

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 1168 OF 2015

IN
SUIT NO. 597 OF 2014

Dr. Vijay Mallya and Ors. ... Applicants /
Def. Nos. 2 to 7

IN THE MATTER BETWEEN:

Airports Authority of India ... Plaintiff

Versus

Kingfisher Airlines Limited and Ors. ... Defendants

Ms. Rekha Rajgopal a/w. Ms. Debashree M. for the Plaintiff.
Ms. Ankita Singhania i/b. Bachubhai Munim and Company for the Applicants /
Defendant Nos. 2 to 7.

CORAM : S.J. KATHAWALLA, J.
DATED : 21ST OCTOBER, 2015

P.C.

1. By the above Chamber Summons, the Applicants / Defendant Nos. 2 to 7
have sought the following relief :

*“that this Hon'ble Court be pleased to strike out the names of the
Applicants from the Plaint under the provisions of Order 1, Rule 10 (2) of
the Code of Civil Procedure, 1908”.*

2. The above Suit is filed by the Plaintiff – Airports Authority of India
against Defendant No. 1 – Kingfisher Airlines Limited and Defendant Nos. 2 to 7 i.e.
Chairman & Managing Director, Chief Financial Officer, Vice President (Finance),
Vice Chairman, Non Executive, Non Independent Director and Non Executive, Non

Independent Director of Defendant No. 1 respectively for the following relief :

“That the Defendants be ordered and decreed to pay to the Plaintiff a sum of Rs.294.57 Crores towards the aforesaid Aeronautical and Non-Aeronautical dues including interest upto 28th February, 2014 as per the particulars of claim being Exhibit-L hereto, with interest 18% per annum on Rs.294.57 Crores from the date of the said charges due in the Suit till payment or realization”.

3. The Applicants / Defendant Nos. 2 to 7 have in their Affidavit in support of the Chamber Summons pointed out that no averments have been made and absolutely no cause of action exists, which would entitle the Plaintiff to a decree, whether jointly or severally or in the alternative, against the Applicants / Defendant Nos. 2, 3, 4, 5, 6 and 7 and there is also nothing in the Plaint to suggest that the Applicants / Defendant Nos. 2 to 7 personally undertook or agreed to clear any alleged liability of Defendant No. 1 Company. It is submitted that the Applicants / Defendant Nos. 2 to 7 who are Directors / erstwhile Directors and officers / employees of Defendant No. 1 Company are neither necessary parties nor proper parties to the present Suit. It is submitted that the Plaintiff has no right to relief against the Applicants / Defendant Nos. 2 to 7 in respect of the alleged claim against Defendant No. 1 Company, which is a distinct and separate legal entity and as such its Directors / employees are not liable for any of its alleged liabilities. It is also submitted that it is possible to pass an effective decree in the absence of the Applicants / Defendant Nos. 2 to 7 and that their presence is not necessary for a complete and final decision on the questions involved in the present Suit. Hence,

joining the Applicants / Defendant Nos. 2 to 7 as Defendants is improper and unnecessary. It is therefore submitted that this Court be pleased to strike out the names of the Applicants / Defendant Nos. 2 to 7 from the Suit under the provisions of Order 1, Rule 10(2) of the Code of Civil Procedure, 1908 and make the Chamber Summons absolute with costs.

4. The Plaintiff has filed its Affidavit in Reply to the above Chamber Summons, stating that the Applicants / Defendant Nos. 2 to 7 being the officers and employees of Defendant No. 1 Company are bound by and answerable on behalf of Defendant No. 1 Company. They are therefore necessary parties to the Suit. It is further submitted that Defendant No. 1 is a corporate entity and the Court may have to lift the corporate veil in the course of the proceedings to fully determine the nature of rights of the Plaintiff and therefore the presence of the Applicants / Defendant Nos. 2 to 7 is imperative to meet the ends of justice. It is submitted that in the absence of the Applicants / Defendant Nos. 2 to 7 being on record the Suit will be rendered infructuous as there would be no person who could be in fact and in law held liable and answerable for the misdoings of Defendant No. 1 Company. It is also submitted that the prayer in the Suit pertains to recovery of charges dues from Defendant No. 1 Company to the Plaintiff and the same is reflected in a plethora of correspondence exchanged between the parties wherein the claim amounts and other such related issues have been discussed with the officers and employees of Defendant No. 1 Company.

5. I have perused the Plaintiff as well as Affidavit in support of the Chamber Summons and the Affidavit in Reply filed by the Plaintiff.

6. Admittedly, the amounts claimed by the Plaintiff were payable by the Defendant No. 1 – Kingfisher Airlines Limited in whose name the Plaintiff had raised various invoices towards Aeronautical and Non-Aeronautical services.

7. The Applicants / Defendant Nos. 2 to 7 have correctly contended that no averments have been made and absolutely no cause of action exists, which would entitle the Plaintiff to a decree, whether jointly or severally or in the alternative against the Applicants / Defendant Nos. 2, 3, 4, 5, 6 and 7. As regards some of cheques signed by the Applicants / Defendant Nos. 2 to 7 on behalf of Defendant No. 1 Company, which have been dishonoured, the Plaintiff themselves have mentioned in the Plaint that the complaints bearing Nos. 944 of 2012 and 945 of 2012 have already been filed in the Court of Metropolitan Magistrate, Andheri, Mumbai. **The Plaintiff has admitted in its Affidavit in Reply that the prayer in the Suit, pertains to recovery of charges due from the Defendant No. 1 Company to the Plaintiff.** According to the Plaintiff, the same is reflected in a plethora of correspondence exchanged between the parties wherein the claim amounts and other such related issues have been discussed with the officers and employees of Defendant No. 1 Company. Since some correspondence is carried out with the Plaintiff by some of the Directors or employees of the Company, it surely cannot be contended that the Applicants / Defendant Nos. 2 to 7 are necessary and / or proper parties to the Suit. Even if certain promises are made by some of the Applicants / Defendants to make payments in the letters signed by them, such promises are obviously made on behalf of Defendant No. 1 Company and the Applicants / Defendant Nos. 2 to 7 have not personally undertaken or agreed to clear

any alleged liability of Defendant No. 1 Company. The Applicants / Defendant Nos. 2 to 7 are therefore neither necessary nor proper parties to the Suit and the Plaintiff has no right to relief against the Applicants / Defendant Nos. 2 to 7 in respect of the alleged claim against Defendant No. 1 Company, which is a distinct and separate legal entity.

8. The contention of the Plaintiff that the presence of Applicants / Defendant Nos. 2 to 7 is imperative to meet the ends of justice or that Defendant No. 1 is a corporate entity and therefore the Court may have to lift the corporate veil in the course of the proceedings to fully determine the nature of rights of the Plaintiff cannot be accepted. The submission that in the absence of Applicants / Defendant Nos. 2 to 7 being on record, the Suit will be rendered infructuous as there would be no person who could be in fact and law held liable and answerable for the misdoings of Defendant No. 1 Company appears to have been made without understanding the provisions of Company Law.

9. In the circumstances, the Chamber Summons is allowed and the office is directed to strike out the names of the Applicants / Defendant Nos. 2 to 7 from the Plaint under the provisions of Order 1, Rule 10 (2) of the Code of Civil Procedure, 1908.

10. The Chamber Summons is accordingly disposed of.

(S.J.KATHAWALLA, J.)