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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL APPEAL NO.128 OF 2017

IN

CHAMBER SUMMONS (L) NO.774 OF 2016

IN

SUIT NO.6846 OF 1999

Airports Authority of India

..Appellant.

V/s.

Mumbai International Airport Pvt. Ltd. & Ors.

..Respondents.

Mr.Vishal Jalsania with Arsh Misra i/b. M.V.Kini for the appellant.

Mr.S.U.Kamdar, Senior Advocate with Mr.Farid Karachiwala, Ms. Sneh Mehta and Ms.Mihika Chheda i/b. Wadia Gandbhy & Co. for respondent No.1.

Mr.Zal Andhyarujinawith Mr.S.V.Mehta i/b. M/s. Malvi Ranchoddas & Co. for respondent No.2.

***CORAM: NARESH H.PATIL AND
NITIN W.SAMBRE, JJ.***

DATE : JANUARY 19, 2018

PC.:-

The appellant is the original defendant No.1 in a suit bearing Suit No.6846 of 1999 filed by respondent No.2 Regency Convention Centre and Hotel Pvt.Ltd., a company registered and incorporated under the Companies Act. The suit is for specific

performance. In Chamber Summons (L) No.774 of 2016 in Suit No.6846 of 1999, a prayer that Mumbai International Airport Pvt. Ltd. be directed to be impleaded as a party respondent in the suit is made. The learned Single Judge of this Court allowed prayer clause (a) by passing the following order :-

“1. Perused the Chamber Summons and the Affidavit in support thereto. For the reasons set out in the Affidavit in support of the Chamber Summons, the Chamber Summons is allowed in terms of prayer clause (a), which is reproduced hereunder :

“(a) that the Plaintiff be directed to join and implead the Applicant above named as party Defendant in the above Suit.”

2. Amendment to be carried out within a period of one week from today.

3. All contentions of the parties are kept open.

4. The Chamber Summons is accordingly disposed off. ”

2. The counsel appearing for the appellant placed reliance on the judgments of the Delhi High Court in ¹*Gurmauj Saran*

¹ 1989 (16) DRJ

Baluja V/s. Mrs.Joyce C. Salim & Ors. and Madras High Court in ²*Lingam, B.C. (died) & 7 others V/s Mrs.Statesnko Larissa & 2 others* in support of his submission that the appeal against the impugned order is maintainable. Mr.Kamdar, the learned senior counsel raises a preliminary issue of maintainability of the appeal. Mr.Kamdar relied upon the judgments of this Court in the case of *Mr.Madhukar Venkatesh Ullal V/s. M/s. Anita Hermy D'souza and others. [Appeal No.1068 of 2005]* and *Mahendra Jayantilal Vora and others V/s.Aditya Enterprises and others [Appeal No.382 of 2005]* in support of his contention.

3. Mr.Zal Andhyarujina, counsel appearing for the original plaintiff submitted that in view of the letter written by the appellant to respondent No.2 herein (original plaintiff), the agreement cannot be performed. A communication was made by the Chief Executive Officer of the appellant-Mumbai International Airport Pvt. Ltd., which is placed on record and marked 'X' for the sake of convenience. We find it appropriate to reproduce the said letter :-

“MIAL/CEO/47

19th August, 2016

*Regency Convention Centre and Hotels Limited,
Hyatt Regency, Kolkata,
JA-I Sector-III,
Salt Lake City,
Kolkata - 700 098.
India.*

Attention: Mr.Bimal Jhujhunwala, Director

Sir,

Subject: Terms of settlement with Regency Convention Centre and Hotels Limited (“Regency”) in respect of lands admeasuring 31,000 sq. mtrs. on the plots bearing CTS Nos.145 A (Part) and 1405 (Part) in villages Sahar and Marol.

Ref: 1) Articles of Agreement dated 24th July, 2015.

*2) AAI letter No.LAO/144.2/1/91-Vol.XI/698 dated 27th
June, 2016*

We refer to the Articles of Agreement dated 24th July, 2015 (“Agreement”) entered into between Regency Convention Centre and Hotels Limited (“Regency”) and Mumbai International Airport Private Limited (“MIAL”) pursuant to which we had agreed to certain terms for out-of-court settlement of Suit No.6846 of 1999 (“Suit”) filed by Regency against the Airports Authority of India (“AAI”) in the Hon'ble High Court at Bombay. Ccapitalized terms used and not defined herein shall have the meaning given to them in the Agreement.

Fundamental premise of the Agreement was that Regency and AAI will enter into consent terms for disposal of the Suit, accordingly AAI was approached by MIAL to take the settlement terms under the Agreement on record and file consent terms before the Hon'ble

Bombay High Court. The AAI has now communicated, vide its letter No.LAO/144.2/1/91-Vol.XI/698 dated 27th June, 2016 (copy enclosed), that the settlement proposal as set out in the Agreement is not approved, and that the Suit should be decided on merits.

In view of AAI's disapproval of the Agreement, the Agreement cannot be performed by the parties and therefore, is void.

*Yours Sincerely,
For Mumbai International Airport Private Limited
sd/-
(R.K. Jain)
Chief Executive Officer”*

4. In view of the statement made across the bar and in view of the communication placed on record, the counsel appearing for the appellant submits that the appeal be disposed of as not pressed, keeping open legal issue regarding maintainability of the appeal in such cases.

5. The appeal is disposed of in the above terms as not pressed.

(NITIN W.SAMBRE, J.)

(NARESH H.PATIL, J.)