



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

COMMERCIAL APPEAL NO. 03 OF 2024

New India Assurance Co. Ltd.
and others

... Appellants
(Original Plaintiffs)

- Versus -

Janus Aviation Pvt. Ltd.

... Respondent
(Original Defendant)

.....
Mr. Ritesh Dawda, Advocate for the appellants.
Mr. Deoul Pathak, Advocate i/b Mr. Ishaan Chhayya, Advocate for the
respondent.

.....

CORAM : BHARATI DANGRE &
ABHAY J. MANTRI, JJ.
DATED : OCTOBER 10, 2024.

P.C. :

1. The short point that arises for consideration in the present commercial appeal is, whether the dispute staked in the suit instituted by the New India Assurance Company Limited along with four other Insurance Companies against the defendant for subrogated recovery of an amount of USD 31,77,696.98 (equivalent to Rs.24,69,07,055) along with *pendente lite* and future interest would lie on the commercial division, under the Commercial Courts Act, 2015 (for short 'Act of 2015')

We have heard the learned counsel Mr. Ritesh Dawda appearing for the plaintiffs, who have filed the present appeal, being aggrieved by the impugned order passed below Exh.12 on 13.02.2024, upon an application filed by the defendant, under Order VII, Rule 10 of the Code of Civil Procedure, to return the plaint, to be presented before the proper court.

We have also heard Mr. Deoul Pathak, the learned counsel for the respondent (original defendant) at whose instance, the impugned order is passed.

We have perused the plaint as well as the application filed by the defendant along with the reply filed and ultimately the order passed thereupon on 13.02.2024, thereby allowing the application (Exh.12) and directing the plaint to be returned to the plaintiffs.

2. The plaint filed by the plaintiffs, the insurer of Aircrafts of Indigo Airlines specifically pleaded that the suit is for subrogated recovery of damages of plaintiff nos.1 to 5 along with the *pendente lite* and future interest and the claim of the plaintiffs was staked on the premise that they are entitled for the damages from the defendant, a company engaged in business of providing ground handling services at Airport for the losses suffered by them due to its negligence and as the dispute in the suit arose out of an insurance agreement, it was to be captioned as a commercial dispute in terms of Section 2 (c)(xx) of the Act of 2015.

A careful reading of the pleadings in the plaint, would disclose that the suit is filed against the defendant on account of the

amount that is repaid by the plaintiff nos.1 to 5 to Interglobe Aviation Limited (Indigo) on account of the damages suffered by Indigo's Airline, in an accident caused due to the alleged negligence of the defendant at Dr. Babasaheb Ambedkar International Airport, Nagpur on 26.05.2018.

It is specifically pleaded that the plaintiffs insured aircrafts of Indigo, including the aircraft involved in the incident, vide the Policy No.93000043171000000006. The Policy type being "Airline Hull" (including spares) & Liability Insurance" and also by another policy, classified as "Aviation Hull Deductible Insurance" to the percentage of insurance shared by the five plaintiffs as stated in the plaint.

The incident, which is referred to, relate back to 26.05.2018, when an aircraft of Indigo Airlines-ATR-72-600 parked at Bay No.4 at the Airport at Nagpur was ready to be operated between Nagpur to Hyderabad and at the relevant time, it is alleged that the defendant company was operating the Airport, Nagpur and was responsible for providing Ground Handling Services to Go Air and Air Asia.

On the date of the incident, the defendant had their passenger step ladders/parked at the Ground Service Department area and at the relevant time, Indigo was not availing ground handling services from the defendant. As such, the defendant was under an obligation to act only towards the companies to which it was providing the services operating at the Airport. However, at around 18.09 hours, following weather warning was received by the Airport Operation Command Centre (AOCC) from Air Traffic Control

(ATC), with effect from the specifications stated therein, it caused a storm and pursuant to the passing of the storm, the aircraft remained parked stationary at Bay No.4 but the ladder belonging to the defendant was blown by wind and travelled to a distance of approximately 100 meters, before coming to a halt and it struck the left wing trailing edge of the aircraft, causing significant damage to it.

At the relevant time, the aircraft was loaded with passengers, waiting for ATC approval, but due to the said incident, it could not take off and the passengers were required to be offloaded.

The above incident resulted into joint investigation and the Safety Investigation Coordinator along with the parties including the defendant, the representatives of the airport authorities Mihan India Limited (MIL) and Indigo's flight safety and ramp safety representatives carried out a detailed investigation of the incident and a report was furnished analysing the probable cause of the incident as being the non-operational equipments, in the parking area without being safely secured.

3. After the investigation, the insurer/underwriter of Indigo appointed McLarens Aviation as their loss adjuster to assess the loss caused to the Aircraft of Indigo and for deciding quantum of the same.

