

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

+ **RFA No.613/2017**

% **14<sup>th</sup> July, 2017**

ANUBHAV JAIN ..... Appellant

Through: Mr. Balbir Singh, Sr. Adv. with  
Mr. Aditya Nayyar, Adv.

versus

AIR INDIA LTD. & ORS. .... Respondents

**CORAM:**  
**HON'BLE MR. JUSTICE VALMIKI J. MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

**C.M. Nos.24161/2017 & 24162/2017 (exemption)**

1. Exemption allowed subject to just exceptions.

C.M.s stand disposed of.

**RFA No.613/2017 and C.M. No.24160/2017 (stay)**

2. This Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) is filed by the appellant/defendant no.1 impugning the judgment of the court below dated 24.4.2017 by which the trial court has dismissed the leave to defend application filed under

Order XXXVII Rule 3 CPC and has decreed the suit for recovery for a sum of Rs.13,61,881/- along with contractual interest at 18% per annum. The suit which was filed was for recovery of Rs.34,76,881/-, but while decreeing the suit the appellant/defendant no.1 has been given adjustment towards unpaid salary, provident fund dues and other dues payable by the respondent no.1/plaintiff, and therefore the decree is only passed for a sum of Rs.13,61,881/-.

3.(i) The facts of the case are that the appellant/defendant no.1 was appointed as a Trainee Pilot with the respondent no.1/plaintiff vide letter dated 1.11.2007. Trainee Pilots were put on training schedule after selection and were required to execute a loan agreement in favour of the respondent no.1/employer towards the costs incurred for training. In addition to the loan agreement, a surety bond for an amount of Rs.7.5 lacs was also got executed by the respondent no.1/employer in its favour. The costs for the training of the pilots was taken to be Rs.26 lacs and this amount was to be recovered from the salary of the concerned Pilot, including the appellant/defendant no.1, during his 10 years employment with the respondent no.1/employer i.e in 120 monthly installments. The loan agreement

executed by the appellant in favour of the respondent no.1/employer is dated 5.11.2007. The defendant nos.2 and 3 in the suit, and who are the guarantors, executed a surety bond on 5.11.2007, and which aspect is not in issue in the present appeal. Appellant/defendant no.1 was issued a letter dated 20.7.2009 appointing him as a second officer with the respondent no.1/employer w.e.f 18.5.2009. The appellant/defendant no.1 tendered his resignation with the respondent no.1/employer by giving one month's notice on 4.8.2011. Since the action of the appellant/defendant no.1 in terminating his services was before rendering 10 years service, the respondent no.1/plaintiff was thus entitled to enforce the terms of the loan agreement dated 5.11.2007 which provided that in case the appellant/defendant no.1 left the services of the respondent no.1/plaintiff in violation of the service agreement before rendering service for 10 years, the respondent no.1/plaintiff was to become entitled to and claim the balance amount of the loan which was not adjusted. Appellant/defendant no.1 had worked with the respondent no.1/employer/plaintiff only from 18.5.2009 till 4.9.2011. The subject suit was filed under Order XXXVII CPC.

(ii) Appellant/defendant no.1 appeared and filed his leave to defend application. In the leave to defend application, it is not disputed that the appellant/defendant no.1 did execute the service agreement and the loan agreement, both dated 5.11.2011. The appellant/defendant no.1 however denied his liability on the ground that the respondent no.1/employer had come out with the policy dated 11.2.2008 whereby the training costs incurred for training of the pilots were not to be recovered from February 2008, and therefore, monthly installments were not recovered from the salaries of the Pilots, including the appellant/defendant no.1, w.e.f February 2008 and accordingly it was pleaded and argued by the appellant/defendant no.1 that the appellant/defendant no.1 was not liable to refund the loan amount. Appellant/defendant no.1 also raised certain disputes with respect to claims of the flying allowances for the months from May 2011 to July 2011 and salary for the month of August 2011, but as will be subsequently seen these adjustments have already been given by the impugned judgment to the appellant/defendant no.1 including the amount recovered by the respondent no.1/plaintiff on account of the

encashment of the bank guarantee given pursuant to the surety bond executed by the defendant nos.2 and 3 in the suit.

4. Learned senior counsel for the appellant/defendant no.1 argued before this Court that once there is a policy that from the salaries of the pilots, no longer the training costs would be recovered in terms of the policy letter dated 11.2.2008, appellant/defendant no.1 hence was no longer liable for payment of the suit amount and which is admittedly towards the balance costs of training after adjustments already made of the loan amount. It is also argued that the rate of interest which is granted by the court below at 18% per annum is very high and could not have been granted in favour of the respondent no.1/plaintiff.

5. The law with respect to grant of leave to defend in an Order XXXVII CPC suit is well settled. In case the defence raises a triable issue showing that defendants may or could succeed, then, leave to defend can be granted, either unconditionally or subject to terms. However, in case the defence is found to be a moonshine defence and which means that defence is such that it could not entitle and enable the defendant seeking leave to defend to succeed in

defences in the suit, then leave to defend is denied and the suit for recovery under Order XXXVII CPC decreed.

