agreed to meet you today along with my colleagues at my office at 12 noon. At our request our lawyer from Dua Associates was also present at the meeting.

However in the said meeting instead of explaining your point of view, you intimidated me and my colleagues and also indulged in character-assassination by levelling totally unwarranted allegations of a serious nature against me and my colleagues. We have taken a serious cognizance of your threats and shall do all that is needful to protect our interests in law and otherwise.

*Needless to say that in view of still unexplained irregularities as set out in the Notice coupled with your intimidating behaviour today, I am compelled to terminate with immediate effect the Travel Desk Agreement (“**Travel Desk Agreement**”) executed between JICA and KT under which KT was engaged for providing its services to JICA for a period of 1 year from April 1, 2009. In view of this termination you are hereby requested to immediately take back and remove your staff posted (as per the Travel Desk Agreement) at the travel desk at JICA India Office.*

Kindly note that any effort to enter JICA’s premises without JICA’s permission shall be treated as a trespass and you shall be entirely responsible for all the consequences thereof in law and otherwise.

As communicated to you in the meeting today, KT’s dues, if any, shall be cleared only after JICA’s internal investigation into KT’s billing irregularities is completed.”

13. Thus, by virtue of the letter dated 13.01.2010, not only the TDA was terminated but the Plaintiff was also informed that its dues will be cleared only after internal investigation in respect of Plaintiff’s billing irregularities is completed. Further, letters dated 13.01.2010 and 14.01.2010 are alleged to have been written by the Plaintiff to the Defendant. Allegations made in those letters were refuted by the Defendant and the irregularities committed by the Plaintiff were again pointed out by a letter dated 25.01.2010 written by the Defendant. The relevant paragraphs of the letter dated 25.01.2010 are extracted hereunder:

“Subject: Letters of K.T. Holidays Private Limited (“KT”) dated 13.01.2010 and 14.01.2010 addressed to Japan International Cooperation Agency (“JICA”)

We refer to your aforesaid letters in continuation of our letters dated January 11, 2010 we write to you as under:

At the outset, JICA denies the correctness of each and every allegation contained in your letters dated January 13, 2010 and January 14, 2010 and states that the same are completely misconceived and an attempt to unjustifiably cover your dishonest actions of cheating and misrepresentation. It is in fact KT which has been involved in fraudulent and dishonest activities to enrich itself in an unjust manner at the cost of JICA.

Whilst we are continuing our internal investigation as stated in our letter dated January 13, 2010.

In this regard, the correct position is that JICA had issued instructions to KT, in terms of the Travel Desk Agreement, to purchase seven international airline tickets on JAL in full Fare economy class (Y Class) for travel departing on November 8, 2009 on following routes/sectors.

8th November Delhi/Narita

9th November Haneda/Hiroshima

27th November Itami/Haneda-Narita/Delhi

On such instructions, KT booked the tickets and forwarded the passengers Electronic ticket Receipt which was not the actual ticket. In the said Electronic Ticket Receipt the Fare Basis of the ticket is shown to be of YRT. However, it came to knowledge of JICA that the tickets which were issued by KT were not of Fare Basis of YRT and of Y class but of being S class(discounted ticket).

KT with an intention to cheat JICA sent a wrong Electronic Ticket Receipt to JICA and its passengers, to make JICA believe that the tickets which were being issued for the passengers were Full Fare economy class tickets.

.....

In view of what is stated hereinabove, the allegations in your two letters stated above are completely false and misconceived. Your allegations regarding Mr. Yamada are also false and concocted and the same are made in an attempt to cover up your illegal and malafide actions. JICA also denies that KT is entitled to a payment of Rs.42 lakhs as alleged.”

14. Hence, by virtue of this letter, the Defendant not only confronted the Plaintiff with the irregularities and the inflated invoices raised, but also denied the Defendant's liability to pay a sum of ₹ 42 lakhs. The Plaintiff was further required to issue revised invoices to Defendant's satisfaction for adjustment and payment, if any, within seven days of receipt of this letter. Admittedly, no revised invoices were issued by the Plaintiff to the Defendant as required by this letter. Even if the letter dated 25.01.2010 may be taken as indirect acknowledgement of liability, the Plaintiff at most could have filed the suit within a period of three years from 25.01.2010. A perusal of the record reveals that the suit was instituted only on 22.02.2013, which is clearly barred by limitation.

