



2024:DHC:6979-DB



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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 27.08.2024**Pronounced on: 11.09.2024*

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**FAO(OS) (COMM) 181/2024 & CM APPL. 47667-47668/2024****SPICEJET LIMITED****.....Appellant**

Through: Mr Amit Sibal, Sr Adv with Mr K Sasiprabhu, Mr Kartikeya Asthana, Mr Sanjeevi Seshadari, Mr Manan Shishodia, Mr Darpan Sachdeva and Mr Ankit Handa, Advs.

versus

**TEAM FRANCE 01 SAS****.....Respondent**

Through: Mr Rajshekhar Rao, Sr Adv with Mr Anandh Venkataramni, Mr Saket Satapathy, Mr Anubhav Dutta, Ms Mansi Tyagi, Ms Akshita Totla, Mr Rishit Vamadalal, Ms Vishkha Gupta, Mr Devvrat Singh and Mr J Shivam Kumar, Advs.

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**FAO(OS) (COMM) 182/2024 & CM APPL. 47671-47672/2024****SPICEJET LIMITED****.....Appellant**

Through: Mr Amit Sibal, Sr Adv with Mr K Sasiprabhu, Mr Kartikeya Asthana, Mr Sanjeevi Seshadari, Mr Manan Shishodia, Mr Darpan Sachdeva and Mr Ankit Handa, Advs.

versus

**SUNBIRD FRANCE 02 SAS****.....Respondent**

Through: Mr Rajshekhar Rao, Sr Adv with Mr Anandh Venkataramni, Mr Saket Satapathy, Mr Anubhav Dutta, Ms Mansi Tyagi, Ms Akshita Totla, Mr

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Rishit Vamadalal, Ms Vishkha Gupta,  
Mr Devvrat Singh and Mr J Shivam  
Kumar, Advs.

**CORAM:**  
**HON'BLE MR. JUSTICE RAJIV SHAKDHER**  
**HON'BLE MR. JUSTICE AMIT BANSAL**

**[Physical Hearing/Hybrid Hearing (as per request)]**

**RAJIV SHAKDHER, J.:**

**I. PREFATORY FACTS**

1. The above-captioned appeals are emblematic of the adage that fools create assets and wise men use them. The use of a lessor's assets without recompense, on agreed terms, by the lessee often leads to consequences which disrupt the interests of both sides.
2. The instant appeals are directed towards a common judgment and order dated 14.08.2024 [hereafter referred to as the "impugned judgment and order"] passed by the learned Single Judge concerning interlocutory applications preferred in two (2) suits instituted by each of the respondents, i.e., Team France 01 SAS [hereafter referred to as "Team France"] and Sunbird France 02 SAS [hereafter referred to as "Sunbird France"].
3. The two suits filed by the respondents are CS (COMM) no. 908/2023, and CS (COMM) no. 909/2023.
  - 3.1 While CS (COMM) no. 908/2023 has been instituted by Team France, CS(COMM) no. 909/2023 has been filed by Sunbird France.
  - 3.2 Several interlocutory applications [IA] were filed in the aforementioned suits, including the following applications, which are referred to in the impugned judgment and order.
  - 3.3 IA nos. 25662/2023, 33280/2024 and 35024/2024 were filed in CS



(COMM) no. 908/2023. IA no. 25662/2023 was preferred under Order XXXIX, Rules 1, 2, and 7 read with Section 151 of the Code of Civil Procedure, 1908 [hereafter referred to as "CPC"] when the suit action was first instituted, i.e., 14.12.2023.

3.4 IA no. 33280/2024 was filed while proceedings before the learned Single Judge were on, i.e., 11.07.2024. This application sought certain urgent reliefs, including initiation of contempt proceedings against the appellant, i.e., SpiceJet Limited [hereafter referred to as "SpiceJet"]. The application was mainly pivoted on consent terms recorded in the order dated 29.05.2024. More is said about the order dated 29.05.2024 in the latter part of our judgment as the impugned judgment and order is pivoted on the order dated 29.05.2024.

3.5 IA no. 35024/2024 also sought urgent orders which, while replicating most of the reliefs sought in IA no. 33280/2024, in addition, sought initiation of contempt proceedings against SpiceJet for willfully violating, *inter alia*, the order dated 15.07.2024.

3.6 In the other suit, i.e., CS (COMM) no. 909/2023, similar applications were filed. These applications [i.e., IA nos. 25664/2023, 33281/2024, and 35008/2024] replicated the reliefs sought in the above-mentioned applications filed in CS (COMM) no. 908/2023.

4. Thus, the learned Single Judge was, broadly, dealing with two sets of applications. The first set of applications sought interlocutory relief at the stage when the suits were instituted. In contrast, the second set of applications was filed midstream to seek urgent relief as SpiceJet had failed to adhere to the payment regime stipulated in the orders passed in the suit actions.



5. Although the record shows that the history of default concerning payment of lease rentals dates back to July 2021, i.e., a period before the institution of the suit(s), at present, we are concerned with the defaults that took place while the suit actions were pending before the learned Single Judge.

6. Therefore, in order to appreciate the contentions raised before us on behalf of the disputants, a brief backdrop of how the suit actions proceeded before the learned Single Judge must be spelled out.

### **Journey of the suit actions**

7. On 14.12.2023, Team France and Sunbird France instituted their respective suit actions.

7.1 In its suit action, Team France sought specific performance, *albeit* post-termination of the lease agreement executed with SpiceJet, to hand over and redeliver the subject engines, i.e., engines bearing no. ESN602805 and ESN602776. These engines were the subject matter of the lease agreements of even date, i.e., 14.12.2018.

7.2 Likewise, Sunbird France sought, amongst other reliefs, repossession and redelivery of engine bearing no. ESN854096, which was the subject matter of the lease agreement dated 29.03.2018, as novated by the agreement dated 26.11.2020. Although the engine lease agreements dated 29.03.2018 concerned four (4) aircraft engines, Sunbird France's suit action is confined to only one (1) engine referred to above, i.e., engine bearing no. ESN854096.

