

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3132-3133 OF 2011

AIRPORTS AUTHORITY OF INDIA . . . APPELLANT (S)
VERSUS
AER LINGUS LIMITED & ORS. . . RESPONDENT (S)

O R D E R

1. Two Aircrafts viz. VT EWH and VT EWI were being operated at the relevant point of time by one East-West Airlines who had obtained the said aircrafts on lease from the Respondent No.1 herein-AER Lingus Limited. On a demand by the Appellant-Airports Authority of India on account of landing and parking charges etc., which remained unpaid, the two aircrafts were sought to be detained. Writ Petition No. 2399 of 1996 was filed by Respondent No. 1- AER Lingus Limited before the Bombay High Court against the detention of the aircrafts. An interim order was passed on 27th December 1996, inter alia, requiring the respondent to furnish bank guarantees of a sum of Rs. 2 crores subject to which the two aircrafts were to be allowed to fly out of India. It is not in dispute that the aircrafts were flown out of the Country, pursuant to the guarantees furnished in terms of the interim order of the Bombay High Court. It is also not in dispute that

bank guarantees in question have been validated from time to time and the said bank guarantees, as on date, are current and operational.

2. Around the same time the appellant-Airports Authority of India had instituted Civil Suit No. 366 of 1997 in the Bombay High Court seeking a decree against AER Lingus and East and West Airlines jointly and severally for a sum of Rs.2,71,31,058/- on account of charges payable in respect of the two aircrafts. Notice of motion seeking detention of the aircrafts was moved. The said interim relief was refused by the Bombay High Court on 5th February, 1997 primarily on the ground that the two aircrafts have been allowed to fly out of India in terms of the interim order dated 27th December, 1996 passed in the Writ Petition No. 2399 of 1996 and, therefore, it would not be necessary to pass any further interim orders in the suit.

3. Against the aforesaid refusal an appeal was filed by the Airports Authority of India before the Bombay High Court. The writ petition as well as the appeal against the refusal of interim relief in the Suit were taken up for consideration together and decided by the impugned order dated 9th of March, 2011 holding, inter alia, that Respondent No. 1-AES Lingus Limited was not liable to pay the charges demanded by the Airports Authority of India and, therefore, the bank

guarantees cannot be either retained or encashed by the said authority. Consequently, orders were issued to cancel the bank guarantees given by the AES Lingus Limited. The appeal against the refusal of the interim order in the Suit was also disposed of in the above terms. Aggrieved, this appeal has been filed.

4. We have heard Mr. C.U. Singh, learned senior counsel for the appellant and Mr. Gopal Jain, learned senior counsel for Respondent No. 1.

5. Shri C.U. Singh, learned senior counsel appearing for the appellant has taken us through the provisions of the International Airports Authority of India (Management of Airports Regulations) 1982 and has contended on the strength of the Regulation 4(22) read with 4(23) that the charges in respect of the aircrafts can be recovered either from the owner/lessor or the lessee, as may be, both of whom are liable for the payment of charges under the Regulations in force. The liability of the owner has also been sought to be enforced on the strength of several other propositions and contentions details of which we do not consider necessary to record in the present order as it is submitted, and rightly so, that all such contentions and propositions will have to be tested in the Suit. It is accordingly submitted that the amount covered by the bank guarantees may be ordered to be treated as security under the provisions of Order XXXVIII of the Code of

Civil Procedure.

6. Controverting the said submissions, Shri Gopal Jain, learned senior counsel appearing for Respondent No.1 has urged that the provisions of Regulations 4(22) read with 4(23) cannot cast any liability on the owner i.e. AES Lingus Limited in respect of charges sought to be levied by the Airports Authority of India. In any case, according to Shri Jain, in view of the findings recorded by the Bombay High Court in the Writ Petition, the liability of the owner stands determined and, therefore, there is no justifiable reason for any contrary order in facts of the present case.

7. The facts presented before us makes it obvious that the claim in the suit filed by the appellant is yet to be adjudicated. We, therefore, would not like to enter into any of the issues advanced by the parties before us as the same may have the effect of pre-judging the suit. We have noticed that the bank guarantees in question have been validated from time to time since the date of the interim order of the Bombay High Court dated 27th December, 1996. Whether in the present case, the provisions of Order 38 of the C.P.C. would be attracted, is a matter for determination by the Trial Court in the Suit. In this regard, we have already noticed that the interim relief sought for in the suit had been declined by the High Court on account of the interim order passed in the Writ

Petition. In the aforesaid facts, it would, therefore, be appropriate if the bank guarantees are ordered to remain valid for a period of two months from today within which time it will be open for the appellant, who is the plaintiff in the suit, to seek interim appropriate orders from the learned Trial Judge including orders under the provisions of Order XXXVIII of the Code of Civil Procedure, if so advised.

8. We make it clear that the learned Trial Judge would be free to pass such interim orders as may be warranted in law. We also request the learned Trial Judge to expedite the hearing of the suit and dispose of the same within a period of one year which will, naturally, be decided without being influenced by any of the observations made in the impugned order passed by the High Court in the Writ Petition.

9. The appeals are disposed of in the above terms.

.....J.
[RANJAN GOGOI]

NEW DELHI
5TH NOVEMBER, 2014

.....J.
[ROHINTON FALI NARIMAN]

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 3132-3133/2011

AIRPORT AUTH.OF INDIA

Appellant(s)

VERSUS

AER LINGUS LIMITED & ORS.

Respondent(s)

Date : 05/11/2014 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s) Mr. Chander Udai Singh, Sr. Adv.
 Mr. Praveen Jain, Adv.
 Mrs. Gunjan S. Jain, Adv.
 Mr. Ganesh Kamath, Adv.
 For M/s. M. V. Kini & Associates, Adv.

For Respondent(s) Mr. Gopal Jain, Sr. Adv.
 Mr. Krishnan Singhania, Adv.
 Ms. Annapurna, Adv.
 Mr. Abhinav Agrawal, Adv.
 Mr. Mahesh Agarwal, Adv.
 Mr. Rishi Agrawala, Adv.
 Mr. E. C. Agrawala, Adv.
 Ms. Devika Mohan, Adv.

Mr. Ashok Kumar Panda, Sr. Adv.
Ms. Sunita Rani Singh, Adv.
Mr. B. Krishna Prasad, Adv.

Mr. Vinay Navare, adv.
Mr. Satyajeet Kumar, Adv.
Ms. Abha R. Sharma, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeals are disposed of in terms of the signed order.

(MADHU BALA)
COURT MASTER

(ASHA SONI)
COURT MASTER

(Signed order is placed on the file)