

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

**INTERIM APPLICATION NO. 3109 OF 2025
IN
COMMERCIAL FIRST APPEAL NO. 13 OF 2025
IN
COMMERCIAL SUIT NO. 1143 OF 2025**

Airport Authority of India] .. Applicant

Versus

Aer Lingus Ltd. & Ors.] .. Respondents

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Mr. Aseem Naphade a/w. Ms. Radha H. Bhandari and Mr. S. D. Shetty i/b
M. V. Kini & Co. for the Applicant.

Ms. Archana Deshmukh a/w. Mr. Krishan Singhania, Ms. Srishti
Singhania, Ms. Anjana Devi and Mr. Aayush Shah i/b Singhania & Co. for
Respondent Nos.1, 4 & 5.

CORAM : ALOK ARADHE, CJ AND

M. S. KARNIK, J.

DATED : 25th APRIL, 2025.

ORDER (Per M. S. Karnik, J.)

1. By this application, the applicant-Airport Authority of India (for short 'AAI') pray that pending the final disposal of the appeal, interim operation and effect of the impugned order dated 27.06.2024 and impugned judgment dated 03.01.2025 be stayed.

2. The operative part of the judgment and order dated 03.01.2025 in the Commercial Suit No.1143 of 2024 filed by the Airport Authority of India -

Plaintiff versus Aer Lingus Ltd & Ors.-Defendants reads thus: -

- “1) Commercial Suit No.1143 of 2024 is partly decreed against the defendant Nos. 2 and 3 with costs.*
 - 2) The defendant Nos.2 and 3 do jointly and severally pay an amount of Rs.2,71,51,058/- (Rupees Two Crores, Seventy One Lakhs, Fifty One Thousand and Fifty Eight only) to the plaintiff within three months from the date of passing of decree with the interest thereon @ 9% p. a. from the date it became due till realization in full.*
 - 3) The plaintiff do pay to the defendant No.1 amount of Rs.96,25,000/- towards Bank Guarantee charges and such further Bank Guarantee charges as may accrue till the Bank Guarantee is canceled by the Prothonotary and Senior Master of the Hon'ble Bombay High Court with interest thereon @ 9% p. a. from the date of decree till its realization in full.*
 - 4) The plaintiff do further pay exemplary costs of Rs.1 Crore and litigation costs of Rs.50 Lakhs to the defendant No.1 with interest thereon @9% p. a. from the date of decree till its realization in full.*
 - 5) The Prothonotary and Senior Master of the Hon'ble Bombay High Court is hereby directed to cancel the Bank Guarantee in the above suit submitted vide order dated 27.12.1996 passed by the Hon'ble Bombay High Court being Bank Guarantee No.5717015001, GL31308 Bank name Citibank N. A., branch Mumbai in WP No.618 of 1997 (Lodging No.2399 of 1996).*
 - 6) Decree be drawn up accordingly.*
 - 7) Commercial Suit No.1143 of 2024 disposed off accordingly.”*
3. In the suit, the plaintiff-Airport Authority of India prayed for the following reliefs : -

- “a) For a declaration that, the Plaintiff is entitled to detain defendant Nos.4 and 5 aircrafts until and unless all the aforesaid charges due in respect of the aircrafts are cleared to the plaintiff;*
- b) That, the defendants jointly and severally to pay the plaintiff a sum of Rs.2,71,51,058/- in respect of defendants Nos.4 and 5 aircrafts towards the aforesaid charges as per particulars of Claim (Exhibit-I), with further interest thereon @ 18% per annum from the date the said charges became due till the date of the suit and thereafter till payment or realization;*
- c) That, defendants jointly and severally to continue to pay the parking charges as per prescribed rate prevailing from time to time until the aircrafts are allowed to be cleared by the plaintiff.*
- d) For a declaration that, the plaintiff has a lien over defendant Nos.4 and 5 aircrafts until all charges and expenses payable in respect of defendant Nos.4 and 5 aircrafts are paid and cleared by the aircrafts or the operators or the owners thereof jointly and severally, and the plaintiff is entitled for refusing the permission to anyone to fly these aircrafts until such time.”*

4. The applicant-AAI has also prayed for stay of the impugned order dated 27.06.2024. By the order dated 27.06.2024 the Trial Court held that there is no privity of contract between the plaintiff and defendant No.1. It is held that the plaintiff failed to show that it is entitled to claim charges for services and facilities rendered and landing charges from defendant No.1. It is held by the Trial Court that whatever charges are to be recovered for the use of the airport by aircrafts, needs to be recovered from defendant No.2 and 3, if any, being in its possession as lessee at the relevant time.