8. Both suit actions were listed for the first time before the concerned bench on 19.12.2023. The learned Single Judge, after noticing that in the suit actions, amongst others, reliefs of repossession of the subject three (3)



engines, including costs and payment of outstanding lease rentals was sought, deferred issuance of summons in the suit actions based on the assurance given on behalf of SpiceJet that it would remit the following sums to Team France and Sunbird France on the dates given hereafter:

| Timeline                | Amount (USD) |
|-------------------------|--------------|
| On or before 21.12.2023 | 50,000/-     |
| By 29.12.2023           | 200,000/-    |
| On or before 03.01.2024 | 200,000/-    |

8.1 Furthermore, the learned Single Judge directed SpiceJet to file an affidavit within ten (10) days setting out how it intended to liquidate Team France's and Sunbird France's outstanding dues and restore the subject engines unless disputants mutually agreed to extend the tenure of the engine lease agreements. The suit actions were, thus, directed to be listed on 04.01.2024.

9. On 04.01.2024, the concerned bench was informed that the other two tranches had been remitted to Team France and Sunbird France except for USD 200,000/-, which had to be paid by 03.01.2024. Given this position, on behalf of SpiceJet, it was conveyed to the learned Single Judge that USD 200,000/- [which was otherwise required to be paid by 03.01.2024] would be remitted by 05.01.2024. The learned Single Judge, thus, while adjourning the matter to 29.01.2024, made it abundantly clear that if the amount as mentioned above was not remitted by the date indicated, the court would have no option but to proceed in the matter.

9.1 Besides this, the court also took on record an affidavit dated 04.01.2024, which included SpiceJet's proposal for liquidation of



outstanding dues.

9.2 We may note that in the order dated 04.01.2024, there is also a reference to other aircraft and engines which, according to Team France and Sunbird France, were not being properly maintained and, hence, could cause a potential loss to them. Having regard to this assertion, the learned Single Judge called upon SpiceJet to grant inspection of the concerned aircraft/engines leased within five (5) days of such communication being made.

9.3 Accordingly, the suit actions were directed to be listed on 29.01.2024.

10. On 29.01.2024, the learned Single Judge recorded the statement made by SpiceJet's counsel that no further payments had been made besides USD 450,000/-, which, too had been paid pursuant to the order dated 19.12.2023.

10.1 Because it had been conveyed to the court on behalf of SpiceJet that it had received substantial funding, and that it had exchanged settlement proposals with Team France and Sunbird France, a direction was issued to SpiceJet to remit USD 4 million to Team France and Sunbird France by 15.02.2024.

10.2 Significantly, the learned Single Judge, in paragraph five (5) of the order mentioned above, observed, "***if the said payment is not made, the Court would be constrained to pass orders in respect of the engines which are being used as the admitted dues, are stated to be more than 20 million USD***".

11. The suit actions were, thereafter, listed on 22.02.2024. On that date, it was conveyed on behalf of SpiceJet that it had remitted only USD 2 million to Team France and Sunbird France and that the remaining amount, i.e., USD 2 million, would be paid on or before 29.02.2024. Consequently, the



court directed the relisting of the matter on 13.03.2024 with the observations that the interim application(s) will be taken up for hearing on the next date.

12. Since the court did not convene on 13.03.2024, the matter was stood over to 28.03.2024. On 28.03.2024, the court recorded that USD 4 million had been remitted to Team France and Sunbird France, *albeit*, after some delay.

12.1 Furthermore, since it was submitted on behalf of SpiceJet that settlement proposals submitted on its behalf were under consideration by Team France and Sunbird France, the matters were adjourned to 29.04.2024.

12.2 However, even while adjourning the matters, the learned Single Judge directed SpiceJet to remit current payments for using the subject three (3) engines concerning March 2024. Besides this, SpiceJet was also called upon to engage with Team France and Sunbird France concerning outstanding dues [payable for past period], which were (approximately) over USD 20 million.

13. On 29.04.2024, the learned Single Judge, after hearing counsel for the parties, concluded that the direction issued by her on 28.03.2024 concerning payment of usage charges for March 2024 relating to the three (3) subject engines had not been complied with. That said, SpiceJet was allowed to file an affidavit by 30.04.2024, setting out payment details of usage charges pertaining to March 2024.

13.1 The learned Single Judge observed that if it was found that usage charges for March 2024 had not been paid, the subject three (3) engines could be grounded. In addition, thereto, the learned Single Judge directed an Authorized Representative of SpiceJet, well-versed with financial transactions undertaken with Team France and Sunbird France, to remain



present in court. Accordingly, the matter was directed to be listed on 01.05.2024.

14. On 01.05.2024, the learned Single Judge, after noting in paragraph five (5) of the order passed on that date that between 01.03.2024 and 23.04.2024, USD 680,000/- had been paid by SpiceJet, accorded one last opportunity to it to pay Rs 50 crores, *albeit* within a reasonable timeframe having regard to Team France's and Sunbird France's assertion that approximately, Rs 90 crores [i.e., USD 10.84 million] was outstanding, which included past and current dues.

14.1 Consequently, counsel for SpiceJet was directed to take instructions concerning two (2) aspects. First, the timeframe within which it could deposit 50 crores. Second, whether the engine that had been grounded by SpiceJet, could be returned to Team France and Sunbird France.

15. The suit actions, thereafter, were listed on 03.05.2024. On 03.05.2024, the learned Single Judge noted that some negotiations were on between the disputants, although the same had yet to firm up. However, based on submissions made before the learned Single Judge, SpiceJet was directed to pay USD 1.58 million to Team France/Sunbird France by 22.05.2024.

15.1 Significantly, the court issued this direction based on the suggestion put forth on behalf of Team France/Sunbird France, which SpiceJet's counsel accepted. At this hearing, it was clarified by SpiceJet's counsel that contrary to the observations made in the previous order, i.e., 01.05.2024, all three (3) engines were being utilized and that one (1) of these engines had been grounded on an earlier occasion only for maintenance. The matter was, thus, posted for 27.05.2024.



16. On 27.05.2024, the court noted that USD 1.58 million was remitted to Team France/Sunbird France by SpiceJet, *albeit* in several tranches. The last installment was paid on the date of the hearing, i.e., 27.05.2024.

16.1 Importantly, at the hearing, the counsel for Team France and Sunbird France handed over a copy of the "consent interim arrangement", which parties were desirous of being incorporated in a court order. The matter was, thus, stood over to 29.05.2024 at the behest of counsel for SpiceJet, as he wished to return with instructions concerning the terms of the interim arrangement.