15. In view of my findings above, the extension of time to deposit the court fee loses any significance. At the same time, the application having been made, it would be appropriate to dispose of the application on merits. As I have already stated above, extension was granted by the Joint Registrar from time to time since February, 2013. Last such extension was granted for a period of two weeks on 26.03.2014. The period of two weeks came to an end on 09.04.2014. This application for extension of time to deposit the court fee alongwith the court fee has been moved only on 01.08.2014. The averments made for extension of time are contained in paras 4 to 6 of the application, which are extracted hereunder:

“4. In a nutshell, the reasons for not paying the court fees put forth in IA No.14664/2013 were threefold:

- a. The Plaintiff Company was undergoing tax audits until June 2013.*
- b. The mother of Mr. Gautam Sapra, the Director of the Plaintiff Company had undergone a major heart surgery and was discharged from the hospital in August 2013 and was advised bed rest for 3 months. In fact, being an old and frail woman, it took her almost 7-8 months to fully recover. Needless to say Mr. Gautam Sapra and his sister were both busy attending to their mother’s needs and hence the Plaintiff Company could not operate at all during this time, including attending to court matters. It is*

pertinent to note that the Plaintiff Company has only 3 Directors, namely Mr. Gautam Sapra, his sister and his mother. 100% of the shareholding of the Company is also owned by them.

c. The Plaintiff was low on funds and in certain arbitration proceedings before Mrs. Manju Goel, Sole Arbitrator, the Plaintiff had been awarded several lakhs of Rupees. In fact, in the arbitration titled as “Mitsui Chemicals v. KT Holidays” the award was passed in favour of the Plaintiff but it has still not received the amount as the said Mitsui Chemicals had filed a S.34 Petition in the District Court at Saket, New Delhi, challenging the award. Final arguments on the said S.34 Petition were heard by the Hon’ble Court on 31.7.2014. The other arbitration before Mrs. Manju Goel is still pending.

d. Therefore it may be seen that the reason for which this Hon’ble Court allowed the IA No.14664/2013 continued to hold good even subsequent to the said application being allowed. The Plaintiff prays that this Hon’ble Court may kindly show the same leniency once more as no prejudice has been caused to the Defendant.

5. The Plaintiff submits that an additional reason for non-payment of court fees was that, having had certain unsatisfactory experiences in the past, the Plaintiff changes its previous lawyer in November-December 2013 and appointed the present lawyer only in late March 2014 as it took him time to find a lawyer.

6. *Finally, another genuine reason for not filing the court fees was that after filing of IA No.11856/2014 by the Defendant under Order 7 Rule 11, the Plaintiff was initially considering withdrawing the present suit, applying for Central Government permission under S.86 of the CPC and then filing the same afresh. However, when the Plaintiff was advised by his lawyer that he has at least an arguable case against the said application, the Plaintiff has decided to go ahead with the present suit and hence applied for the Court Fees.”*

16. The averments made in the application have been refuted by the Defendant by filing a reply. It is stated in the reply that the averments made in the application are false. In *A. Nawab John v. V.N. Subramaniam*, (2012) 7 SCC 738, relied upon by the Plaintiff, it was laid down that although the Court has a discretion under Section 149 of the Code of Civil Procedure, 1908 (CPC) to grant time to the Plaintiff to deposit the necessary court fee, but before exercising such discretion, the Court must scrutinise the explanation offered by the Plaintiff for delayed payment of the deficit court fee. In para 44 of the report, the Supreme Court observed as under:

“44. It is well settled that the judicial discretion is required to be exercised in accordance with the settled principles of law. It must not be exercised in a manner to confer an unfair advantage on one of the parties to the litigation. In a case where the plaint is filed within the period of limitation prescribed by law but with deficit court fee and the plaintiff

seeks to make good the deficit of the court fee beyond the period of limitation, the court, though has discretion under Section 149 CPC, must scrutinise the explanation offered for the delayed payment of the deficit court fee carefully because exercise of such discretion would certainly have some bearing on the rights and obligations of the defendants or persons claiming through the defendants. (The case on hand is a classic example of such a situation.) It necessarily follows from the above that Section 149 CPC does not confer an absolute right in favour of a plaintiff to pay the court fee as and when it pleases the plaintiff. It only enables a plaintiff to seek the indulgence of the court to permit the payment of court fee at a point of time later than the presentation of the plaint. The exercise of the discretion by the court is conditional upon the satisfaction of the court that the plaintiff offered a legally acceptable explanation for not paying the court fee within the period of limitation.”

17. In the instant case, the Plaintiff has made just vague averments which will not entitle him to the extension of time of more than six months in paying the deficient court fee. In the application, the Plaintiff has stated that he himself had undergone a major heart surgery and was discharged from the hospital only in August, 2013. The date of the surgery has not been stated in the application. It is stated that the Plaintiff was low on funds and could not get the money under the award passed by the Arbitrator. Although this cannot be a ground for extension of time for payment of the court fee, yet the averments have been denied and copies of the balance sheets of the Plaintiff have been

placed on record by the Defendant to show that the Plaintiff had sufficient amount to pay the court fee. It is also stated that initially, the Plaintiff was considering withdrawal of the suit and to seek permission under Section 86 of the CPC, but it was advised by its lawyer that it has an arguable case and hence, it decided to go ahead with the suit. This cannot again be a ground for grant of extension of time for payment of the court fee.

18. In view of the foregoing discussion, the suit of the Plaintiff is barred by limitation. Not only that, it was filed beyond the period of limitation and on the day it was filed, the suit cannot be treated to have been filed on that date as well as the requisite court fee was not paid. Thus, the plaint is hereby rejected.

(G.P. MITTAL)
JUDGE

DECEMBER 04, 2014

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