

(2015) 03 MEG CK 0005
In the Meghalaya High Court
Case No : F.A. No. 1 of 2013

ACSCO Travels and Others

APPELLANT

Vs

Indian Airlines Limited

RESPONDENT

Date of Decision : 03-03-2015

Acts Referred:

Air Corporations Act, 1953 — Section 3

Citation : (2015) 03 MEG CK 0005

Hon'ble Judges : Sudip Ranjan Sen, J.

Bench : Single Bench

Advocate : S. Chakravarty, for the Appellant; S.D. Upadhaya, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Sudip Ranjan Sen, J.—The brief story of the case in a nutshell is that:

"The brief story of the plaintiff case is that erstwhile Indian Airlines was a statutory corporation established under section 3 of the Air Corporation Act 1953. That it was the principal function of Erstwhile Indian Airlines to provide safe efficient adequate economic and property co-ordinate AIR Transport service and the said erstwhile Indian Airlines had to exercise its power as to secure that the air transport services were developed to the best advantage of the people. In course of its normal business on or about 25th February 1985 the erstwhile Indian Airlines entered into a domestic passenger sales agency agreement with the defendant appointing the defendant as their agent for sale of domestic flight ticket.

That in clause 7(a) of the agreement was stipulated, "The agent shall remit to the Airlines the money due for the transportation (passenger sold hereunder, at such times, under such conditions and in accordance with the accounts procedure, as the Airlines may designate from time to time in writing, All financial settlements under this agreement shall be in Indian Currency Rupees)?

And that Clause 15(a) of the said agreement stipulated that "If the agent shall at any time default in observing and performing any of the provisions of this agreement or shall become bankrupt or make any assignment for the benefit of or enter into any agreement or composition with its creditors or go into liquidation or suffer any of its goods to be taken into execution or it ceases to be in business as an agent for sale of air passenger transportation, this agreement may at the option of the Airlines be terminated or its operation suspended forthwith and for such period as the Airlines may decide and the Airlines may without prejudice to any of its rights under the agreement take possession of any documents and property belonging to the airlines."

Further that clause 15(b) of the said agreement provides. "The agreement may be terminated or suspended as between the agent and the Airlines at any time by notice in writing from either to the other, such notice to take effect immediately upon its receipt or as otherwise provided herein subject to the fulfillment by each of all the obligations accrued prior to the receipt of the said notice. Upon suspension or termination of this agreement all unused documents of the Airlines shall be returned by the agent to the Airlines, together with all moneys due and payable to the Airlines hereunder and a complete and satisfactory accounting shall be rendered."

The copy of agreement enclosed at Annexure "A" to the plaint.

That the defendant failed to make payment of the fortnightly dues on four consecutive occasions i.e. on 31st October 1991, 15th February 1992, 15th March 1992 and 30th April 1992. That the defendant again on 24th September, 1992 had paid an amount of Rs. 5,47,007/- against total amount dues of Rs. 6,68,007/- thereby taking short payment of Rs. 1,21,000/-. That the defendant however, deposited the said sum of Rs. 1,21,000/- on 25th August, 1992, the defendant made the said short deposit deliberately while carrying forward the page total of AGT-1 to AGT-2 by changing the figures. That in one fortnight it was also observed that serial No. AGT-2 forwarded to erstwhile Indian Airlines and AGT-2 kept in their record was different and there was variation in the sales figures.

That on inspection of the office of the defendants by the officials of the erstwhile Indian Airlines on 22nd September, 1992 it was found that there was a constant break in seriality in AGT-2 and AGT-4. That after reporting of one fortnight sales one or two AGT-2 AGT-4 were kept by the defendants regularly for manipulation in almost every fortnight. That by reason of aforesaid act of default the defendants were declared defaulter by the Indian Airlines vide Letter no CCU/CM/MKT/10-1(ACSCO) 1816 dated 28th August 1992, which copy is at Annexure "B" of the plaint.

To resolve the matter amicably official of the Indian Airlines suggested the following measures for compliance of the defendant.

That the defendant shall furnish additional Bank guarantee since the original

Bank guarantee is not enough to cover the subsequent default of payment. That if the adequate bank guarantee is given then the CVD would be restored. After restoration of CVD the defendant would deduct only 1% commission due to the plaintiff. That the defendant were informed about the aforesaid suggestion vide letter dated 3rd May 1993 copy at Annexure "C" if the plaintiff.