### **Consent terms**

17. The 29.05.2024 hearing, from the point of view of adjudication of these appeals, is crucial as, based on the proposal considered by the disputants, the learned Single Judge broadly recorded the agreed interim arrangement arrived at between them. The terms, as set forth in the order dated 29.05.2024, are extracted hereafter:

*"i) The Plaintiff is willing to accept a payment of US\$ 4.8 million as an interim arrangement amount to allow the Defendant to continue to use the three engines. This is acceptable to the Defendant, who has agreed to pay the same in four separate instalments of US\$ 1.2 million as per the following payment schedule:-*

- a) USD 1.2 M (Rs.9,96,70,500) by 30th June, 2024*
- b) USD 1.2 M (Rs.9,96,70,500) by 31st July, 2024*
- c) USD 1.2 M (Rs.9,96,70,500) by 31st August, 2024*
- d) USD 1.2 M (Rs.9,96,70,500) by 30th September, 2024*

*ii) In addition, the Defendant has also agreed to start making weekly payments of US \$160,000 per week, which would include both the basic rent and maintenance accrual (usage charges) commencing from 8th June, 2024 on a weekly basis till 30th September, 2024.*

***iii) If any of the payments set out above is missed by the Defendant, the Defendant would be liable to ground the three engines and return them within fifteen calendar days without the specific Court order to this***



**effect, so long as there is no order to the contrary.**

iv) *The payments in terms of Clause 1 and Clause 2 are mutually exclusive to each other.*

v) *In the event that the Engine ESN 854096 becomes unserviceable, the Defendant would be required to immediately return the said engine to the Plaintiff without any delay.*

vi) *If the said engine is returned, the proportionate adjustment in the weekly payments shall accordingly be given to the Defendant."*

[Emphasis is ours]

18. It is relevant to highlight that at the hearing held on 29.05.2024, Team France and Sunbird France emphasized that they would have outstanding dues amounting to USD 3,633,255.09/- payable to them even after payments are made as per the agreed terms outlined in the said order.

18.1 Since it was communicated on behalf of SpiceJet that the aforementioned outstanding dues would require reconciliation, a direction was issued that the repayment plan should be discussed if it emerged that amounts were payable upon completion of such exercise.

18.2 It must be emphasized that the learned Single Judge, on 29.05.2024, made it abundantly clear that the interim arrangement put in place on that date would continue to operate till September 2024 and SpiceJet would be at liberty to use "aircraft and engines" subject to compliance of the terms contained therein.

### **Default of consent terms**

19. Since there was a breach of the terms of the interim arrangement incorporated in the order dated 29.05.2024, as noticed at the outset, Team France and Sunbird France moved interlocutory applications, i.e., IA no. 33280/2024 and IA no. 33281/2024 on 11.07.2024 in their respective suit actions. These applications came up for hearing on 15.07.2024.

19.1 Interestingly, at the hearing held on 15.07.2024, learned counsel



appearing for SpiceJet accepted that SpiceJet had defaulted in adhering to the payment schedule stipulated in the order dated 29.05.2024. It was also conceded that as of 13.07.2024, the outstanding dues against SpiceJet were USD 1,314,870.82/-, a position that obtained even on the date of hearing, i.e., 15.07.2024.

**Breach of further assurances**

20. It is against this backdrop that counsel for SpiceJet informed the learned Single Judge that instructions had been issued by SpiceJet to its banker on that very date, i.e., 15.07.2024, to remit USD 480,000/- to Team France/Sunbird France and that the said amount would get credited either by the end of the day or the following day.

20.1 Furthermore, counsel for SpiceJet conveyed to the court, on instructions, that the remaining amount, i.e., USD 834,871/-, would be remitted to Team France and Sunbird France by 26.07.2024. The counsel went on to state that the remaining payments will be made as per the terms stipulated in the interim settlement recorded by the court on 29.05.2024.

20.2 It must be emphasized that USD 480,000/-, which had been remitted to Team France and Sunbird France, was accepted by them, *albeit*, without prejudice to their rights in the applications placed before the court on 15.07.2024. The matter was directed to be listed before the court on 08.08.2024.

21. Because SpiceJet had failed to make payments in consonance with the terms of payment recorded in the order dated 29.05.2024 and the statements made on its behalf on 15.07.2024, Team France and Sunbird France moved another set of interlocutory applications, i.e., IA no. 35024/2024 in CS (COMM) no. 908/2023, and IA no. 35008/2024 in CS (COMM) no.



909/2023 on 29.07.2024, to seek urgent reliefs.

21.1 These applications were listed before the court on 31.07.2024. *Via* the said applications, Team France and Sunbird France sought *ad interim ex parte* injunction against SpiceJet concerning the operation of engines bearing nos. ESN602805, ESN602776 and ESN854096.

### **Acceptance of default by SpiceJet**

21.2 Notably, SpiceJet was represented by counsel on 31.07.2024, who accepted that default in making payments as per schedule had been committed and the assertions made in that behalf in paragraphs 22 and 23 of the applications were "fairly accurate".

21.3 It is in this context that the learned Single Judge directed the Chief Financial Officer, SpiceJet, to file an affidavit in support of the reply to the application and to remain present on the next date of hearing in the event payments were not regularized as per the agreed schedule. The matter was, thus, posted to the date already fixed, i.e., 08.08.2024.

### **Fresh proposal by SpiceJet**

22. On 08.08.2024, SpiceJet's counsel handed over, in court, an affidavit of even date, i.e., 08.08.2024, which contained a fresh proposal for making payments to Team France and Sunbird France.

22.1 It was asserted on behalf of SpiceJet that it would be able to repay the dues by September 2024.

22.2 Perhaps looking at the track record of SpiceJet, the learned Single Judge called upon the counsel for SpiceJet to take instructions if its Director would be willing to furnish a personal undertaking to secure the repayment of dues and towards this end, make a disclosure of assets owned by him/her.

22.3 The matter, thus, was posted for 12.08.2024.



23. On 12.08.2024, the matter was directed to be listed for orders on 14.08.2024.

**Last ditch effort by SpiceJet: Revised Proposal**

24. It appears that admitted defaults in adhering to the agreed payment schedule impelled SpiceJet to make a last-ditch effort to save itself from an adverse order.

24.1 Accordingly, applications, i.e., IA no. 36462/2024 in CS (COMM) no. 908/2024 and IA no. 36461/2024 in CS (COMM) no. 909/2023 were moved by SpiceJet. *Via* these applications, SpiceJet purported to place before the court a revised proposal for complying with the agreed terms of the interim arrangement as incorporated in the order dated 29.05.2024.

24.2 On that date, the stance taken by SpiceJet before the court was that the revised proposal was in supersession of the offer made on 12.08.2024 [*sic* 08.08.2024].

