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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

***INTERIM APPLICATION NO.13558 OF 2024
IN
COMMERCIAL FIRST APPEAL (L) NO.25118 OF 2024***

Airports Authority of India

.. Petitioner

Versus

AER Lingus Ltd. & Ors.

.. Respondents

Ms. Radha Bhandari a/w Ms. Kajal Gupta a/w Ms. Shweta Singh i/by M. V. Kini & Co. for the applicant.

Ms. Archana Deshmukh a/w Mr. Krishan Singhania a/w Ms. Srishti Singhania a/w Ms. Anjana Devi i/by Singhania & Co. for respondent No.1, 4 and 5.

CORAM : M. S. Sonak &

Jitendra Jain, JJ.

DATE : 13 December 2024

PC.:-

1. Heard learned counsel for the parties.
2. This appeal challenges the order dated 27 June 2024 made by the Commercial Court, deciding, in a sense, two preliminary issues against the appellant/petitioner and favouring the respondent Nos. 1, 4 and 5.
3. Ms Deshmukh, the learned counsel for the respondent Nos.1, 4 and 5, who have been impleaded as respondents in this appeal, objects to the maintainability of this appeal by pointing out that the impugned order is neither a judgment nor is it an order appealable under Order 43

of the Civil Procedure Code (CPC). Accordingly, she submits that this appeal would not be maintainable. She further points out that the arguments in the main suit have concluded, and the suit is now posted for judgment on 17 December 2024. She submitted that should any judgment and decree be made against the appellant, the appellant will have every remedy to appeal not only such decree or judgment but also the impugned order dated 27 June 2024. Therefore, she submits that no prejudice will occur to the appellant if this appeal is not entertained. She maintains that this appeal is not, in fact, not entertainable.

4. Ms. Radha Bhandari, the learned counsel for the appellant, points out that since the impugned order virtually dismisses the suit against the defendant Nos. 1, 4 and 5, an appeal would lie because the impugned order is almost like a partial decree dismissing the suit. She further submits that if the suit is dismissed, the defendants, who were called upon to furnish a bank guarantee by order of the Hon'ble Supreme Court, may immediately seek a return of same, thereby placing the appellant/plaintiff securityless or without any security.

5. Now that the entire suit is posted for judgment on 17 December 2024, and undoubtedly, the appellant would have the right to appeal the decree if adverse to the appellant and in such appeal, they may also question the impugned order dated 27 June 2024. Accordingly, it is

unnecessary to go into rival contentions on the maintainability of this appeal. As contended by Ms Deshmukh, there would be no issue of maintainability once a final decree is made in the suit. If such a decree is adverse to the appellant's interests, a comprehensive appeal would lie in which even the order impugned in this appeal could be challenged. Should the appellant succeed in the suit against other defendants, and such other defendants appeal, still the present appellant would be entitled to institute cross-objections. Independently, the appellants could maintain an appeal against the dismissal of the suit qua defendants 1, 4, and 5. At this stage, therefore, we need not entertain this appeal.

6. Regards the apprehension of the immediate return of the bank guarantee, it is always open to the appellant to request the learned Commercial Court for some reasonable accommodation until the appellant has an opportunity to appeal against the decree, should the decree be adverse to the appellant. The appellant can always point out the Hon'ble Supreme Court's order and the circumstance that the defendants are aircraft. Based on the apprehension now expressed, we do not think it necessary to admit this appeal and encourage multiplicity.

7. For the above reasons and without going into the merits of the rival contentions, we decline to entertain this appeal. However, we clarify that once the decree is passed in the suit, the appellant, if

aggrieved by such decree or by the factum of exoneration of the respondent Nos. 1, 4 and 5 by the order dated 27 June 2024, will have the right to institute a substantive appeal questioning not only the decree but also the order dated 27 June 2024 now impugned in this appeal.

8. We also clarify that we have not examined the merits of the rival contentions since that is the Commercial Court's duty in the first instance. The Commercial Court also posted the matter for judgment on 17 December 2024. The matter must be disposed of according to law and on its merits without being influenced by the non-entertainment of this appeal. Such non-entertainment is not on merits. Suppose the appellant applies for some reasonable accommodation in the above terms. In that case, we are sure that the Commercial Court will consider such an application following the law and on its merits.

9. With the above observation and liberties, we dispose of this appeal and the interim applications.

10. All concerned must act on an authenticated copy of this order.

(Jitendra Jain, J.)

(M. S. Sonak, J.)