

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.11.2018

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

C.S. (COMM DIV) No.644 of 2018
AND OA.No.868 of 2018
AND A.Nos.7098, 7099, 7809, 7817, 7867 & 8515 of 2018

Kunal Air Charter Private Ltd.,
Rep. by its Director Ajay Agarwal,
A7 & 8 T.V.K.Industrial Estates,
Guindy, Chennai 600 032.

.. Plaintiff

Vs

1.Madras Flying Club Ltd.,
Rep. by its Hon. Secy Jacob Selvaraj,
Civil Aerodrome, Chennai 600 027.

2.Madras Flying Club Ltd.,
Rep. by its Secy Jacob Selvaraj,
Madras Flying Club building,
Civil Aerodrome, Chennai 600 027.

3.Jacob Selvaraj

4.R.Rajkumar,
Secretary (IOSA Auditor, ISO 9001:2015 Lead Auditor),
The Madras Flying Club Ltd.,
Civil Aerodrome, Chennai 600 027.

5.The Airport Director,
Airport Authority of India,
Chennai Airport,
Chennai 600 027.

.. Defendants

This Civil Suit is preferred, under Order IV, Rule 1 of The Original Side Rules read with Order VII, Rule 1 of The Code of Civil Procedure, praying to

(a) declare the agreement dated 20.04.2017 entered into between the plaintiff and 1st defendant as valid and binding the plaintiff and the defendants and the same shall be in full force till 20.04.2019;

(b) grant permanent injunction restraining the defendants, their men, servants, agents or anyone claiming under them from any manner removing the plaintiff's aircraft Cessna 1995 Citation-V Ultra Aircraft from the hangar maintained inside the airport premises;

(c) pay cost of the suit.

For Plaintiff : Mr.R.Subramanian

For Defendants No.1 to 3 : Mr.V.Raja Saravanan

For Defendant No.4 : Mr.R.Rajkumar,
Party-in-person

For Defendant No.5 : Dr.FR.A.Xavier Arulraj
Senior Counsel for Ms.A.Arulmary

JUDGMENT

There is a sole plaintiff and there are five defendants in this suit.

2.Mr.R.Subramanian, learned counsel on record for sole plaintiff, Mr.V.Raja Saravanan, learned counsel on record for defendant Nos.1 to 3, Mr.R.Rajkumar, party-in-person (present in Court) and Dr.Fr.A.Xavier Arulraj, learned Senior Counsel leading Ms.A.Arulmary, counsel on record for defendant No.5 are before this Commercial Division.

3.After hearing in the interlocutory applications for some time, it dawned on aforesaid Senior Counsel, Counsel and party-in-person i.e., all parties to lis

that main suit itself can be given a quietus by a consent decree. All the aforesaid counsel, Senior Counsel and party-in-person had no two opinions about this and they all submitted in unison that suit itself can be given quietus by a consent/compromise judgment/decree. They also submitted and requested in unison that it be done forthwith without loss of time as fifth defendant urgently needs the hangar in question for expansion, plaintiff is in a tearing hurry to make it's aircraft airworthy and fly out. Defendants 1 to 3 and 4th defendant are keen in getting their *inter se* disputes (not part of this lis) resolved in other proceedings at the earliest without remaining embroiled in this suit. Same is the case with regard to disputes (not part of this lis) between 5th defendant and defendants 1 to 3.

4.Mr.R.Subramanian, learned counsel on record for sole plaintiff has taken instructions from Hrishikesh Narasimman, Accountable Manager of the plaintiff company, who is present in Court. Mr.V.Raja Saravanan, learned counsel for defendant No.1 to 3 has taken instructions from defendant No.3 Mr.Jacob Selvaraj, who is present in Court. (It is represented that he is also Accountable Manager for defendant Nos.1 and 2 for the purpose of this suit alone, as issues of MFA with 4th defendant are being left open)

5.Mr.R.Rajkumar (defendant No.4) is present in Court in person as mentioned supra.

6.Dr.FR.A.Xavier Arulraj, learned Senior Counsel instructed by Ms.A.Arulmary, has taken instructions from Mr.K.Arulanthu, Manager (Land Management) of Airport Authority of India, who is also present in Court.

7.All the aforesaid parties, draw my attention to Order XIII-A of amended 'The Code of Civil Procedure, 1908' ('CPC' for brevity) as amended by 'The Commercial Courts Act, 2015' ('said Act' for brevity). All the parties draw my attention specifically to Rule 3 therein, which deals with grounds for summary judgment. In the light of the stated position of all the parties to this lis, it is submitted that neither the plaintiff nor the defendants have any real prospect of getting any decree beyond the consensus that has been arrived at today, which shall be alluded to and set out *infra* *inter alia* in the form of enumeration of clauses. In this view of the matter, all the parties mentioned supra make a common request in unison that a summary judgment without resorting to oral evidence may please be passed under Order XIII-A of amended CPC as amended by said Act, as there is no other compelling reason as to why, the suit should not be so disposed of by a consensus/compromise judgment/decreed on the terms which are being set out *infra*.