24.3 However, on behalf of Team France and Sunbird France, it was conveyed to the court, in no uncertain terms, that the revised offer, which was the subject matter of the applications mentioned above, was not acceptable and that they sought the return of the subject three (3) engines.

24.4 Since the revised proposal was rejected at the threshold, the learned Single Judge closed the applications filed in that behalf by SpiceJet. We may note that there is, perhaps, a typographical error in the order dated 13.08.2024, as although the cause title refers to both applications, the heading of the order adverts only to IA no. 36461/2024 filed in CS (COMM) no. 909/2023.

25. *Via* the impugned judgment and order, the learned Single Judge passed the following operative directions:



"29. In view of the aforesaid findings, this court has no option but to direct the defendant to ground the three (3) Engines with effect from 16.08.2024.

29.1 The defendant will take steps to ensure that the Engines are redelivered to plaintiff within fifteen (15) days from today.

29.2 To this effect, the defendant is directed to offer prior inspection of the Engines to the plaintiff through its authorized representative at the Delhi Airport within seven (7) days and to facilitate the said inspection, the defendant is directed to make available passes to the plaintiff's authorized representatives.

29.3 The defendant is directed to take all precautions and compliances for ensuring that the Engines are redelivered to the plaintiff in accordance with terms of Lease Agreements executed between the parties.

30. With the aforesaid directions, the present applications are disposed of.

31. It is however clarified that the defendant will remain liable for making payments, which it undertook in order dated 29.05.2024 towards the admitted outstanding of USD 4.8 million and towards the weekly payments arising on account of use of the Engines under the aegis of this court. The return of the Engines does not absolve the defendant from its liability for the payments which have admittedly fallen due and to that extent the plaintiff is entitled to recover the said amount from the defendant through execution of the order dated 29.05.2024."

26. It is in the above-mentioned judgment and order passed by the learned Single Judge that has given rise to the instant appeals.

## II. SUBMISSIONS ON BEHALF OF COUNSEL

27. Mr Amit Sibal, learned senior counsel, who appeared on behalf of SpiceJet, sought to assail the impugned judgment and order broadly on the following grounds:

- (i) The court did not have jurisdiction to entertain the suit actions since, as per clause 24.2 of the subject engine lease agreements, parties had irrevocably agreed to submit themselves to the jurisdiction of the competent Court in England. [See **British India Steam Navigation Co. Ltd. v. Shanmughavilas Cashew Industries**, (1990) 3



SCC 481; *Modi Entertainment Network v. W.S.G. Cricket Pte. Ltd.*, (2003) 4 SCC 341; *Man Roland Druckmaschinen Ag v. Multicolour Offset Ltd.*, (2004) 7 SCC 447; *Beoworld Pvt. Ltd. vs. Bang & Olufsen Expansion*; MANU/DE/1593/2020; hereafter referred to as "*British India Steam Navigation, Modi Entertainment, Man Roland and Beoworld*" respectively].

(ii) The learned Single Judge erred in ignoring that both contractual and non-contractual obligations arising out of or in relation to the subject engine lease agreements, as per Clause 24.1, were to be governed by the laws of England. [See *Hari Shanker Jain v. Sonia Gandhi*, (2001) 8 SCC 233, hereafter referred to as "*Hari Shanker Jain*"; *Beoworld*].

(iii) The learned Single Judge, *via* the impugned judgment and order, had, in effect, decreed the suit because SpiceJet failed to comply with the undertaking outlined in the court's order dated 29.05.2024. The learned Single Judge has attempted to enforce the terms of the agreed interim arrangement *via* the impugned judgment and order. [See *State of Orissa v. Madan Gopal Rungta*, 1951 SCC 1024; *Dorab Cawasji Warden v. Coomi Sorab Warden*, (1990) 2 SCC 117; *Indian Oil Corporation Limited v. MS. Suman Gupta, Proprietor of M/S Bakson Gas Service*; FAO (OS) (COMM) 135/2024; *Dabur India Limited v. Emami Limited*; FAO (OS) (COMM) 171/2023; *Omkara Asset Reconstruction Company v. DLF Ltd.*; FAO (OS) (COMM) 218/2023; *Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira*, (2012) 5 SCC 370; hereafter referred to as "*Madan Gopal Rungta, Dorab Cawasji Warden,*



***IOCL, Dabur India, Omkara, Maria Margarida Sequeira Fernandes***" respectively].

(iv) A court cannot be invested with jurisdiction either through consent or estoppel. Since summons had not been issued until the impugned judgment and order was passed, SpiceJet was not able to formally raise its objection concerning lack of territorial jurisdiction. Although during the hearing, this aspect was brought to the notice of the court, the learned Single Judge rejected the contestation summarily based on the consent accorded by SpiceJet, as reflected in the order dated 29.05.2024.

(v) Since the subject engine lease agreements had not been stamped in accordance with provisions of the Indian Stamp Act of 1899 [hereafter referred to as the "1899 Act"], they were required to be impounded. [See ***Hindustan Steel Ltd. v. Dilip Construction Co.***, (1969) 1 SCC 597; ***Avinash Kumar Chauhan v. Vijay Krishna Mishra***, (2009) 2 SCC 532; hereafter referred to as "***Hindustan Steel and Avinash Kumar Chauhan***" respectively].

(vi) Team France and Sunbird France failed to take recourse to pre-litigation mediation; a mandatory requirement under Section 12A of the Commercial Courts Act, 2015 [hereafter referred to as "2015 Act"]. Because the disputes between the parties had been festering for four (4) years, Team France and Sunbird France should have taken recourse to mediation before the institution of suit actions. [See ***Yamini Manohar v. T.K.D. Keerthi***, (2024) 5 SCC 815; ***Harish Verma v. Joginder Pal Singh***, 2024 SCC OnLine Del 2770; hereafter referred to as "***Yamini Manohar and Harish Verma***" respectively].



(vii) The suit actions have been incorrectly valued and, therefore, are deficient in court fees in terms of Section 7(iii) of the Court Fees Act, 1870. Although the suit actions, as framed, seek specific performance of the obligations contained in the subject engine lease agreements, they seek recovery of movable properties, i.e., engines with a monetary value. Therefore, court fee should have been deposited accordingly.

(viii) The suit is impregnated with a fundamental defect inasmuch as the prayers made therein allude to relief of specific performance and alternatively for a claim for damages and possession which cannot coexist in law.