5. We have perused the findings of the learned Trial Court in its judgment and order dated 03.01.2025. The Trial Court for the reasons recorded was of the opinion that the plaintiff-AAI are not entitled the claim charges for services and facilities rendered and lending charges from defendant No.1 as it had leased its aircrafts to defendant Nos.2 and 3. The Trial Court, thus, held that it is defendant Nos.2 and 3 who are alone liable in respect of aforesaid charges to the plaintiff. However, as regards the issue whether the plaintiff has colluded with defendant Nos.2 and 3 to claim the dues from defendant No.1, the Trial Court answered the issue in the affirmative. The Trial Court was of the opinion that the plaintiff-AAI has purported to exercise its right to recover dues as a result of such collusion from the defendant No.1.

6. Some facts relevant need to be stated. The plaintiff-AAI detained two aircrafts of defendant No.1 for non-payment of charges for which the suit was filed. This action of the plaintiff was challenged by defendant No.1 before this Court in Writ Petition (L) No. 2399 of 1996 when the order dated 27.12.1996 came to be passed wherein respondent No.1/defendant No.1 was permitted to take possession of the aircrafts in question subject to furnishing bank guarantee of Rs.2 Crores.

7. Thus, briefly stated, the Trial Court found that respondent No.1/defendant No.1 had leased its aircrafts to defendant Nos.2 and 3. As

per the Airports Authority of India Act, 1994 and Rules thereunder to claim recovery of charges for services and facilities rendered, it is defendant Nos.2 and 3 alone who are liable to pay the charges to the plaintiff-AAI.

8. Learned counsel for respondent No.1 was, therefore, at pains to point out that there is no question of this Court granting any stay to the Clauses 3, 4 and 5 of the impugned order dated 03.01.2025 having regard to the well considered findings of the Trial Court.

9. Learned counsel for respondent No.1 pointed out that respondent No.1 is an Irish company. The respondent No.1 is the owner and lessor of two aircrafts. Respondent Nos. 2 and 3 is East West Airlines which is currently under liquidation, who had taken these two aircrafts on lease for five years from respondent No.1 in 1992. Due to non-payment of lease rent and for operating aircrafts without insurance cover, respondent No.1 terminated the lease and filed the suit for recovery of lease rent and possession of aircrafts.

10. Learned counsel submits that the bills were raised on respondent No.2 only but maliciously the AAI joined respondent No.1 and their aircrafts as party-defendants. She submits that the Division Bench of this Court allowed Writ Petition No. 618 of 1997 filed by respondent No.1 and held that the defendant No.1 i.e. the lessor of aircrafts is not liable to pay the dues of the operation of the aircrafts and ordered cancellation of bank

guarantee. The said judgment and order was not set aside in appeal by the Hon'ble Supreme Court. However, in an appeal against the order passed by this Court rejecting the plaintiff's Notice of Motion filed under Order 38 of the Code of Civil Procedure for attachment of bank guarantee, the Supreme Court only ordered continuation of the bank guarantee till disposal of the suit and ordered the suit to be disposed of within a period of one year. Learned counsel for respondent No.1 submitted that the Trial Court in its order dated 27.06.2024 held that lessor of the aircrafts cannot be held liable to pay the dues for services rendered by AAI when the aircrafts were leased out in the absence of any contract between the AAI and defendant No.1. It is therefore submitted that no case is made out for staying the judgment and decree of the Trial Court.

11. The Trial Court held that the suit filed by the Plaintiff-AAI against R-1/defendant No.1 was malicious and hence granted cost of Rs. One Crore, under S.35-A of CPC for filing false & vexatious suit against R-1 which dragged for 27 long years. The Trial Court held that collusion between the AAI & R-2 & 3 was also proved by CAG report (Exh-B) which was admitted by PW-1 in his cross examination (Exh-A) which showed that the Appellant in breach of rules, allowed R-2 to operate the airlines by paying only Rs.1.57 lakhs towards security deposit whereas they were bound to pay Rs.17.5 Cr. security deposit to conduct airlines

operation. The Trial Court found that the bills were not raised in timely manner upon R-2. PW-1 also admitted in its cross examination that officials of AAI were fully aware before filing the suit that this Court in WP had held in 1996 itself that R-1 is not liable to pay the dues of the airlines however, as R-2 had gone into liquidation, AAI joined R-1 & the aircrafts as parties, which proved that the suit against R-1 was purely malicious. The Trial Court also awarded cost of Rs. 50 lakhs to R-1 towards litigation expenses and bank guarantee Charges of Rs. 96,25,000/- (Rupees Ninety Six Lakhs and Twenty Five Thousand Only/-) incurred by the R-1 in extending the BG for 27 years under S. 35 of CPC as amended by the Commercial Courts Act.

