

IN THE HIGH COURT OF SINDH, KARACHI

Suit No. 628 of 2015

Marhaba Aviation Services Private Limited

Versus

Real Air Travel

Plaintiff : Through Mr. Juzer Q. Pishori, AdvocateDefendant : Nemo for Defendant.Date of hearing : 07.02.2017Date of Judgment : 07.02.2017**JUDGMENT**

Muhammad Faisal Kamal Alam, J: This suit is filed under Summary Chapter of Civil Procedure Code, 1908, with regard to dishonoring of the cheques, issued by Defendants (Real Air Travel) to the Plaintiff (Marhaba Aviation Services Private Limited) in relation to their business transaction. In Paragraph-5 of the Plaint, details of cheques, which have been dishonored, are mentioned, whereas, in Paragraph-6 of the Plaint, the present Plaintiff has claimed that total outstanding amounts against the Defendant is Rs.222,009,539/- (Rupees Twenty Two Crore Twenty Lac Nine Thousand Five Hundred Thirty Nine Only), but the present proceeding is filed only in respect of dishonored bills of exchange / cheques. When queried, the learned counsel for Plaintiff referred to Annexure "E-3" at Page-81, which is one of the Emails exchanged between the parties hereto, wherein, Defendant appreciated the Plaintiff's services in lifting 3700 plus passengers despite 'mis-commitment' from Defendant's side. On 27.04.2016, this Court has ordered that a further confirmation from United Bank Limited on which

the cheques in question were drawn, should also be placed on record, in order to further verify the authenticity of the instruments / cheques in question.

2. Today, learned counsel for the Plaintiff, under his Statement has produced a correspondence dated 07.11.2016 (in original), issued by United Bank Limited (UBL), Cantt. Railway Station Branch, Karachi, verifying that the cheques in question were dishonored / bounced due to insufficient funds in the account of Defendant maintained at the above UBL Branch.

3. Learned counsel for Plaintiff has stated that all the dishonoured cheques were given for consideration as Plaintiff and Defendant had business relationship as Defendant booked a large number of seats through Plaintiff in Flynas Airline, which was also conducting Hajj Flights. It has mentioned in Paragraph-4 of the Plaint that Defendant overall purchased a total number of 3702 seats for a total amount of Rs.37,90,70,864/= (Rupees Thirty Seven Crore Ninety Lac Seventy Thousand Eight Hundred Sixty Four Only) out of which the Plaintiff had received a sum of Rs.15,70,61,325/= (Rupees Fifteen Crore Seventy Lac Sixty One Thousand Three Hundred Twenty Five Only), whereas, a sum of Rs.222,009,539/- (Rupees Twenty Two Crore Twenty Lac Nine Thousand Five Hundred Thirty Nine Only) is still outstanding against the Defendant.

4. In Paragraph-9 of the Plaint, it has been averred that on account of continuous fraudulent acts of Defendant, the Plaintiff lodged a F.I.R. No.638 of 2014 dated 22.11.2014 at Police Station Boat Basin against its partner, namely, Tariq Waseem Siddiqui and an employee of Defendant, Salim Ahmed, under Sections 489-F and 420 of PPC (Pakistan Penal Code). In this regard, a Criminal Case No.132 of 2014 is sub judice

before the concerned Court of Judicial Magistrate, Karachi (South), wherein, the above named accused persons have been declared proclaimed offender by order dated 05.03.2015. Relevant record of the above Criminal Case is appended with the application filed by Plaintiff under Order V Rule 20 of CPC in the present proceeding.

5. On 08.10.2015 the service was held good after notice of this Court was published in the Daily Express in its issue dated 24.09.2015, original copies of the Newspaper is available in record.

6. Till date, no leave to defend application has been filed by Defendant and so was observed in the Assistant Registrar Diary of 08.10.2015. Under the statutory provision, leave to defend application should be filed within 10 (ten) days after publication of notice. In this regard, a well-known Judgment of *Haji Ali Khan & Co. V/s. M/s. Allied Bank of Pakistan Limited reported as PLD 1995 Supreme Court Page-362*, is of relevance and provides guidance, wherein a complete procedure has been laid down by the Hon'ble Supreme Court; at Page-371, it has been mentioned that if the defendant within 10 days did not file/apply for leave to defend the case, then the allegations in the Plaint shall be deemed to have been admitted and the Plaintiff shall be entitled to a decree in terms of sub-clauses (a), (b) and (c) of sub-rule (2) of Rule 2 of Order 37 of CPC. It would be advantageous to reproduce here-in-below the Paragraph No.10 of the above judgment_

*“The **ratio decidendi** of the above referred cases seems to be that if a defendant fails to appear or fails to obtain leave to defend in response to a summons served in Form No.4 provided in Appendix B to the CPC or fails to fulfill the condition on which leave was granted or where the Court refuses to grant leave, the Court is to pass a decree. It may further be observed that in sub-rule (2) of Rule 2 CPC, it has been provided that if a defendant fails to appear or defaults in obtaining leave, the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree, but no such consequences are provided for in*

Rule 3 of the above Order in a case where the Court refuses to grant leave or the defendant fails to fulfill the condition on which leave was granted. In our view, notwithstanding the above omission in Rule 3, the effect of refusal of the Court to grant leave or failure on the part of the defendant to comply with the condition of the leave, will be the same i.e. the defendant shall not be entitled to defend the suit on any ground and the Court would pass a decree in favour of the plaintiff. However, this does not necessarily mean that the Court is not required to apply its mind to the facts and the documents before it. Every Court is required to apply its mind before passing any order or judgment notwithstanding the factum that no person has appeared before it to oppose such an order or that the person who wanted to oppose was not allowed to oppose because he failed to fulfill the requirements of law.

9. *The upshot of the above is that while passing the impugned decision the learned Trial Court has applied its judicial mind hence, no case of interference is made out in the impugned judgment and decree, which has rightly applied the law to the facts of the case and particularly considering the fact that the suit proceedings were of summary nature and the object of such type of proceedings cannot be allowed to be defeated on some fanciful grounds. Consequently, the present appeal is dismissed with costs.”*

7. Accordingly, I decree the suit in terms of prayer Clauses “A” and “B”, that is, for the total amount of Rs.115,000,000/- (Rupees One Hundred Fifteen Million Only) together with the interest at the rate of 6% per annum from the date of institution of the suit till realization of the above amount. However, parties are left to bear their own costs.

JUDGE