28. Mr Rajshekhar Rao, learned senior counsel, who appears on behalf of Team France and Sunbird France, contested each of these submissions. The main thrust of Mr Rao's submissions was that SpiceJet invited orders from the court based on various proposals it submitted for making payments to Team France and Sunbird France. The order dated 29.05.2024 whereby, the agreed interim arrangement was put in place with the imprimatur of the court was one such order which, clearly, provided that in case of breach, SpiceJet would be required to ground the subject engines and return the same within fifteen (15) calendar days without a specific direction of the court.

28.1 Therefore, according to Mr Rao, the arguments advanced on behalf of SpiceJet concerning lack of jurisdiction and the purported failure of the learned Single Judge in applying the governing law, i.e., the English law were an afterthought.

28.2 Furthermore, Mr Rao submitted that, in any event, Mr Sibal's



contention about lack of jurisdiction was untenable in view of the provisions of Clause 20.1 of the engine lease agreements. It was emphasized that upon the occurrence and continuance of any "Termination Event", which included failure to pay rent, the lessor, i.e., Team France and Sunbird France, would have the right to repossess the subject engine and have it exported from the relevant jurisdiction in which the engine was located as permissible by the applicable law.

28.3 Under sub-Clause (a) of Clause 20.1, the lessee, i.e., SpiceJet, had agreed to waive any right it may have under applicable law to any hearing or rights it may have to bring any proceedings of whatever nature prior to repossession of the engine.

28.4 As far as Clauses 24.1 and 24.2 read with Clause 1.1 of the engine lease agreements were concerned, on which Mr Sibal placed reliance, Mr Rao's contention was that they have to be read in conjunction with Clause 25.1 and Clause 1.2<sup>1</sup> of the engine lease agreements. In this context, Mr Rao submitted that Team France and Sunbird France could rely upon the original copy or extract of the engine lease agreements in connection with, *inter alia*, the commencement of original legal proceedings before any court in India. The marginal heading of Clause 25.1, "Document Matters", would have to give way to the plain text of the said Clause. Clause 1.2, in no uncertain terms, states that clause headings have been inserted for convenience of reference only and shall be ignored in the interpretation of the agreement. Therefore, the submission that the learned Single Judge had no jurisdiction to entertain the suit was misconceived both in law and on facts.

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<sup>1</sup> 1.2 Clause headings and the table of contents are inserted for convenience of reference only and shall be ignored in the interpretation of this Agreement.



28.5 As regards the argument advanced on behalf of SpiceJet that the learned Single Judge issued directions from time to time without issuing summons in the suit, Mr Rao submitted that this argument overlooked the stance taken by SpiceJet on the very first date, i.e., 19.12.2023, that because it intended to make good the payment of outstanding dues, the issuance of summons in the suit should be deferred. According to Mr. Rao, this position obtained right up until the order dated 29.05.2024 was passed [which incorporated the consent terms] and thereafter when proposals were placed before the court for repayment of outstanding dues on 08.08.2024 and 13.08.2024.

29. As per Mr Rao, contrary to the submissions advanced on behalf of SpiceJet, the suit was properly framed. The suit actions seek specific performance of obligations undertaken by SpiceJet under the engine lease agreements post-termination, one such obligation being to enable repossession of the subject engines and their export from the jurisdiction in which they are located. It was stressed that the suit as framed is not for recovery of money. The costs claimed are those associated with the repossession and export of the engines. Team France and Sunbird France had, in fact, moved applications under Order II Rule 2 of the CPC to seek reliefs, among other things, such as liquidation of outstanding debts and loss of profits. Therefore, the submission that the appropriate court fee has not been paid is baseless.

30. As regards the submission, since the engine lease agreements are not stamped as per the provisions of the 1899 Act and, therefore, they ought to be impounded, Mr Rao submitted that, in law, it was an untenable submission in law. Mr. Rao contended it was well-established that courts



have power under the 1899 Act to impound only original documents. Therefore, the engine lease agreements filed along with suit actions are copies of the original and could not be impounded.

31. In support of his submissions, Mr Rao relied upon the following judgments:

(i) *Municipal Corporation of Delhi v. Natraj Construction Company*, 2012 SCC OnLine Del 2501.

(ii) *Harshad Chiman Lal Modi v. DLF Universal Ltd. and Another*, (2005) 7 SCC 791.

### III. ANALYSIS AND REASONS

32. We have heard learned counsel for the parties and perused the record. The main thrust of Mr Sibal's submission is that suit actions could not have been entertained given the provisions of Clause 24.2<sup>2</sup> of the engine lease agreements read with the definition of the expression "Courts", which, according to him, conferred irrevocable exclusive jurisdiction in the Courts of competent jurisdiction in England.

32.1 Tied to this submission is the other contention advanced by Mr Sibal that the engine lease agreements were governed by and had to be construed in accordance with the governing law, which meant the laws of England. In this context, our attention was drawn to Clauses 24.1<sup>3</sup> and 1.1<sup>4</sup> of the lease

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<sup>2</sup> 24 LAW AND JURISDICTION

24.2 The Courts shall have exclusive jurisdiction to settle any disputes arising out of or in connection with, and any non-contractual obligations arising out of or in connection with, this Agreement. For such purposes each party irrevocably submits to the jurisdiction of the Courts and waives any objection to the exercise of such jurisdiction.

<sup>3</sup> 24.1 This Agreement and any non-contractual obligations arising out of or in relation to this Agreement are governed by and shall be construed in accordance with the Governing Law.



agreements.

32.2 Mr Sibal contended that governing law was a question of fact which had to be proved by taking recourse to expert testimony.

32.3 As noted above, there were other submissions which we will deal with as we go along.

33. As far as the submission concerning lack of jurisdiction in the Indian courts is concerned, it is founded on the plain text of Clause 24.2 of the engine lease agreements. However, when the engine lease agreements is/are read as a whole, along with other clauses, particularly Clause 20.1(a)<sup>5</sup>, it is clear that the lessors, i.e., Team France and Sunbird France have been provided, metaphorically speaking, two strings to the bow insofar as the reliefs concerning repossession of leased engines are concerned. Thus, while SpiceJet, i.e., the lessee, can maintain a suit action concerning both contractual and non-contractual disputes arising out of or in connection with the lease agreement in Courts of competent jurisdiction in England, the

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<sup>4</sup> 1 DEFINITIONS

“Courts” means the courts of competent jurisdiction of England;

“Governing Law” means the laws of England;

