

(2000) 01 DEL CK 0085

In the Delhi High Court

Case No : IA No. 2001/98 and S.No. 3681/91

Air India

APPELLANT

Vs

M/s. R.K. Tours and Travels P. Ltd.

RESPONDENT

Date of Decision : 14-01-2000

Acts Referred:

Citation : (2000) 85 DLT 843 : (2000) 126 PLR 17 : (2000) 4 RCR(Civil) 648

Hon'ble Judges : J.B. Goel, J

Bench : Single Bench

Advocate : Mr. V. Sheshagiri, for the Appellant; Mr. Arjun Bhandari and Mr. Bimlesh Kumar Singh, for the Respondent

Judgement

J.B. Goel, J.—This is an application filed by the defendant seeking leave to defend in a summary suit under Order 37 of the CPC (for short "the Code") for recovery of Rs. 21,12,384/-. The suit is based on an acknowledgement-cum-promise made in letter dated August 16, 1991 given by the defendant to the plaintiff when a sum of Rs. 6,46,404/- was paid as part payment and another sum of Rs. 20,46,992/- was to be paid in two installments which it is alleged was not paid.

2. plaintiff is engaged in the business as carrier by air of passengers and is a member of the International Air Transport Association (IATA). At the request of the defendant and with the approval of the IATA, the defendant was appointed as an approved sale agent w.e.f. 30.9.1990. As such agent and in accordance with IATA rules, plaintiff had given stocks of tickets for sale to the defendant. The defendant was required to furnish fortnightly statements of accounts of the sale made along with a cheque of the amounts payable for such sales after deducting the amount of commission due to it. The defendant became irregular and failed to make payments in spite of meetings and demands and then a settlement was arrived at on 16.8.1991, a sum of Rs. 6,46,406/- was paid and the balance of Rs. 20,46,992/- was to be paid in two installments. Defendant did not pay this amount and hence the plaintiff has filed the suit for summary trial.

3. In this application I.A. 2001/98 seeking leave to defend the suit, the pleas taken are that on August 16, 1991, the parties had mutually settled the dues when a credit of Rs.28,10,648/- was given to the defendant on account of their dues and a sum of Rs. 26,93,398/- was due and payable by the defendant to the plaintiff which was agreed to be paid in three installments. It was further agreed that the claim of the defendant in respect of Dubai Traffic for 1991 which was made to the plaintiff on 23.7.1991 was to be paid on verification of the flight details. It was further agreed that the incentive payable to the defendant for the current year 1991-92 was to be paid on determination at the time of financial year after verification of the sales. On this settlement, a sum of Rs.6,46,404/- was paid and the balance amount was not paid as the defendant is entitled to the following amounts on account of refunds given by them for the tickets returned to the passengers:-

1. Rs. 3,85,760/- for the period 22.7.91 to 16.8.1991. 2. Rs. 5.00 lakhs period not given. 3. Rs. 54,881/- for the period 16.8.1991 to 24.8.1991. 4. Rs. 3,08,361/- for the period 16.9.1991 to 16.11.1991. 5. Rs. 65,832/- for the period 28.8.1992 to 26.10.1992

4. The defendant also claims that Rs.9.00 lakhs on account of Dubai Traffic dues and another sum of Rs.7.5 lakhs on account of incentive for the year 1991-92 @ 5% of the business procured by defendant also have not been paid by the plaintiff to it. It is thus claimed that after adjusting these amounts, a sum of Rs.4,13,788/- is due from the plaintiff to the defendant. The defendant has filed a separate suit, being Suit No.857/95 against the present plaintiff for its recovery. It is thus denied that any amount is due from the defendant to the plaintiff and rather the plaintiff is indebted to the defendant. Defendant claims unconditional leave to defend.

5. The plaintiff in reply has disputed various claims made by the defendant and has pleaded that the accounts were settled on 16.8.1991 after taking into consideration all the dues of the defendant, that the defendant is not bona fide and no triable issue arises.

6. I have heard learned counsel for the parties. Learned counsel for the defendant has contended that though a settlement was arrived at on 16.8.1991, however, that was subject to giving credit by the plaintiff of the dues of the defendant on account of Dubai Traffic and also for refunds given by the defendant on account of return of the tickets, incentive for the year 1991-92 and proceeds of bank guarantee and after so adjusting it is the defendant who is indebted and not the plaintiff. Learned counsel for the plaintiff has not disputed the encashment of the bank guarantee of Rs.7,66,850/-. However, he has contended that after adjusting this amount, the balance amount still remains due. As regards the Dubai account, he has contended that this account was also settled on 16.8.1991 and whatever amount was due was adjusted on 16.8.1991 and no other claim of defendant remained outstanding. According to him, after giving credit of the amount of bank guarantee, balance of Rs.12,80,142/-

remains due out of the agreed amount and in the circumstances defendant is not entitled to leave to defend.

