

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.453 of 2021
Naseem Akbar and others

Versus

The Chairman and Chief Executive of Emirates Airlines and others

| S. No. of order / proceedings | Date of order/ Proceedings | Order with signature of Judge and that of parties or counsel where necessary. |
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03.02.2021 Mr. Farhat Nawaz Lodhi, ASC for the petitioners.

Through the instant writ petition, petitioners impugn the order dated 23.12.2020 passed by learned Civil Judge, Islamabad whereby their application for review of the order dated 07.10.2020 was dismissed. Through the said order dated 07.10.2020, respondents No.5 and 6’s application under Order I, Rule 10 of the Code of Civil Procedure, 1908 (“C.P.C.”) for deleting their names from the array of defendants was allowed.

2. Brief facts of the case are that on 15.06.2012, the petitioners filed a suit seeking damages in the sum of 10 Million US Dollars and written unconditional apology from respondents No.1 to 4 etc. It was *inter alia* pleaded in the plaint that petitioner No.1 had purchased economy class E-tickets of Emirates Airlines (respondents No.1 to 3) through M/s the Flight Connections (respondent No.4) for petitioners No.2 to 5’s air travel on 25.05.2011 from Islamabad to Jeddah via Dubai. It is also averred in the plaint that on 25.05.2011 when petitioners No.2 to 5 reached at Dubai Airport, they were stopped from travelling further to Jeddah and were made to stay at Dubai for overnight, while petitioner No.1 was waiting for the said petitioners’ arrival at Jeddah. In this backdrop, it is pleaded in the plaint that respondents No.1 to 4 had breached their

contract, and caused physical torture and mental agony to the petitioners. No relief against respondents No.5 and 6 (the Director General and the Airport Manager of the Civil Aviation Authority) was sought in the plaint but it was pleaded that they had been impleaded on account of being the regulatory body and for effective proceedings at the trial.

3. On 22.04.2019, respondents No.5 and 6 moved a joint application under Order I, Rule 10 C.P.C. seeking to delete their names from the array of the defendants. The petitioners contested the said application by filing a written reply. However, vide order dated 07.10.2020, the learned trial Court allowed the respondents' said application. Thereafter, the petitioners moved an application for review of the said order dated 07.10.2020, which was dismissed vide impugned order dated 23.12.2020. Hence this petition.

4. Learned counsel for the petitioners, after narrating the facts leading to filing of the instant petition, submitted that respondents No.5 and 6 are the office bearers of the Civil Aviation Authority ("C.A.A."), a regulatory body vested with the legal authority to inquire into the grievance of the petitioners; that under local law and international treaties, safe, efficient and coordinated civil air transport services is the mandate of the C.A.A.; that the impleadment of respondents No.5 and 6 was also necessary for the enforcement of decree against respondents No.1 to 4; that respondents No.5 and 6 are proper parties in the petitioners' suit; that against the order dated 07.10.2020, the petitioners had filed a revision petition under section 115 C.P.C. before this Court which is pending under office

objection; and that the impugned orders being against the law and facts are liable to be set-aside. Learned counsel for the petitioners prayed for the petition to be allowed in terms of the relief sought therein.

5. I have heard the contentions of the learned counsel for the petitioners and have perused the record with his able assistance.

6. In the plaint, a copy whereof is annexed with present petition, the petitioners had alleged breach of contract and resultant tortious liability against respondents No.1 to 4. No act resulting in mental agony, loss or damages has been attributed to respondents No.5 and 6 or for that matter to the C.A.A. There is also no privity of the contract between the petitioners and the C.A.A.

7. Now, for a person to be impleaded as a party in the proceedings in a suit, he should either be necessary or proper party. The petitioners have not claimed any relief against respondents No.5 and 6. The said respondents in no manner are affected by any outcome of the petitioners' suit. Therefore, respondents No.5 and 6 are not necessary parties.

8. The petitioners' claim that the said respondents are proper parties. A proper party is the one whose presence is necessary for a Court to effectively and completely adjudicate and settle all questions involved in a suit. Apparently, the issues in the suit have, so far, not been framed but the facts averred in the plaint do not show respondents No.5 or 6's presence to be necessary for adjudication. A distinction is required to be maintained between a necessary witness and proper party because a person having no interest in the outcome of a suit does

not become a proper party merely being able to give an account of legal or treaty position on the subject. Such a person, if required, may be summoned as witness with Court's permission. Impleadment of such a person would not be in the interest of justice because after being made a party to suit he is exposed to an arduous liability of following the proceedings in a suit. In the case titled as Mian Muhammad Abdul Malik Ludhianvi Vs. Saddarudin Hashwani (1988 CLC 1339), the Hon'ble Lahore High Court held as under:-

"The plaintiff has claimed damages against the defendant No.1 for making alleged defamatory, insulting and false statement regarding operation and establishment of Islamic Banking in Pakistan. The plaintiff has not claimed any other relief in the suit. The defendants Nos.5 to 10 and 13 have taken no notice of the statement of the defendant No.1 but the plaintiff claims to have suffered damages. No legal right of the plaintiff is involved in the suit, nor the plaintiff is claiming entitlement to any legal character or to any right to any property which is being threatened or is adversely affected by any act of the defendants. A perusal of the plaint will show that the plaintiff has made no allegation against the defendants Nos.5 to 10 A and 13. At best they can be witnesses."

9. Additionally, a person otherwise stranger to the proceedings cannot be allowed to be impleaded as a party, merely because the said person would be instrumental in execution if the suit is decreed in favour of the plaintiff. Since respondents No. 5 and 6 are not jointly liable with the other respondents, an effective and enforceable decree can be passed without their presence. Only a person interested in the question under adjudication in a suit is a necessary and proper party. In the case titled as Naveed Merchant Vs. Safdar Gondal (2013 CLD 66), the respondent had filed a suit for recovery of compensation and damages on the basis of an oral agreement which was between him and the

other respondent and no specific role against the petitioner had been mentioned in the plaint. The main grievance of the plaintiff was against a Company and its officials whereas the petitioner was only an estate advisor for the said Company. He was not a beneficiary of the alleged oral agreement. The petitioner moved an application for striking out his name from the array of parties in the suit which was dismissed by the learned trial Court. However, the Hon'ble Lahore High Court set aside the said order of the trial Court and allowed the petitioner's application for striking out his name from the array of parties in the suit. The Hon'ble High Court *inter alia* held as under:-

"It is settled principle of law that compensation for breach of contract can be claimed from a party to a contract, who has breached the terms of agreement. A person who is not a party to a contract is neither necessary nor proper party in suit for damages. Reliance can be placed to the case of Province of the Punjab through Secretary, Sports Government of the Punjab and another v. Messrs Qavi Engineers Pvt. Ltd. through Director and 2 others (2007 MLD 89) Lahore."

Law to the said effect has also been laid down in cases titled as Tajuddin Vs. Ferozuddin (2010 YLR 256) and Kaikhusro Merwan Mondhi Vs. Ardeshir Merwan Mondhi (1989 MLD 3281).

10. In view of the above, I do not find any legal error or material irregularity apparent on the face of the impugned order, therefore, the instant petition, being devoid of merit, is dismissed in limine.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**