<sup>5</sup> 20 LESSOR’S RIGHTS FOLLOWING A TERMINATION EVENT

20.1 At any time after the occurrence and continuation of any Termination Event the Lessor may, by notice to the Lessee, immediately terminate the Lease Period (whereupon, as the Lessee hereby agrees and acknowledges, the Lessee’s right, title and interest in and to the Engine and to possess and operate the Engine, shall terminate) and the Lessor shall be entitled to:

(a) repossess the Engine and export the Engine from the relevant jurisdiction in which the Engine is located, to the extent permitted by applicable law, and the Lessee agrees to take all such actions and execute all such documents as the Lessor may require to effect such export or to effect redelivery of the Engine to the Lessor in accordance with the requirements of this Agreement and the other Lease Documents, and the Lessee waives any right it may have under applicable law to any hearing or rights it may have to bring any proceedings of whatever nature prior to repossession of the Engine. The Lessee further agrees that it shall ensure that the Lessor, or any agent or other person acting on behalf of the Lessor, shall be entitled to enter upon any premises where the Engine and/or its Manuals and Technical Records may be located for the purpose of retaking possession of the Engine and/or its Manuals and Technical Records and that neither the Lessor nor any agent or other person acting on behalf of the Lessor shall have any liability to the Lessee as a result of or in connection with any such entry upon such premises;



lessors, i.e., Team France and Sunbird France have been given the leeway to approach the "**relevant jurisdiction**" in which the engine whose repossession is sought is located to the extent permitted by "**applicable law**". A harmonious reading of Clauses 24.2 and 20.1 would reveal that parties appear to have forged an *asymmetric jurisdiction* clause which allows the lessor, [i.e., Team France and Sunbird France] to sue the lessee [i.e., SpiceJet] both in Courts of competent jurisdiction in England as well as in courts of relevant jurisdiction where the lease assets, i.e., the engines in issue are located.

33.1 The following extract from Professor Fentiman's book (2<sup>nd</sup> Edition) on International Commercial Litigation, quoted in *Etihad Airways PJSC v. Prof. Dr. Lucas Flother*, [2020] EWCA Civ 1707, provides a synoptic view of what constitutes an asymmetric jurisdiction clause:

*"Arguably, the solution is to draw a distinction between a jurisdiction clause and the distinct agreements it may comprise. It is coherent to say that asymmetric clauses are to be classified as non-exclusive, in so far as they do not confine proceedings to a single court. However, such clauses contain separate exclusive and non-exclusive jurisdiction agreements, whereby the counterparty's agreement to sue in the designated court is exclusive, and the "beneficiary's" agreement to sue in that court is non-exclusive."*

[Emphasis is ours]

34. As a matter of fact, under sub-clause (a) of Clause 20.1, the lessee, i.e., SpiceJet, has waived any right that it may have under the applicable law to a hearing or rights that it could take recourse to bring proceedings of whatever nature before repossession of the subject engines.

35. In our opinion, the applicable law for repossession and export would be the law prevailing in the jurisdiction where the engine(s) is/are located.



36. Furthermore, a perusal of Clause 25.1<sup>6</sup> would show that parties have agreed that the engine lease agreements, whether in its original form, copy, or extract of its facsimile image is/are prohibited from being brought to India except when the lessors [i.e., Team France and Sunbird France] are required to do so in connection with commencement of original legal proceedings before any court in India. This elbow room is available to the lessors [i.e., Team France and Sunbird France], in connection with any enforcement proceedings brought in India.

36.1 Therefore, the submission of Mr Sibal that the operative directions issued by the learned Single Judge were in law inefficacious as the court was progressing suit actions when jurisdiction lay with competent Courts in England is a submission which, facially, appears to be untenable. The reason that we say, at this juncture, that the objection concerning jurisdiction is facially unsustainable is because the learned Single Judge has issued summons in the suit *via* the impugned judgment and order, allowing SpiceJet to file a written statement. Therefore, if an objection concerning jurisdiction and the governing law is taken, issues will be framed, which will be adjudicated by the suit court.

36.2 Assuming that the learned Single Judge were to conclude that the governing law in the facts obtaining in the instant case was English law, one

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<sup>6</sup> 25 DOCUMENT MATTERS

25.1 Notwithstanding anything stated in this Agreement, the Lessor shall not bring or permit to be brought this original Agreement within the Republic of India or any copy or extract (whether certified to be a true copy or not and whether facsimile image or otherwise of the original document) except if required to do so in connection with commencement of original legal proceedings before any court in India or in connection with any enforcement proceedings in India, and/or if required to do so by any Government Entity in India, and/or if brought in the State of Delhi for filings with the Aviation Authority, and/or if required by the Lessor's legal counsel for legal advice and issuing a legal opinion, and/or if the Lessor is requested to do so by the Lessee. If the Lessor acts in breach of this covenant, the Lessee's sole remedy will be to seek payment or reimbursement from the Lessor of the appropriate stamp duty payable in India as a result of the Lessor's breach of this covenant.



would find it hard to quibble with the proposition that it would have to be proved, perhaps, by taking recourse to expert testimony. The suit actions have not reached this stage as yet.

36.3 We have examined the issue concerning both jurisdiction and governing law, *albeit* broadly, to satisfy ourselves as to whether there was a sliver of jurisdictional ingredients in the suit actions preferred by Team France and Sunbird France or, as contended on behalf of SpiceJet, there was a complete lack of jurisdiction in the suit court. Clause 20.1(a) read with Clause 25.1 of the engine lease agreements has persuaded us to reach this conclusion.

37. Besides this, the narration of the history of the suit action, i.e., the various orders passed by the suit court, would show that SpiceJet invited orders, including the order dated 29.05.2024. Significantly, *via* order dated 29.05.2024, the agreed interim arrangement backed by the court's imprimatur was put in place. At each hearing, counsel for SpiceJet was heard and given due opportunity and room to espouse its constraints and difficulties. At no stage, except, perhaps, at the hearing held on 12.08.2024, when orders were reserved in the subject applications, did counsel for SpiceJet raise objections concerning jurisdiction.

37.1 It appears that objection concerning governing law was never articulated before the learned Single Judge; at least nothing was shown to us in this behalf during the hearing.

37.2 Although notices were issued in IA no. 33280/2024 and IA no. 35024/2024 filed in CS (COMM) no. 908/2023, as also in IA no. 33281/2024 and IA no. 35008/2024 filed in CS (COMM) no. 909/2023, SpiceJet failed to file reply(ies) and raise any objections, as are articulated in



the appeal.

