

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 373 OF 2018
IN
SUIT NO. 366 OF 1997

Airports Authority of India

..Applicant/Plaintiff

Vs.

Aer Lingus Ltd. & Ors.

..Defendants

Ms. Radha H. Bhandari a/w S. Shetty i/b. M. V. Kini & Co. for the
Applicant/Plaintiff.

Mr. S. Sen a/w Archana Deshmukh, Shrishti Singhania, K. G.
Singhania & Preksha Shah i/b. Singhania & Co. for the Defendant
Nos. 1, 4 and 5.

CORAM: B. P. COLABAWALLA, J
DATED: 10 MARCH 2023

P.C.

1. This Chamber Summons is filed by the Plaintiff seeking a modification of the order dated 2nd March 2015, insofar as it directs that issue Nos.1 and 5 shall be tried under the provisions of Order XV Rule 3 of the Code of Civil Procedure,1908 (for short “CPC”) as its adjudication will determine whether or not the Plaintiff would require to lead evidence about the extent of the claim of the Plaintiff against the contesting Defendant No.1 as well as Defendant Nos.4 & 5 [prayer clause (a)]. The other prayer sought in the Chamber Summons [prayer clause (b)] is that the Plaintiff may be permitted to

take steps to convert the above Suit to a Commercial Suit because the dispute between the parties is a commercial dispute and would be governed by the provisions of the Commercial Courts Act, 2015.

2. So far as having the above Suit being numbered as a Commercial Suit is concerned [i.e. prayer clause (b)], Mr. Sen does dispute that the claim made by the Plaintiff in above Suit would fall within the definition of a commercial dispute as contemplated under the provisions of the Commercial Courts Act, 2015. He therefore fairly stated that the above Suit can be converted and numbered as a Commercial Suit.

3. Considering the fair stand taken by Mr. Sen, the Plaintiff is permitted to take such steps in accordance with the provisions of the Commercial Courts Act, 2015 to convert the above Suit to a Commercial Suit and have it renumbered accordingly. Whatever steps are required to be taken by the Plaintiff in that regard, shall be taken within a period of two weeks from today. This takes care of prayer clause (b) of the Chamber Summons.

4. This now leaves me to deal with the prayer seeking modification of the order dated 2nd March 2015 [prayer clause (a)]. As far as modification of the order is concerned, the argument canvassed

is that the provisions of Order XV Rule 3 do not apply to the Commercial Court and/or the Commercial Division of the High Court and therefore Issue Nos.1 & 5 cannot be tried as preliminary issues. For the sake of convenience, Issue Nos.1 & 5 are reproduced hereunder:

“1. Whether the Plaintiffs are entitled to claim charges for services and facilities rendered and lending charges from Defendant No.1, who leased its aircrafts to Defendant Nos.2 and 3 under the Aircraft Act, 1934 and the Rules framed thereunder.

.....

.....

5. Whether the suit is maintainable against Defendant Nos.4 and 5 which are aircrafts.”

5. As far as this argument is concerned, I find absolutely no merit in the aforesaid contention. Though in the order a reference is made to Order XV Rule 3 of the CPC, and which was correct at that given point of time, even today, under Order XV-A of the CPC (and which applies to the Commercial Court and the Commercial Division of the High Court), categorically gives power to the Court to inter alia decide (i) the order in which issues are to be tried; (ii) to exclude an issue from consideration; and/or (iii) dismiss or give judgment on a claim after a decision on a preliminary issue. This being the case, I do not find that there is any requirement for modification of the order dated 2nd March 2015, insofar as it stipulates that Issue Nos.1 and 5 shall be tried as preliminary issues. I am of the opinion, that the

Court has correctly ordered that Issue Nos. 1 and 5 shall be tried as preliminary issues because only if those issues are answered in favour of the Plaintiff, then the Plaintiff would be required to lead evidence regarding the quantum of the claim against the said Defendants. Further, Mr. Sen, the learned Advocate appearing for Defendant No.1, correctly submitted that Issue Nos. 1 and 5 are questions of law and can be decided as preliminary issues without any of the parties being required to lead any evidence on these two issues. In these circumstances, prayer clause (a) of the Chamber Summons stands rejected.

6. In view of the foregoing discussion, the above Chamber Summons is disposed of in the aforesaid terms. No order as to costs.

7. Place the above Suit on board for arguments on the preliminary issues, namely, Issue Nos. 1 and 5, on 13th April 2023.

8. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

B. P. COLABAWALLA, J