

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION NO.44 OF 2023

IN

FIRST APPEAL NO.28 OF 2023

**AVIAION SERVICES MANAGEMENT
(INDIA) PVT. LTD.**

...APPLICANT

Versus

**UNION OF INDIA, THR. ITS
MINISTRY OF CIVIL AVIATION
AND 2 ORS.**

....RESPONDENTS

Mr Akash Rebello with Mr P. Sawant, Advocate for the Applicants.
Mr Pravin Faldessai, Deputy Solicitor General of India for
Respondent No.1.

Mr Gaurish Agni with Mr G. Rege and Mr K. Kavlekar, Advocates
for Respondent Nos.2 and 3.

CORAM: M. S. SONAK, J.

DATE: 14th DECEMBER 2023

P.C. :

1. Heard Mr Akash Rebello who appears along with Mr P. Sawant for the applicants. Mr Pravin Faldessai, learned Deputy Solicitor General of India appears for the respondent no.1 and Mr Gaurish Agni appears along with Mr G. Rege for respondent nos.2 and 3.

2. Mr Rebello points out that possession has already been restored to the respondents. The interim relief now prayed for is to restrain the execution of the money decree.

3. The money decree is in an amount of approximately ₹70,00,000/- (Rupees Seventy Lakhs only) as submitted by Mr Agni. Mr Rebello submits that the respondents had retained a deposit of about USD 10,000. He further submits that most of the decretal amount relates to the exponential penalty which was double the normal licence fee. He refers to the calculations at page 405 of the paperbook.

4. Even if the deposit amount is taken into account, the decretal amount comes to approximately ₹60,00,000/- (Rupees Sixty Lakhs). The calculations at page 405 no doubt refer to the exponential penalty. However, Mr Agni submits that the contract between the parties had stipulated the imposition of this penalty.

5. Mr Rebello submits that such penal clauses are not to be enforced because they are clauses in terrorem. He relies on the decision of *Kailash Nath Associates V/s. Delhi Development Authority and Anr.*¹

6. Even after considering Mr Rebello's submission and the decision of the Hon'ble Supreme Court in the case of *Kailash Nath Associates* (supra), the appellants will have to be directed to deposit an amount of at least ₹40,00,000/- (Rupees Forty Lakhs only) in this Court as a condition for grant of interim relief. Even assuming that penal provisions cannot be normally enforced, here is a case where the appellants have continued in possession of the suit premises even after

¹ (2015) 4 SCC 136

the termination or the contractual period. Therefore, the appellants cannot insist upon paying the normal licence fee at least during such a period.

7. For all the above reasons, interim relief is granted in terms of prayer clause (A), subject to the condition that the appellants deposit in this Court an amount of ₹40,00,000/- (Rupees Forty Lakhs only) within a period of four weeks with due intimation to the learned Counsel for the respondents. However, it is clarified that possession of the suit premises has already been restored by the appellants to the respondent nos.2 and 3. Accordingly, there is no question of stay of the impugned decree to the extent it had ordered the eviction of the appellants from the suit premises.

8. In case there is default in depositing the above amount, this interim relief to stand vacated without further reference to this Court.

9. If the amount is deposited, the same is to be invested in a Nationalised bank on usual terms.

10. Civil Application No.44/2023 is disposed of.

M. S. SONAK, J.