37.3 The objection with regard to jurisdiction concerns **territoriality**. It does not concern **subject matter** jurisdiction. As is evident from the record, SpiceJet invited orders from the court and, in a sense, acquiesced to its jurisdiction. That SpiceJet was aware of the fact that the interim arrangement, which was recorded in the order dated 29.05.2024, if breached, could cause prejudice is evident from the following extract of the said order:

**" (iii) If any of the payments set out above is missed by the Defendant, the Defendant would be liable to ground the three engines and return them within fifteen calendar days without the specific Court order to this effect, so long as there is no order to the contrary."**

[Emphasis is ours]

38. Perhaps keeping the conduct of SpiceJet in mind, the learned Single Judge rejected the objection taken by SpiceJet at the fag end, that too across the Bar concerning the absence of jurisdiction. The rejection of this submission advanced on behalf of SpiceJet, in our view, can only be preliminary in nature, and cannot efface the right of SpiceJet from taking the objection both with regard to jurisdiction and also governing law in its defence to the suit. As indicated above, our observations in relation to both jurisdiction and governing law are only *prima facie*, which have been made only to adjudicate the appeal and examine the sustainability of the impugned judgment and order.

39. This brings us to the other contention that since the lease agreements were not stamped according to the provisions of the 1899 Act, they deserve to be impounded.

39.1 Mr Rao, in our opinion, is right that impounding can be ordered only *qua* original unstamped or deficiently stamped documents. Concededly, the



engine lease agreements lodged with the suit actions are copies of the original.

40. As regards the contention that the suit actions are not properly framed, i.e., even while they seek specific performance of the engine lease agreements, monetary claims are made for costs and damages.

40.1 According to us, this submission is completely misconceived. Team France and Sunbird France have sought specific performance of post-termination events. "Termination Events" are stipulated in Clause 19 of the engine lease agreements. Amongst others, the failure to pay rent is included as a termination event [See Clause 19.1(a) of the engine lease agreements<sup>7</sup>].

41. As noticed above, Clause 20 adverts to the lessor's rights [i.e., Team France and Sunbird France] following a termination event which includes the right to repossess the subject engine and having it exported from the jurisdiction in which it is located. [See Clause 20.1(a) of the engine lease agreements].

42. The costs sought *via* the suit actions concern the effectuation of the right to repossess the 'subject engines'. Therefore, the argument that the suit is improperly framed is, in our opinion, misconceived.

43. The frame of the suit also impinges upon its valuation and payment of court fees. The submission advanced on behalf of SpiceJet that suit actions

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<sup>7</sup> 19 TERMINATION EVENTS

19.1 The Lessor and the Lessee agree that it is a fundamental term and condition of this Agreement that none of the following events and/or circumstances shall occur during the Lease Period, and that the occurrence of any of the following events and/or circumstances shall constitute a repudiatory breach (but not a termination) of this Agreement, whether any such event or condition is voluntary or involuntary or occurs by operation of law or pursuant to, or in compliance with, any judgment, decree or order of any court or any order, rule or regulation of any Government Entity:

(a) the Lessee fails to pay Rent, Maintenance Accruals or any other sum payable by it under this Agreement within three (3) Business Days of its due date or in the case of sums payable on demand, unless otherwise prescribed, within eight (8) Business days of demand;



have not been properly valued and, therefore, the appropriate court fee has not been paid, is also untenable in law. The suit actions clearly are not for recovery of monies. As alluded to above, concededly, as a measure of abundant caution, Team France and Sunbird France have moved applications under Order II Rule 2 of CPC to secure their rights to file such actions in future.

44. The contention advanced on behalf of SpiceJet that the suit ought not to have been entertained as Team France and Sunbird France had failed to take recourse to pre-litigation mediations as mandatorily required under Section 12A of the 2015 Act loses sight of the fact that the suit actions were accompanied by interlocutory applications preferred under Order XXXIX Rules 1 and 2 of the CPC.

44.1 A matter of this nature undoubtedly contemplated urgent interim relief as SpiceJet is using the subject engines to the detriment of Team France's and Sunbird France's interests without recompense. Since the engines are depreciable assets, with each passing day, they would degrade the interests of Team France and Sunbird France.

45. Lastly, SpiceJet's argument that the impugned judgment and order seeks to issue an interim mandatory injunction at an interlocutory stage and, hence, has more or less resulted in the suit being decreed does not impress us in the facts and circumstances of this case for the following reason.

45.1 It is well established that courts are vested with the power to issue a temporary mandatory injunction, provided the following broad circumstances obtain in a given matter.

(i) First, the plaintiff is in a position to make out a strong case for trial. The *prima facie* case set up by the plaintiff is of a higher standard than that



required to seek a prohibitory injunction.

(ii) Second, if interlocutory mandatory relief as sought is not granted, it would cause irreparable or serious injury which cannot be, normally, compensated in terms of money.

(iii) Third, the balance of convenience mandates the grant of such relief.

46. In this case, clearly there is no dispute about the fact that the lease arrangement vis-à-vis the subject engines obtained between the disputants. The record reveals SpiceJet is in default, and past and current outstanding dues remain unpaid. At the risk of repetition, it must be stressed that SpiceJet has violated an agreed interim arrangement for payment of dues, which included a term that, upon breach, it would ground the engines that Team France and Sunbird France could then repossess.

46.1 Therefore, in our view, the first condition is fulfilled.

47. The second condition, in our opinion, also stands fulfilled as the engines being depreciable assets, they would be of little use to Team France and Sunbird France if they are used without recompense. The fact that the financial condition of SpiceJet is weak is evident from its conduct and the stand taken on its behalf in court, which is that it is attempting to infuse funds through loans and/or equity. If the position in which SpiceJet is at this juncture, Team France and Sunbird France could well end up both without its engines or the monies due under the engine lease agreements.

47.1 Therefore, compensation in terms of money does not seem probable from the point of view of Team France and Sunbird France.

48. The last condition, i.e., concerning the balance of convenience, is undoubtedly in favour of Team France and Sunbird France; the repossession and export of subject engines upon a termination event occurring is a



contractual right conferred upon Team France and Sunbird France under the engine lease agreements.

48.1 As alluded to above, if Team France and Sunbird France are prevented from exercising their contractual rights at this stage, they could possibly lose both their assets, i.e., the engines, and the money.

48.2 Clearly, in the facts and circumstances of the case, there has been no failure of justice. In any event, given that SpiceJet would have a second shot at raising these objections *via* its written statement, the impugned judgment and order, in our opinion, needs no interference.

