

Ethiopian Airlines vs Delhi International Airport Ltd. & Ors on 10 September, 2020

Author: C. Hari Shankar

Bench: C. Hari Shankar

\$~2(original side)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(OS) 256/2020 & I.A. 7985/2020, I.A. 7986/2020, I.A. 7987/2020, I.A. 7988/2020

ETHIOPIAN AIRLINES

..... Plainti

Through: Mr. Dheeraj Kumar Garg and
Ms. Ritu Singh Mann, Advs.

versus

DELHI INTERNATIONAL AIRPORT LTD. & ORS.

..... Defend

Through: Anirudh Bakhru with Ayush

Puri, Advs. for R-1

Ms. Geeta Malhotra, Adv. and Mr. Sarul

Jain, Adv. for Defendant No.2

Ms. Shreya Sethi, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER

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10.09.2020

(Video-Conferencing)

1. The prayer clause, in this suit, reads thus:

"That in the facts and circumstances stated above, it is most respectfully prayed that this Hon'ble Court may be pleased to:

(i) Decree the suit of the Plaintiff by declaring that Defendant Nos. 1 and 2 are jointly and severally liable to indemnify the Plaintiff against any claim made against the Plaintiff by any third party towards damage to its property, particularly Defendant No. 3 whose aircraft was damaged in the incident, and are liable pay to any third party, including Defendant No. 3, any amount that the Plaintiff may be found liable to pay as damages or otherwise, including costs, by any competent court or authority.

(ii) Direct Defendant Nos. 1 and 2 to deposit before this Hon'ble Court or provide an interest bearing security in the form of FDR or any other mode deemed fit by this Hon'ble Court, to the extent of INR 7,64,33,733/-, the amount claimed by Defendant No. 3, till such time as the claim of Defendant No. 3 vis-à-vis the Plaintiff, is decided in CS(OS) 213 of 2020.

(iii) Award the costs of the present proceedings against the Defendant No. 1 and 2 and in favour of the Plaintiff, and

(iv) Pass such other and further orders that this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The cause of action, in these proceedings, arises out of a wing- to-wing collusion, between Ethiopian Airlines ET 686 and Air India flight AI 5542, which took place on 9th August, 2017, in the Indira Gandhi International Airport, during pushback. The matter was investigated by the Director General of Civil Aviation (DGCA), which reported that no fault could be attributed to the plaintiff, and that the incident had occurred owing to the negligence of Defendant Nos. 1 and 2.

3. On 25th September, 2017, Defendant No. 3, i.e. Air India, issued a notice alleging the plaintiff to be responsible for the damages caused to its aircraft.

4. This was followed by another notice, dated 19th December, 2018, whereby Defendant No. 3 claimed an amount of US\$ 574372.46 from the plaintiff.

5. The plaintiff, vide reply dated 22nd January, 2019, denied all responsibility for the incident, and refuted the claim of Defendant No.

6. The plaintiff also wrote on 30th July, 2020, to Defendant Nos. 1 and 2, asserting its right to be indemnified, in respect of the claim of Defendant No. 3, even if the claim of Defendant No. 3 were found to be sustainable.

7. These events culminated in the filing of CS (OS) 213/2020, by Defendant No. 3, against the plaintiff and Defendant Nos. 1 and 2, claiming damages to the tune of 7,64,33,733/-. The suit is pending.

8. In the present suit, the plaintiff essentially seeks to be indemnified against the said claim of the plaintiff, and a declaration, by this Court, to the effect that Defendant Nos. 1 and 2 will be liable to indemnify the plaintiff, against the claim of Defendant No. 3, or any other third party, in respect of the above incident.

9. As such, it is clear that the cause of action in the present suit is inextricably intertwined with that in CS (OS) 213/2020.

10. In view thereof, I am of the opinion that the present suit ought to be heard by the same bench which is seized of CS (OS) 213/2020.

11. I am informed that CS (OS) 213/2020 is next listed on 22nd October, 2020.

12. Accordingly, renotify this suit along with CS (OS) 213/2020 on 22nd October, 2020, before the appropriate Bench, subject to orders of Hon'ble the Judge-in-Charge (Original Side).

C. HARI SHANKAR, J.

SEPTEMBER 10, 2020 dsn