8.On instructions from respective parties and defendant No.4, who is present party-in-person consensus that has been arrived at for disposal of the main suit itself was narrowed down/crystallized and the same are as follows:

a) All issues and litigations between 'Madras Flying Club Limited' ('MFC' for brevity) or in other words, all issues between defendant Nos.1 to 3 on one side and defendant No.5 viz., 'Airport Authority of India' ('AAI' for brevity) on the other side shall be left open and this judgment/decreed in this suit will not impede or come in the way of any of those issues/legal proceedings being sorted out in other proceedings.

b) Likewise all issues and litigations (including pending proceedings) between defendant No.4 Mr.R.Rajkumar on one side and MFC or in other words, defendant Nos.1 to 3 on the other side are left open and this judgment/decreed in this suit will not come in the way or impede any of those issues/legal proceedings.

c) With regard to the aircraft, which is subject matter of the instant suit, it is a '1995 Cessna aircraft Citation-V Ultra Aircraft' and this shall hereinafter be referred to as 'suit aircraft' for the sake of convenience and clarity.

d) Suit aircraft was purchased by plaintiff company from State Trading Corporation of India in the year 2016.

e) Even at the time of purchase, suit aircraft was parked in the hangar, which is shown as 'A' in the sketch annexed to this judgment.

f) Suit aircraft will be moved from hangar shown as 'A' in the annexed sketch to another part of the airport across the runway on the northern side of the airport, which has been marked and shown as 'B' in the annexed sketch.

g) Moving of the suit aircraft from the present hangar to the other hangar across the runway shall be done by AAI using their towing mechanism and costs of such towing shall be paid by the plaintiff.

h) Aforesaid towing by AAI shall be done within a maximum two days from date of receipt of copy of this judgment/decreed.

i) After such moving of the suit aircraft from present hangar to the new one across the primary runway, plaintiff will have eight (8) weeks time to complete all repair works necessary in the suit aircraft and remove the aircraft out of the new hangar.

j) Now that this arrangement is between AAI and plaintiff viz., defendant No.5 and plaintiff, it is open to the two parties to continue the arrangement of parking suit aircraft in new hangar, on mutually agreed terms if they choose to do so, as it is the stated position of AAI that the new hangar i.e., 'B' in sketch is not required for expansion.

k) For the aforesaid eight (8) weeks, housing charges payable by plaintiff company to AAI shall be in accordance with existing, operating tariff applicable for the suit aircraft. It has been agreed that the housing charges payable by the plaintiff company to AAI is Rs.6,49,000/- per month and therefore, the same shall be Rs.12,98,000/- for the eight (8) weeks period.

l) If the plaintiff company wants to engage the services of some company other than the AAI for towing the suit aircraft from the present hangar ('A' in annexed sketch) to the aforesaid another hangar ('B' in annexed sketch) across the primary runway at the northern end of the airport, it will be open to the plaintiff to do so, after obtaining necessary permission/clearance from AAI in this regard.

m) In the light of all issues between AAI and MFC (defendant Nos.1 to 3) being left open, plaintiff will be permitted to enter the present hangar and take inventory and also do the needful for towing the suit aircraft from the present hangar to the new hangar across the primary runway. Neither defendant Nos.1 to 3 nor defendant No.5 will obstruct such a course.

n) With regard to the agreement between the plaintiff Kunal Air Charter Private Ltd. and MFC, both parties give up all claims against each other and both parties i.e., plaintiff and MFC agree that they have no claim/s against each other and this judgment/decreed shall be treated as complete conclusion of the entire arrangement between them.

o) Though obvious it is made clear that no rights can be pressed into service by any of the parties to this lis, pursuant to the order made in interlocutory applications as all these applications and orders have merged with this compromise summary judgment/decreed in this suit.

9. In the light of the narrative supra, the main suit being C.S.No.644 of 2018 is being disposed of by this compromise/consensus judgment/decreed. The annexed sketch shall form part of the judgment/decreed.

10. Consequently, all interlocutory applications are closed.

11. There shall be no order as to the costs. Suit decreed on above terms.

12.11.2018

Issue Judgment/Decree copies by 15.11.2018

Speaking/Non-Speaking order

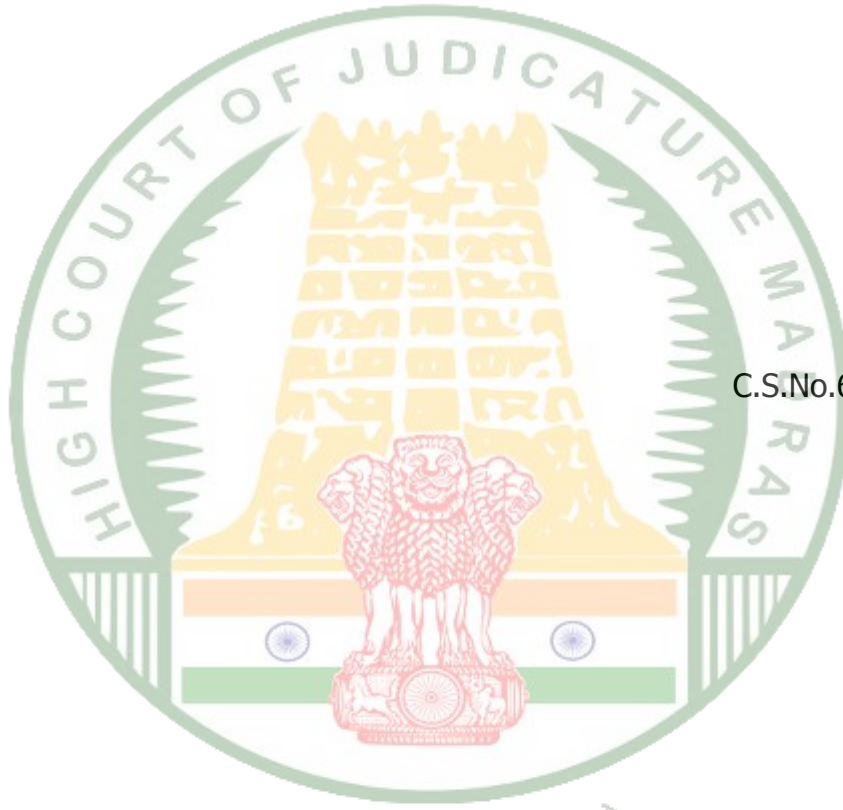
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M.SUNDAR, J.

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