

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

SUIT NO.4782 OF 1997

Airports Authority of India ... Plaintiff

Versus

East West Travels and Trade Links

Ltd. and Ors. ... Defendants

WITH

SUIT NO.366 OF 1997

Airports Authority of India ... Plaintiff

Versus

Aer Lingus Limited and Ors. ... Defendants

WITH

CHAMBER SUMMONS (L) NO. 362 OF 2015

IN

SUIT NO.4782 OF 1997

Ms. Radha Bhandari i/by M/s. M.V.Kini and Co., for Plaintiffs in Suit No.4782 of 1997 and Suit No.366 of 1997.

Mr. Sunip Sen with Ms. Archana Deshmukh, Mr. K.G.Singhania, Mr. Ashwin Vasista i/by Ms. Singhania and Co., for Defendant Nos.1, 4 and 5 in Suit No. 366 of 1997.

Mr. Pravin Kejriwal i/by M/s. Gagrats for Respondent No.2 in CHSL No.362 of 2015.

Ms.Fereshte Sethna with Mr. Shantanu Singh, Mr. Adhiraj Malhotra i/by M/s. Duttmenon Dunmorrsett, for Defendant No.3 in Suit No. 4782 of 1997.

CORAM : S.J. KATHAWALLA, J.
DATED : 30TH NOVEMBER, 2017

P.C.:

1. On 11th February, 2015 Mrs. Roshan Dalvi, J. (as she then was) framed issues in Suit No. 4782 of 1997. Issue No. 4 framed by the Court reads thus :

"4. Whether Defendant No. 3 as the Lessor of Defendant No. 10 has any liability to the Plaintiff in respect of the Suit claims"

2. The learned Judge by her Order dated 11th February, 2015 further directed as follows :

"Issue No. 4 is an issue of law. It would be required to be decided initially as an issue of law under the provisions of Order 15, Rule 3 of the Code of Civil Procedure, 1908 since if it is decided in the negative, the Plaintiff would not require to proceed to prove the extent of its claim against Defendant No. 3."

3. Thereafter, submissions with regard to Issue No.4 in Suit No. 4782 of 1997 were made before me by the Counsel for the parties. However, since further assistance / clarification was required from the Advocates, this Court on 8th September, 2017 directed that Suit No. 4782 of 1997 be placed on board on 27th September, 2017 at 03.00 p.m. for directions.

4. On 27th September, 2017 Suit No. 4782 of 1997 was placed before this Court when Advocate Vishal Talsania on behalf of the Plaintiff - Airports Authority of India mentioned the matter out of turn and informed the Court that there is one more Suit being Suit No. 366 of 1997, in which identical issues are required to be decided and therefore Suit No. 366 of 1997 be tagged with Suit No. 4782 of 1997. In the circumstances, this Court on 27th September, 2017 at the instance of the Plaintiff - Airports Authority of India passed the following Order :

"1. Mentioned out of turn.

2. The Learned Advocate appearing for the Plaintiff – Airport Authority of India states that there is one more suit i.e. Suit No.366 of 1997 in which identical issue is required to be decided. It is therefore submitted that Suit No.366 of 1997 be placed with Suit No.4782 of 2017. It is submitted that the said Suit No.366 of 1997 was before Justice Mr.Shriram. However, when the Learned Judge was informed that the above matter involving the same issue is pending before this Court, he has removed the matter from the board and has allowed the parties to move this Court for the same being tagged for hearing with the above matter. In view thereof, Office to seek necessary directions from the Learned Chief Justice to have both the matters heard by one court.

3. By consent, stand over to 9th November, 2017 at 3.00 p.m."

5. On 5th October, 2017 the learned Chief Justice passed an Order allowing Suit No. 366 of 1997 to be tagged with Suit No. 4782 of 1997 and to be placed before me as per the Order dated 27th September, 2017.

6. On 9th November, 2017, attention of the Court was drawn to Issue Nos. 1 and 2 framed on 2nd March, 2015 by Mrs. Roshan Dalvi, J. (as she then was) in Suit No. 366 of 1997, which are reproduced hereunder :

"1. Whether the Plaintiff is entitled to claim charges for services and facilities rendered and lending charges from Defendant No. 1 who leased its aircrafts to Defendant Nos. 2 and 3 under the Aircraft Act, 1934 and the Rules thereunder ?