That the defendant in pursuance of the said decision vide his letter dated 8th April 1993 agreed to the proposal but since he failed to comply with the terms and conditions of the proposal the original Bank guarantee was encashed. That after encashment of original Bank guarantee a sum of Rs. 11,00,321.00 is outstanding including penal interest and since the defendant failed to pay the amount the Money Suit No. 16 (H) 1995 was filed by the plaintiff".

2. Mr. S. Chakravarty, learned counsel appearing for and on behalf of the appellants argued that, initially, Indian Airlines Limited who is the respondent here in this appeal had filed a Money Suit bearing Money Suit Case No. 16 (H) 1995 as plaintiff against the present appellants. The learned court of the Assistant to the District Judge, Shillong has passed the judgment on 22.02.2013 and subsequently, decreed it.

Mr. S. Chakravarty, learned counsel for the appellants pointed out that, in Money Suit the plaintiff examined one witness as P.W. 1 who, after examination-in-chief never come forward to offer himself for cross-examination, and thereafter, the court concerned has closed the cross-examination and proceed with the defence witness. The respondent examined and cross-examined one witness and discharged. The contention of the learned counsel is that, without giving any opportunity to cross-examine the P.W. 1 in Money Suit, how the court can solely rely on the evidence of the appellants who is the defendant in the Money Suit and decreed the case. The learned counsel also further argued that from the evidence of D.W. 1, nothing came specific that the defendant agreed or admitted the facts of the Money Suit.

3. Mr. S.D. Upadhaya, learned counsel for the respondent, submits that, the learned court below has rightly passed the order, as the defence witness admitted the fact when confronting on the point that, whether there is a law solely on the basis of the evidence of the defence witness a case can be decreed, could not give specific answer. It appears that no lists of documents or lists of witnesses were filed before the court.

4. I have perused the deposition of D.W. 1 Shri Sabyasachi Paul, and after going through the deposition, I did not find anywhere in the examination-in-chief he admitted the allegation made in the plaintiff. On further perusal of the cross-examination also, I did not find that he has specifically admitted the averments of the plaintiff except his statement "AGT-1, AGT-2; AGT-3; and AGT-4 if any done was done by the manager who is entrusted for the whole job". On bare perusal of the contention quoted above, it is understood and clear that he has used the word "If any", it means he is not sure whether, there is or there was any

manipulation by anyone in the office. Therefore, in my view, the court cannot safely rely on such evidence, and should have called further witnesses to prove the case, but that has not been done in this case.

I have also perused the judgment dated 22.02.2013 and found mentioned that, "On perusal of case record this court found that the case was actually pending for cross of PW. 1 since 22.07.08 and despite last chance order been given on 16.10.09 vide order dated 10.09.09 and since then till 03.11.2010 the cross of PW. 1 could not be taken up owing to his absence, hence vide order dated 03.11.2010 the cross of PW. 1 was closed and case was fixed for DWs". From the above quoted portion, it appears that the court fail to secure the presence of P.W. 1 for cross-examination and close the cross-examination. I cannot understand how the court can be so helpless. There are specific provisions in the CPC, Cr.P.C. as well as the Evidence Act how to secure the evidence of the witness for the ends of justice, but here, it seems that the court has failed to take recourse or to exercise such power given by the law. It is also unacceptable if the court fails to secure the presence of the witness for the reason best known to her, she has no right under law just to pass a judgment simply relying on the defence witness. Each of us must remember our primary duty to render substantial justice and for which, we must exercise all the options and procedures available in law and should not come to any whimsical decision which may cause injustice either of the parties. Therefore, I am of the view that, it is a fit case need to be remand back to the court concerned to try afresh and to come to a logical conclusion in accordance with law and proper evidence. Accordingly, I hereby ordered to restore the case back at the stage of cross-examination of P.W. 1 from where the case has actually fallen down. Consequently, the impugned judgment and order dated 22.02.2013 passed in Money Suit Case No. 16 (H) 1995, consequent decree are hereby set aside.

5. The Registry is directed to return the Lower Court case record to the learned court below along with a copy of the judgment and order.

6. The matter stands disposed of.

7. No order as to cost.