

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**Commercial Appeal NO. 179 OF 2017
IN
CHAMBER SUMMONS NO. 1168 OF 2015**

Airports Authority Of India ...Appellant

Versus

Kingfisher Airlines Ltd. And Others ...Respondents

Mr.Pradeep Rajagopal with Drishti Shah i/b. Rekha Rajagopal, for the Appellant.

None for the Respondents.

**CORAM: NARESH H.PATIL AND
G.S.KULKARNI, JJ**

DATED: 19th June, 2018

P.C.:

1. The appeal is directed against the order dated 21 October 2015 passed in Chamber Summons filed by respondents/defendant nos.2 to 7 in the suit filed by the appellant/plaintiff. The plaintiff-Airports Authority of India filed a suit against defendant no.1-Kingfisher Airlines Ltd. and defendant nos.2 to 7 - Chairman and Managing Director of defendant no.1 and others. A chamber summons came to be filed by defendant nos.2 to 7-applicants for 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. In the suit the plaintiff prayed for the following substantive 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 defendants-applicants contended in the affidavit in support of the Chamber Summons that no averments have been made against them nor any cause of action arises 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. It was contended that there is nothing in the plaint to suggest that applicants-defendant nos.2 to 7 personally undertook or agreed to clear any alleged liability of defendant no.1-company.

4. The learned Single Judge considering the pleas of the contesting parties had arrived at a conclusion that the chamber summons needs to be allowed for striking off the names of defendant nos.2 to 7 from the plaint and the names of defendant nos.2 to 7 are struck off as defendants under Order 1 Rule 10(2) of the Code of Civil Procedure.

5. Mr.Rajagopal submits that even if defendant nos.2 to 7 are considered not to be a necessary party, but in the facts of the case they can be made as proper party in the proceedings of the suit. The learned Counsel refers to various documents, averments in the plaint and observations made by the learned Single Judge in the impugned order.

6. As per the Registry the notices are issued, however, inspite of notice, none could be served. Mr.Rajagopal submits that he had made efforts to serve the original defendants.

7. We have perused the record and the impugned order. We have considered the submissions advanced by the learned Counsel for the appellant. We have considered the provisions of Order 1 Rule 10(2) of

the Code of Civil Procedure and the principles of law. From the averments as made in the plaint, we do not notice any specific averment involving defendant nos.2 to 7 to incur liability of defendant no.1. Certainly the plaintiff's claim is against defendant no.1-company which the plaintiff may pursue in the suit. We thus find that the view adopted by the learned Single Judge is a reasonable and sound view in view of the pleadings and the facts of the case. We do not see any perversity in the impugned order.

8. The learned Counsel Mr.Rajagopal submits that at certain point the presence of defendant nos.2 to 7 may be required. If such a situation arises, the Trial Court may resort to appropriate steps in accordance with law. In law nothing precludes the plaintiff from seeking issuance of summons for securing presence of defendant nos.2 to 7 as witnesses in the suit.

9. With this liberty and clarification, we find that no further interference is called for. The appeal is dismissed. All the contentions on merit in the suit are kept open.

(G.S.KULKARNI, J.)

(NARESH H. PATIL, J.)