2. Whether Defendant Nos. 2 and 3 are alone liable in respect of the aforesaid charges to the Plaintiff?"

7. By the said Order dated 2nd March, 2015, the learned Judge had further directed as follows :

"1. Issue No. 1 shall be tried under the provisions of Order 15, Rule 3 of the CPC as its adjudication will determine whether or not the Plaintiff would require to lead evidence about the extent of the claim of the Plaintiff against the contesting Defendant No. 1.

2. Thereafter, the issue regarding maintainability of the Suit against Defendant Nos. 4 and 5 shall also be similarly considered under Order 15, Rule 3 of the CPC with regard to the Plaintiff's claim against these Defendants. If the Plaintiff's claim is held to be maintainable against Defendant Nos. 4 and 5, the Plaintiff shall have to lead evidence about the extent of the claim of the Plaintiff."

The Suits were therefore adjourned to 30th November, 2017 and specifically fixed at 03.00 p.m. with a clear understanding that on that day the Plaintiff - Airports Authority of India shall make their submissions with regard to the aforestated issues framed on 2nd March, 2015 in Suit No. 366 of 1997.

8. Today, when the matter is called out Ms. Radha Bhandari, Advocate instructed by M.V. Kini and Company appearing for the Plaintiff - Airports Authority of India in both the Suits i.e. Suit No. 4782 of 1997 and Suit No. 366 of 1997 states that since Advocate Vishal Talsania was not available, they have briefed Advocate Anushak

Davar to proceed with the Suits and therefore the Suits be kept back for some time. In order to accommodate the said request, this Court engaged itself for about 25 to 30 minutes by going through the papers in Suit No. 366 of 1997. However, even after 25 to 30 minutes, Advocate Davar failed to turn up. This Court therefore enquired from Ms. Bhandari as to why Mr. Davar is not available if he is specifically briefed to proceed before this Court at 03.00 p.m. To this, Ms. Bhandari rudely informed the Court that the matter be kept back since Mr. Davar is before some other Court. When this Court informed Ms. Bhandari that the Court cannot wait for Mr. Davar indefinitely and will adjourn the matters after directing the Plaintiff - Airports Authority of India to pay costs to the contesting Defendants in both the Suits, Ms. Bhandari stated that she will make submissions in Chamber Summons (L) No. 362 of 2015. To this submission, this Court had to point out to Ms. Bhandari that (i) though the Chamber Summons is always shown on board, parties are well aware that the Chamber Summons is not to be heard at 03.00 p.m. today (ii) In fact, the Advocate for the Plaintiff have not bothered to get the Chamber Summons numbered in the last two years which till date is on lodging number (iii) There is no Chamber Summons pending in Suit No. 366 of 1997 and (iv) that though the Chamber Summons is taken out in Suit No. 4782 of 1997, the same was not pressed when the Advocate for the Plaintiff made his submissions with regard to Issue No. 4 framed in Suit No. 4782 of 1997. In response, Ms. Bhandari now states that she will address the Court on Issue Nos. 1 and 2 framed in Suit No. 366 of 2017. When this Court enquired from Ms.

Bhandari whether she is ready with the legal submissions qua Issue Nos. 1 and 2 framed in Suit No. 366 of 1997, she has answered in the negative. In view thereof, whilst strongly deprecating the conduct of the Plaintiff as well as their Advocates, who were well aware that they have to address the Court at the outset, qua the issues framed in Suit No. 366 of 1997, today at 03.00 p.m. but are not ready to proceed with the same, I am constrained to pass the following Order :

- i. Stand over to 6th December, 2017 at 03.00 p.m.
- ii. The Plaintiff - Airports Authority of India shall forthwith pay cost of Rs.1 Lac (in one set) to Defendant Nos. 1, 4 and 5 in Suit No. 366 of 1997 and Rs.1 Lac to Defendant Nos. 3 in Suit No. 4782 of 1997.

(S.J.KATHAWALLA, J.)