#### **IV. DISCUSSION ON JUDGMENTS**

49. Before we conclude, one would like to refer to certain judgments cited on behalf of SpiceJet by Mr Amit Sibal.

49.1 Mr Sibal's submission that Indian courts will not be a party to the violation of provisions of the contract obtaining between disputants, which vests exclusive jurisdiction in a foreign court<sup>8</sup>, does not in any manner rail against the conclusion that we have arrived at, in the instant case. As indicated above, Clause 24.2 has to be read with Clause 20.1 of the engine lease agreements.

49.2 A composite and harmonious reading of the clauses mentioned above has persuaded us to conclude that under the engine lease agreements, Team France and Sunbird France have the leeway to sue SpiceJet both in the Courts of competent jurisdiction in England as well as in other jurisdictions where the asset is located. As noted above, this is typical of contracts with asymmetric jurisdiction clauses. Therefore, in our view, the submission

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<sup>8</sup> See *British India Steam Navigation, Modi Entertainment, Man Roland, Beoworld*



advanced by Mr Sibal that if Indian courts were to entertain the suit actions, it would, in a sense, participate in violating the exclusive jurisdiction clause, i.e., Clause 24.2, is misconceived.

49.3 Insofar as the applicability of English law and its proof is concerned, Mr Sibal relied upon Clause 24.1 of the engine lease agreements and the judgments rendered in *Hari Shanker Jain* and *Beoworld*.

49.4 The proposition that the applicability of foreign law has to be proved, as a matter of fact, is well-established, over which there can be no contestation. That said, the question, i.e., what would be the applicable law when Team France and Sunbird France seek repossession of the leased asset(s) [in this case, the three engines in issue] would have to be examined, *inter alia*, in the backdrop of Clause 20.1 of the engine lease agreements.

49.5 Sub-clause (a) of Clause 20.1 of the engine lease agreements provides that where the lessor [i.e., Team France and Sunbird France], seek to repossess and export the engine from the **relevant jurisdiction** in which the engine is located, it would be entitled to do so to the extent permitted by the **applicable law**. The suit court would have to determine what would be the applicable law of the jurisdiction in which the engine is located.

49.6 *Prima facie*, as indicated above, there is nothing before us which would have us conclude, at least at this juncture, that under the applicable law, i.e., the Indian law, there is any impediment in the court directing repossession and export of the engines in issue.

49.7 That said, unlike the issue concerning jurisdiction, SpiceJet did not raise this aspect before the learned Single Judge either in replies to the application or during arguments.

49.8 As far as the decisions rendered in *Madan Gopal Rungta* and *Dorab*



*Cawasji Warden* are concerned, they do not conflict with the legal principle that temporary mandatory injunctions can be granted, provided certain conditions are fulfilled. We have already deliberated on this issue in paragraphs 45 to 48 above.

49.9 The reliance on judgments in *Dabur India*, *IOCL*, *Omkara*, and *Maria Margarida Sequeira Fernandes* in support of the submission that interlocutory application should not be disposed of without a response being filed has no applicability in the facts arising in the instant case. At the risk of repetition, we may reiterate that despite opportunity having been granted to file replies in IA no. 33280/2024 in CS (COMM) 908/2023 and IA no. 33281/2024 in CS (COMM) 909/2023; and in IA nos. 35024/2024 [CS (COMM) 908/2023] and 35008/2024 [CS (COMM) 909/2023], SpiceJet chose not to respond and instead, submitted proposals for settlement of disputes with Team France and Sunbird France.

50. The narration of facts and events in the earlier part of our discussion would show that SpiceJet was given more than one opportunity to have its say in the matter.

50.1 Therefore, in our opinion, these judgments do not apply to the facts obtaining in the instant appeals.

50.2 The reliance placed on the judgments rendered in *Hindustan Steel Ltd.* and *Avinash Kumar Chauhan* by Mr Sibal in support of the submission that documents that are inadequately stamped cannot be looked at by a court is a submission that does not do justice to the principle enunciated in this behalf. In our view, an inadequately stamped document can be considered upon payment of stamp duty and, if necessary, penalty.

50.3 The record discloses that this objection has been taken for the first



time in appeal. Since SpiceJet did not file replies to IA nos. 33280/2024, 33281/2024, 335024/2024, and 35008/2024, the objection does not form part of the pleadings. The objection was also not raised before the learned Single Judge during the hearing.

50.4 The learned Single Judge, *via* the impugned judgment and order, has, in effect, directed SpiceJet to comply with Clause (iii) of the terms of settlement contained in the order dated 29.05.2024, which, among other things, obliged SpiceJet to ground and return the subject engines if it failed to adhere to the agreed payment schedule. Indeed, if this objection is raised, once written statement(s) are filed, the learned Single Judge would deal with the same as per the applicable law bearing in mind the provisions of Clause 25 of the engine lease agreements.

50.5 The judgments rendered in *Yamini Manohar* and *Harish Verma's* case in support of the submission that pre-litigation mediation under Section 12A of the 2015 Act was a mandatory step that cannot be avoided by merely filing interlocutory applications, in our view, would have no applicability to the facts arising in the present appeals for the following reasons:

- (i) Firstly, interlocutory applications were filed that articulated urgency for seeking interim reliefs.
- (ii) Secondly, our *prima facie* view is that the facts obtaining in the suit actions not only displayed urgency but also established that interlocutory applications were not filed to sidestep the provisions of Section 12A of the 2015 Act. As noted in paragraph 44.1 above, the leased assets, i.e., the three engines in issue, which are depreciable, continue to remain in possession of SpiceJet without payment of lease rent, causing immense prejudice to the interests of Team France and Sunbird France.



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## V. CONCLUSION

51. Thus, for the foregoing reasons, we are not inclined to disturb the operative directions issued by the learned Single Judge. That said, the only variation that we propose to make concerns the right of SpiceJet to take all defences in the suit actions, which would include objections concerning jurisdiction and governing law. More particularly, the rejection of SpiceJet's contention concerning jurisdiction, as reflected in paragraph 19.4 of the impugned judgment and order, will not come in its way. As mentioned above, if such an objection is raised, it will be dealt with by the learned Single Judge, *albeit* as per law. The impugned judgment and order is varied only to this limited extent.

52. The appeal is disposed of in the aforesaid terms.

**(RAJIV SHAKDHER)**  
**JUDGE**

**(AMIT BANSAL)**  
**JUDGE**

**SEPTEMBER 11, 2024/pmc**