6. In the present case, there is no dispute as to the appellant/defendant no.1 having executed a service agreement dated 5.11.2007 and the loan agreement dated 5.11.2007. Once these documents are admitted documents, the terms thereof have to be seen. In terms of the loan agreement, it is seen that recovery of the loan amount is by 120 interest free equal installments i.e in 10 years service, and in case the Pilot such as the appellant/defendant no.1 leaves respondent no.1/company in violation of terms of the service agreement and fails to serve the respondent no.1/company the respondent no.1/company would become contractually entitled to take payment of the balance amount along with interest at 18% per annum.

7. The relevant clauses of the loan agreement being clauses 1 to 3 read as under:-

- “1. That the entire loan amount of Rs.26 lakhs stands to the credit of the Borrower from the date of commencement of training as Trainee Pilot and becomes due from this date. That the loan amount shall be recovered by the Company by deducting the same from the salary payable to the Borrower after his appointment as First Officer in the Company in 120 interest free equal monthly installments, over a period of 10 years.
2. That, in the event the training programme is terminated for reasons including the unsatisfactory progress or behavior or due to any act of

commission or omission by the Borrower, which, in the opinion of the Company, amounts to misconduct or the Borrower abandons the training or the Borrower leaves the Company upon successful completion of training and in violation of the Service Agreement, fails to serve the Company, the Borrower shall be liable to refund the balance loan amount/entire loan amount, as the case may be, alongwith interest @ 18%.

3. That the Loan Agreement shall be valid if the installments due to the Company are paid by the Borrower notwithstanding whether the Borrower completes his training or abandons the same or leaves employment before full payment of the loan amount.”

8. The relevant clause of the service agreement dated 5.11.2007 is para 2 and which para reads as under:-

“2. That the cost of the training shall be met with by Mr. ANUBHAV JAIN and after appointment as First Officer, the cost for further training/endorsement over a period of 10 years, estimated at Rs.10 lakhs will be incurred by the Company and in consideration thereof Mr. ANUBHAV JAIN will serve the Company for 10 years. In the event Mr. ANUBHAV JAIN abandons or leaves the service of the Company before the expiry of 10 years he will be liable to pay to the Company a sum of Rs.10 lakhs as damages.”

9. It is also an undisputed fact that the appellant/defendant no.1 had served a resignation letter dated 4.8.2011 giving one month's notice for leaving the services of the respondent no.1/plaintiff w.e.f 4.9.2011 i.e the appellant/defendant no.1 left his services without completing 10 years period of service. The appellant/defendant no.1 is presently working with Indigo Airlines and because he would be getting a better pay-package with Indigo. Therefore clearly in terms of the relevant agreements the undisputed and indubitable position is that

the appellant/defendant no.1 became liable to refund the balance costs incurred by the respondent no.1/plaintiff towards the training once the appellant/defendant no.1 did not complete his service of 10 years with the respondent no.1/plaintiff and only served from 18.5.2009 till 4.9.2011.

10. Learned senior counsel for the appellant/defendant no.1 argued that a triable issue is raised in view of the policy of the respondent no.1/plaintiff and as shown from the letters dated 11.2.2008 and 12/15.12.2008 by arguing that since in terms of these letters training costs were no longer to be recovered from the monthly installments and in fact refund was granted of the training costs to the Pilots, respondent no.1/plaintiff had no entitlement to claim the suit amount being the balance costs of the training. For the sake of ready reference the letters of the respondent no.1/plaintiff dated 11.2.2008 and 12/15.12.2008 are reproduced as under:-

**“Letter dated 11.2.2008**

From:  
General Manager (Fin.)  
NACIL (I) Regd. Office  
New Delhi

Ref. No.Fin/Rules/93/23

Subject:- Recovery of Training Cost-Pilots

To  
General Manager (Fin.)  
NACIL (I): NR/ER/WR/SR  
Dy. GM(Fin.):NACIL-(I):HYD.  
Ch.Mgr. (Fin)-Regd. Office  
DATED: 11<sup>th</sup> February, 2008

It has been decided that recovery from Pilots towards the cost of training would be stopped forthwith effective February, 2008. Therefore, no monthly installment is to be recovered from the salary of Pilots for the month of February, 2008 and onwards.

Please acknowledge receipt.

Sd/-  
(R. Thyagarajan)  
General Manager (Fin.)

CC: Director Personnel  
CC: Executive Director (Ops.)  
CC: EA to CMD

**Letter dated 12/15.12.2008**

|                        |                             |
|------------------------|-----------------------------|
| From:                  | To                          |
| General Manager (Fin.) | General Manager (Fin.)      |
| NACIL (I) Reg. Office  | NACIL (I): NR/ER/WR/SR      |
| New Delhi              | Dy. GM(Fin.):NACIL-(I):HYD. |
|                        | Ch.Mgr. (Fin)-Regd. Office  |

Ref. No.Fin/Rules/93/54

DATED: 12/15<sup>th</sup> December, 2008

**Subject:- Training Cost-Pilots**

Please refer to our Memo No.Fin/Rules/93/23 dated 11<sup>th</sup> February, 2008 advising stoppage of recovery of Training costs from our Pilots effective February, 2008.