7. It is an admitted fact that the defendant was appointed as the selling agent by the plaintiff on September 30, 1990 and as agent, the defendant was to book and sell tickets of the plaintiff, to keep accounts and submit fortnightly returns along with the cheques of the amounts realised on such sales. It is not the case of the defendant that they had faithfully discharged this obligation and were regular in rendering such accounts or making such payments. It is admitted by the defendant that on 16.8.1991, parties had settled their accounts. It is the case of the defendant that against the dues of the plaintiff amounting to Rs.55,04,047/-, credit was given of the dues of the defendant amounting to Rs.28,10,649/- and on such adjustment, a sum of Rs.26,93,398/- remained due and payable to the plaintiff out of which Rs. 6,46,406 was paid leaving a balance of Rs.20,46,992/-. In the letter dated 16.8.1991 also the defendant had promised to pay this amount of Rs.20,46,992/- in two installments, one of Rs.11,25,433/- by August 31, 1991 and another of Rs.9,21,559/- by September 15, 1991. In this letter, defendant has not made any reservation of any dispute of any amount due from the plaintiff. This letter however itself shows that the defendant had taken note of its dues up to June, 1991. The plaintiff in their letter dated 16.8.1991 given to the defendant had accepted it. In this letter, the plaintiff further stated as under :-

"On receipt of the abovementioned payments on the due dates there would be no more claims by either party against each other pertaining to the period up to July 22, 1991.

Except for the settlement to each other on possible dues for Dubai traffic 90/1991 for which claims have been received from you on the 23rd July, 1991 and which are under process of verification for flight details."

8. This letter however contemplates an outstanding dispute about the claim of the defendant in respect of Dubai traffic for the year 1990/91 if found due on verification.

9. The defendant vide letter dated 22.8.1991 asked confirmation of the plaintiff about their Dubai Traffic claim. The plaintiff in their letter dated 26.8.1991 did not give any categorical reply to this. The defendant vide another letter dated 28.8.1991 again asked for confirmation about their Dubai account dues to which the plaintiff in reply letter dated 4.9.1991 informed that the claim for Dubai sales account had also been settled on 16.8.1991 and nothing was due on that account.

10. It is seen that though the defendant in their letter dated 16.8.1991 had made unconditional promise to make payment of the balance amount of Rs.20,46,992/- to the plaintiff in two installments without any reservation, however the plaintiff had also agreed that the account pertaining to the Dubai account would be settled after verification of flight details, and in their letters dated 26.8.1991 and on 4.9.1991 the plaintiff has stated that all the accounts

stood settled on 16.8.1991. There is no Explanation for making statement in their letter dated 16.8.1991 that Dubai sales account would be settled on verification. Though the defendant has claimed a sum of Rs.9.00 lakhs on that count, but they have not given the particulars of this claim which fact must be within their knowledge as they knew the amounts of bookings, the amounts of refunds, if any, the amounts of realisation made and remitted to the plaintiff and the amount of commission that would accrue to the defendant. Though it cannot be said with certainty that the defendant as a businessman would have given an unconditional undertaking to make payment of the specified amount when their claim to the extent of Rs.9.00 lakhs was due from the plaintiff, however, on the material on record, nothing can be said for or against either of the parties. This part of the defense needs trial.

11. As regards the claim of defendant in respect of alleged refunds given by them, no such reservation is made in their letter dated 16.8.1991 by the defendant. It is admitted by the defendant that the agency was terminated w.e.f. 23.7.1991. In that case, they had not acted as agents for the plaintiff thereafter and so could not have made bookings on behalf of the plaintiff and for that reason the question of refunds by them for any such alleged bookings would not arise. Also the claim for incentive for the year 1991-92 is not admitted by the plaintiff. There was no reservation made in letter dated 16.8.1991 to this effect also. In any case, whether the defendant is entitled to any amount on account of incentive or towards refunds for the returned tickets, the defendant has already filed a separate suit being Suit No.857/95 and the disputes to that extent would be taken note of in that suit.

12. The position that emerges is that out of Rs.20,46,992/- payable on 16.8.1991, a sum of Rs.7,66,850/- has been realised by the plaintiff by encashment of the bank guarantee of the defendant. After adjusting this amount, a balance of Rs.12,80,142/- remains due from the defendant. The defendant has raised triable issue in respect of Rs.9 lakhs.

13. The plaintiff in the plaint has claimed Rs.21,12,384/-. There is no Explanation given in the plaint for claiming amount in excess of Rs.20,46,992/-. The plaintiff is entitled to a part decree in the sum of Rs.3,80,142/- and defendant is entitled to leave to defend for the balance suit claim unconditionally. Application of the defendant is partly allowed to this extent.

14. The suit of the plaintiff is partly decreed and -

1. A decree for recovery of Rs.3,80,142/- with

2. Interest @ 6% per annum :-

(a) from the date of institution of the suit till decree; and

(b) further interest at the same rate from the date of decree till realisation; and

3. Proportionate costs of the suit is passed in favor of the plaintiff and the

against the defendant. Pendente lite and future interest @ 6% per annum is tentative, to be determined finally on trial of the suit for remaining claim.

15. I.A. 2001/98 is partly allowed.