12. It is, thus, pertinent to note that the Trial Court found that the aircrafts were leased by respondent No.1 to respondent Nos.2 and 3 and hence the charges cannot be recovered from respondent No.1 as there is no privity of contract between the appellant-AAI and respondent No.1. The Trial Court then finds that there is collusion between the officials of the appellant-AAI and respondent No.2. Para 48 of the order passed by the Trial Court which considered the aspect of collusion between the officials of the plaintiff and respondent Nos.2 and 3 is relevant which reads thus: -

“48) I find force in the above submissions advanced on behalf of the defendant No.1, because, as per the admissions given by PW-1, Sunil Sawant, it is clear that, the plaintiff knew very well that, they

provided services to the defendant No.2 such as parking, landing, route navigation etc., for its airline operation business, in which the defendant Nos.1, 4 and 5 were unconnected. The collusion between the officials of the plaintiff and the defendant No.2 becomes obvious due to the apparent negligence in allowing the defendant No.2 to continue to use its services, though, it defaulted in making the payments. Not only this, the report of the Comptroller and Auditor General of India also shows that, instead of Rs.17.58 Crores a paltry sum of Rs.1.75 Lakhs was taken towards security deposit from the defendant No.2 and therefore, in the Audit adverse observations were passed against the plaintiff by the authority not less than the Comptroller and Auditor General of India. The most vital admission given by the PW-1 is that, if the breach of the terms and conditions is committed, the permit is liable to be cancelled. Then one fails to understand why no action was taken against defendant No.2. Again, an important admission which shows how, the defendant Nos.1, 4 and 5 are deliberately joined as a party to the suit is elicited in the cross-examination of PW-1 to the effect that, "we were aware that the defendant No.2 has gone into liquidation before filing the suit. We were aware that, we cannot recover any amount from the defendant No.2 and therefore, we joined defendant No.1, 4 and 5 as parties." This admission clinches the issue that, the plaintiff maliciously dragged defendant Nos.1, 4 and 5 into the suit. Again, PW-1 admitted that, they were aware that, in order to obtain bank guarantee one needs to pay commission @ 1.75% p.a. on the amount of bank guarantee and for its subsequent renewal. Therefore, the said expenses were saddled upon the defendant Nos.1, 4 and 5 only due to false and malicious suit filed against them by the plaintiff. If, the

plaintiff had not filed the above suit against present defendant Nos. 1, 4 and 5, the defendant No.1 would not have to pay the hefty amount of Rs.96,25,000/- till today.”

13. The aforesaid is the basis for imposing exemplary costs of Rs.1 Crore and litigation costs of Rs.50 Lakhs on the AAI payable to respondent No.1 with interest thereon @ 9% per annum from the date of decree till its realisation in full.

14. So far as Clause 3 of the operative portion of the impugned judgment and decree dated 03.01.2025 is concerned, we are inclined to stay the impugned judgment and decree subject to the appellant-AAI depositing the amounts directed to be ordered in terms of Clause 3 in this Court within the period of eight weeks from today. It is open for the respondent No.1 to apply for withdrawal of the said amount after the same is deposited.

15. So far as Clause 4 of the impugned judgment and decree dated 03.01.2025 is concerned, having given our anxious consideration to the observations of the Trial Court in para 48, prima facie, in our opinion, imposing exemplary costs and litigation costs on the appellant appears to be unjustified. It is not disputed that respondent No.1 had leased out its aircrafts to respondent Nos.2 and 3. Respondent Nos.2 and 3 defaulted in payment of the relevant charges for which the suit for recovery was filed. It

may be the officials of the AAI have been over cautious in protecting the interest of the AAI and hence impleaded defendant No.1 which is admittedly the owner of the aircrafts. In such circumstances, merely because defendant No.1 is made a party to the suit and a claim is made against them is not sufficient to impose exemplary costs. The finding of collusion between officials of AAI and Respondent Nos.2 and 3, prima facie, is misconceived. There is also no basis for allowing the claim of Rs.50 Lakhs which defendant No.1 made towards litigation expenses and costs. There are hardly any materials to arrive at this figure. In such circumstances, though we are conscious that a money decree should not ordinarily be stayed unless the decretal amount is deposited, in the facts and circumstances of the present case, we are inclined to stay the operation and effect of Clause 4 of the judgment and decree dated 03.01.2025.

16. However, we agree with learned counsel for the respondent No.1, that having regard to the findings of the Trial Court, the request made by the appellant-AAI to stay Clause 5 of the impugned Judgment and decree is without any merit and deserves to be rejected. Consequently, the Prothonotary and Senior Master of this Court is directed to expeditiously take steps to comply with Clause 5 of the judgment and decree dated 03.01.2025 of the Trial Court.

17. The Interim Application is disposed of in above terms.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

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