It has now been decided to refund the amount of training cost in respect of Pilots for whom the deduction was made up to January, 2008 and stopped thereafter from February, 2008 in the same number of instalments in which it was recovered from the pilot concerned.

Please acknowledge the receipt.

Sd/-  
(Rajiv Gupta)  
Dy. General Manager (Fin.)

CC: Director Personnel  
CC: Executive Personnel  
CC: EA to CMD” (emphasis added)

11. In my opinion, the letters of the respondent no.1/plaintiff dated 11.2.2008 and 12/15.12.2008 can only be read in one manner inasmuch as the language of the letters make it clear that no longer the monthly installments with respect to training is to be recovered from

the 'salary' of the Pilots, and meaning thereby that salaries of the Pilots have to continue i.e services of the Pilots have to continue with the respondent no.1/plaintiff. In fact by issuing such letters effectively the salaries of the Pilots were increased by the respondent no.1/plaintiff because from the salaries the loan installments are not recovered (and in fact refunded) and pilots thus get more payment. However since as per the policy deduction is no longer to be made from the salaries, it is implicit that the salary continues i.e the service continues. There cannot be any other interpretation to these letters of the respondent no.1/plaintiff dated 11.2.2008 and 12/15.12.2008 and these letters do not even remotely suggest that the service agreements and the loan agreements are given a go bye and a Pilot can leave the service before 10 years and in spite of the same the balance training costs would not be recovered and which were otherwise to be recovered by monthly installments from the salaries of the pilots. In my opinion therefore the argument urged on behalf of the appellant/defendant no.1 of having raised a triable issue is completely misplaced and the argument raised is only a moonshine because the interpretation which is sought to be put forth to the letters of the

respondent no.1/plaintiff dated 11.2.2008 and 12/15.12.2008 are *ex-facie* unacceptable and liable to be rejected.

12. Learned senior counsel for the appellant/defendant no.1 then argued that rate of interest at 18% per annum is very high, however, the argument is fallacious as parties are bound by the contract entered into between them and unless there are very grave reasons for holding the rate of interest to be usurious Courts would not interfere with the contractual rate of interest. In the present case, I have already reproduced para 2 of the loan agreement and which provides for contractual rate of interest at 18% per annum to be recovered along with the balance loan amount, and in my opinion, since this clause of interest is designed to ensure that Pilots do not take training with the respondent no.1/plaintiff and thereafter leave the services of the respondent no.1/plaintiff and earn huge salaries with other private airlines, this Court would not like to change the intended purpose/reason behind the respondent no.1/plaintiff being contractually entitled to 18% per annum. Accordingly, no valid argument, much less a triable issue, can be urged on behalf of the appellant/defendant no.1 with respect to the rate of interest being awarded at 18% per annum.

13. So far as the entitlement of the appellant/defendant no.1 towards adjustment is concerned, the court below while passing its judgment dated 24.4.2017 has also done this and which becomes clear from paras 6 and 7 (para 7 is wrongly numbered as 3) and these paras 6 and 7 read as under:-

“6. In view of discussions herein above:

**CALCULATION OF PRINCIPLE AMOUNT**

|              |                                                                                 |               |
|--------------|---------------------------------------------------------------------------------|---------------|
| (a)          | Loan amount (cost of training)                                                  | :Rs.26,00,000 |
| <u>Less:</u> | Adjustment of amounts payable by the plaintiff to the 1 <sup>st</sup> defendant |               |
| (i)          | Unpaid salaries                                                                 | :Rs.3,78,311  |
| (ii)         | Provident Fund dues                                                             | :Rs.1,14,434  |
|              | (Employees Subscription and Voluntary subscription)                             | Rs.4,92,745   |
| (Deduct):    | Outstanding recoveries from 1 <sup>st</sup> defendant                           | :Rs.4,626     |
|              | Sub-Total                                                                       | :Rs.4,88,119  |
| (b)          | Less amount of bank guarantee which was encashed by the plaintiff               | :Rs.7,50,000  |
|              | Net Loan amount recoverable                                                     | :Rs.13,61,881 |

7. Therefore, all the defendants are jointly and severally liable to make the payment of decree amount of Rs.13,61,881/-. The plaintiff is also entitled for interest @ 18% p.a. from 04.08.2011 i.e. the date when defendant no.1 resigned from the service of the plaintiff till the realization of the amount. The plaintiff is also entitled for proportionate cost of the suit. Decree sheet be prepared accordingly.

File be consigned to record room.”

14. In view of the above discussion, I do not find any merit in the appeal. Dismissed.

**JULY 14, 2017**  
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**VALMIKI J. MEHTA, J**