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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL (L) NO.246 OF 2018
IN
SUIT NO.4782 OF 1997

Airport Authority of India	... Appellant
V/s.	
Aercap Ireland Limited and Ors.	... Respondents

Mr. M.P. Rao, Senior Counsel a/w Mr. Ashutosh Thipsay and Mr. Kunal Chheda I/b. M.V. Kini and Co. for the Appellant/Applicant.

Ms. Feresthe Sethna and Mr. Adhiraj Malhotra I/b. DMD Advocates for the Respondent No.1.

CORAM : A.S.OKA AND M.S. SONAK, JJ.

DATE : 1st OCTOBER 2018.

P.C. :

1 This Letters Patent Appeal takes an exception to the order dated 30th November 2017 passed by the learned Single Judge in Suit No.366 of 1997 and in Suit No.4782 of 1997. On 30th November 2017, the suits were fixed before the learned Single Judge at 3.00 pm for hearing on the preliminary issues framed in the suits. By the impugned order, the learned Single Judge, while adjourning the suits to 6th December 2017 directed payment of costs. Clause (ii) of the impugned order reads thus :-

“(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.”

2 As far as Suit No.366 of 1997 is concerned, the learned senior counsel appearing for the appellant pointed out that the first, fourth and fifth defendants in the suit have agreed to accept a sum of Rs.30,000/- (by way of costs) instead of 1 Lakh. Therefore, now, the grievance survives only in respect of Suit No.4782 of 1997.

3 Thus, by the impugned order cost has been imposed on the original plaintiff – Airport Authority of India (appellant herein) for as a condition for grant of adjournment. In our view, as the impugned order does not decide any issue on merits of the pending suit, it cannot be said to be a judgment within the meaning of clause 15 of the Letters Patent.

4 However, in the memorandum of appeal, a specific contention has been raised that Suit No.4782 of 1997 did not pertain to judicial assignment of the learned Single Judge at the relevant time. In support of Ground A taken in the memorandum of appeal, in paragraph 13 of the memorandum of appeal, it is alleged thus :-

“13. On the said date, the counsel appearing on behalf of Appellant also submitted that the Impugned Order may be reconsidered as the suit should not have been listed before the learned Single Judge as it pertained to a commercial division. Admittedly, the Learned Single Judge did not sit as the Judge of the commercial division while passing the Impugned order. It was also submitted that on 30th November 2017 the assignment with the learned single judge was not that of a commercial division coupled with the fact that the reason for non-appearance of the counsel was not within the control of the Appellant or the advocates representing the

Appellant. It was further submitted that considering the matters have been tagged together and also that have been listed before this same learned single judge for a considerable number of days, an appropriate Application would be made in spite of the judge not having a commercial division to be placed before him. As such, the matter was adjourned to 13th March 2018 for the Advocates to take appropriate steps.”

5 Perusal of paragraphs 4 and 5 of the impugned order shows that on 27th September 2017 certain order was passed at the instance of the appellant. That order is reproduced in paragraph 4 of the impugned order. Paragraphs 4 and 5 of the impugned order read thus :-

“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 Admittedly, on 30th November 2017, a contention was not raised by the appellant that suit no.4782 of 1997 did not pertain to judicial assignment of the learned Single Judge. On the contrary, the learned Single Judge in paragraph 5 has recorded that as per the administrative order of the Hon'ble the Chief Justice passed on 5th October 2017, a direction was issued for tagging of the two suits and for placing the said suits before the learned Single Judge.

7 Therefore, there is no reason to come to a conclusion that the learned Single Judge has dealt with a suit which does not pertain to his judicial assignment. Therefore, there is no merit in the ground raised to that effect in the memorandum of appeal.

8 In any event, the amount of costs awarded by the learned Single Judge is always subject to final order of costs which may be passed by the learned Single Judge while finally deciding the suit. Moreover, if the decree passed in the suit is adverse to the appellant, while preferring

an appeal against the decree, the appellant can always challenge the impugned order.

9 Subject to what is observed above, we decline to entertain this appeal and the same is accordingly disposed of. Pending Notice of Motion does not survive and the same is disposed of.

(M.S. SONAK, J.)

(A.S.OKA, J.)