Pursuant thereto, when the survey was conducted by the Aviation Surveyor of McLarens, the quantum of damages were set

out in the final report which has been adjudged to be as USD 3,202,676.98.

4. A lot of correspondence ensued with the defendant and by letter dated 30.07.2019 issued by the HFW to the counsel of the defendant, the detailed losses suffered by the plaintiffs due to negligence of the defendant were disclosed and the copies of the entire correspondence including the aforesaid communication form part of the plaint.

Ultimately, upon service of legal notice on 24.01.2020 on the defendant, when the defendant did not pay any heed to its liability, where it was alleged that the plaintiffs suffered a substantial loss of USD 31,77,696.98 due to sole negligence of the defendant and accusing the defendant of wilful neglect of its obligation and liability, the suit for subrogated recovery for realization of the amount due to the plaintiffs was instituted.

5. Upon perusal of the pleadings in the plaint, we specifically enquired with the learned counsel for the plaintiffs as regards any privity of contract between the Indigo and the defendant and his answer is in the negative.

We also scanned through the pleadings, to reflect the same, but unfortunately could not find any such averment, which would lead us to derive an inference about privity of contract between the plaintiffs and Janus Aviation Pvt. Ltd.

6. The defendant raised an objection under Order VII, Rule 10 of the Code of Civil Procedure, by specifically pleading that

the ‘commercial dispute’, though the plaintiffs specifically stated to be so arising out of an ‘insurance agreement’ and, therefore, falling it within Section 2 (1)(c)(xx) of the Act of 2015, would not be so.

The defendant primarily raised three objections as regards the dispute to be entertained as a commercial dispute through the suit, namely, there should be a transaction or commercial relationship of ‘insurance or reinsurance’ between the plaintiffs and the defendant. However, as the plaintiffs are relying upon a purported commercial relationship of insurance between the plaintiffs and the Interglobe Aviation Limited (Indigo) which has purportedly assigned its right against the defendant to the plaintiffs. It was, therefore, urged that there is no relation or privity of contract with the defendant and any commercial relationship or transaction with the plaintiffs and a third party cannot be used for the purpose of categorizing the dispute raised through the plaint to be a ‘commercial dispute’.

The second ground on which the relief was premised in the application, was that the cause of action to file the suit did not arise out of any commercial dispute or commercial transaction or contractual breach, but it was based on tort.

Apart from this, it is also specifically averred that if the cause of action in the subject matter of the suit did not fall within the purview of Section 2 (1)(c) (xx) of the Act of 2015, being under the head of insurance and reinsurance, then it would not fall under any of the other categories of ‘Commercial Dispute’ as set out in Section 2(1)(c) of the Act of 2015 and, therefore, the plaint must be returned.

Responding to the application filed by the defendant raising an objection about entertaining the suit as commercial dispute, the plaintiffs had filed an exhaustive reply supported by an affidavit.

7. On 13.02.2024, the learned Judge considered the rival arguments advanced, and by invoking the authorities pronounced in the case of ***Ambalal Sarabhai Enterprises Limited .vs. K.S. Infraspace LLP and another, (2020) 15 SCC 585***, determining the jurisdiction of the commercial Courts and specifically holding that only when the dispute actually answered the definition of ‘commercial dispute’ as provided in Section 2 (1)(c) of the Act of 2015, it must be entertained by the commercial suits and that a strict construction to the provisions of the Commercial Courts Act is required or else it will defeat the very object and purpose of the enactment being speedy disposal of high value commercial disputes, the Additional District Judge found substance in the objection.

8. On considering the rival contentions, and by specifically referring to the pleadings in the plaint, the court extracted the gist of the pleadings and in Paragraph 11 observed to the following effect :-

“11. From over all pleadings of the plaint the gist extract can be carved out is that now the plaintiffs want to enter into the shoes of Interglobe Aviation Limited (Indigo) to claim damages from the defendant as far as the loss caused to the aircraft. The question is whether the suit instituted by the Indigo itself against the defendant company to claim damages would be the commercial suit. The answer to this question would decide the fate of the plaintiffs in this suit. To that effect, I should say

that clause (xx) of Section 2 (1)(c) of the Commercial Courts Act, 2015, will not help the plaintiffs, as this clause only speaks about the insurance and reinsurance.”

Recording that there is no privity of contract between Indigo and the defendant company in respect of the insurance or reinsurance and also there was no agreement between the plaintiffs and the defendant about any insurance or reinsurance, the application filed under Order VII, Rule 10 of the Code of Civil Procedure was allowed by directing the plaint to be returned to the plaintiffs.

9. In addition, Mr. Pathak, learned counsel for the respondent, has also placed reliance upon the decision of the learned Single Judge of Delhi High Court in case of ***Qatar Airways Q.C.S.C. .vs. Airports Authority of India and another, 2017 SCC OnLine Del 8088***, when the suit was filed for recovery of an amount as damages for loss suffered by the plaintiff on account of the damage to the aircraft of the plaintiff at Calicut International Airport and which loss, according to the plaintiff, is attributable to the defendants.

The counsel for the defendants specifically raised an objection that the plaintiffs had titled the suit as a commercial suit invoking Section 2(1)(c)(iv) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, when the same is not applicable.

Referring to the particular clause, being specified as “arising out of transactions relating to aircraft, aircraft engines, aircraft equipments and helicopters, including sales, leasing and financing of the same”, it was concluded that the defendant was right in his contentions that a claim for damages caused to the aircraft would not fall within the said clause.

The said conclusion was supported by the observations in Paragraphs 9 and 15 which read to the following effect :

“9. The counsel for the plaintiff has stated that the plaintiff, in the replication to the written statement, has pleaded that though the suit as originally filed was by the airline but since the airline has recovered insurance, the insurer is now pursuing the suit. He thus states that the suit would also fall in clause (xx) of Section 2 (1)(c) constituting disputes arising out of insurance and re-insurance as commercial disputes.

15. The Legislature, in the Commercial Courts Act has not defined commercial disputes as disputes arising out of all commercial transactions. Instead, the Legislature has opted to specify the 22 transactions listed in clauses (i) to (xxii) of Section 2 (1)(c) of the Commercial Courts Act, as the transactions, disputes arising wherefrom will constitute a commercial dispute. That being the position, every dispute arising from a commercial transaction, without the same falling in any of the clauses, cannot constitute a commercial dispute within the meaning of Commercial Courts Act.”

10. In ***Ambalal Sarabhai Enterprises Limited*** (cited *supra*), the Apex Court, while pronouncing upon the strict construction of the provisions of Section 2 (1)(c) of the Act of 2015, has specifically observed as under :

“13.....Having taken note of the submission we feel that the very purpose for which the [CC Act](#) of 2015 has been enacted would be defeated if every other suit merely because it is filed before the Commercial Court is entertained. This is for the reason that the suits which are not actually relating to commercial dispute but being filed merely because of the high value and with the intention of seeking early disposal would only clog the system and block the way for the genuine commercial disputes which may have to be entertained by the Commercial Courts as intended by the lawmakers. In commercial disputes as defined a special procedure is provided for a class of litigation and a strict procedure will have to be followed to entertain only that class of litigation in that jurisdiction. If the same is strictly interpreted it is not as if those excluded will be non-suited without any remedy. The excluded class of litigation will in any event be entertained in the ordinary civil courts wherein the remedy has always existed.

14. In that view it is also necessary to carefully examine and entertain only disputes which actually answers the definition “commercial disputes” as provided under the Act. In the instant case, as already taken note neither the agreement between the parties refers to the nature of the immovable property being exclusively used for trade or commerce as on the date of the agreement nor is there any pleading to that effect in the plaint. Further the very relief sought in the suit is for execution of the mortgage deed which is in the nature of specific performance of the terms of Memorandum of Understanding without reference to nature of the use of the immovable property in trade or commerce as on the date of the suit. Therefore, if all these aspects are kept in view, we are of the opinion that in the present facts the High Court was justified in its conclusion arrived through the order dated 1.3.2019 impugned herein. The Commercial Court shall therefore return the plaint

indicating a date for its presentation before the Court having jurisdiction.

11. Keeping the aforesaid observations, as a guiding factor, it is necessary that only those disputes which are commercial disputes within the meaning of Section 2 (1)(c) of the Act of 2015 shall be entertained by the Commercial Courts or the Commercial Division and Commercial Appellate Division of High Courts and it is held that the entries therein shall be strictly construed in the order under challenge, the learned Judge has correctly observed that upon reading of the plaint, as regards absence of privity of contract between the defendant and the Interglobe Aviation Limited (Indigo), we are in complete agreement with the conclusion drawn and the learned counsel for the appellants (original plaintiffs), on specifically asked, do not dispute the fact that there is no privity of contract with the defendant.

In the wake of the above, since the present proceedings that is in the form of the suit do not arise of the agreement of insurance or reinsurance, as contemplated under 2(1)(c)(x) of the Act of 2015, we find no fault with the impugned order.

12. In the wake of the above, since we do not find any legal infirmity in the impugned order upholding the same, the commercial appeal is dismissed.

(ABHAY J. MANTRI, J.)

(BHARATI DANGRE, J.)