

(1991) 01 DEL CK 0029

In the Delhi High Court

Case No : I.A. No. 10311 of 1990 in Suit No. 3468 of 1990

Horizon Travels Pvt. Ltd.

APPELLANT

Vs

Pan American World Airlines and another

RESPONDENT

Date of Decision : 17-01-1991

Acts Referred:

Citation : (1991) RLR 404

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : V.P. Singh, for the Appellant; Arun Mohan, for the Respondent

Judgement

P.K. Bahri, J.—I have heard the arguments for deciding the application for grant of interim injunction and, vide this order, I shall dispose of the said application.

2. The plaintiff has filed the suit seeking a permanent injunction restraining defendant No. 1 from making any demand for payment of or from encashing or enforcing the bank guarantee No. 170 of 1988 dated August 26, 1988, issued by defendant No. 2 and restraining defendant No. 2—Canara Bank from making any payment to defendant No. 1 on the basis of the said bank guarantee. Similar relief is sought in this application till the disposal of the suit.

3. Defendant No. 1, Pan American World Airlines Inc., admittedly had appointed the plaintiff as a general sales agent initially for the territories of Jalandhar and Phagwara located in the State of Punjab as per agreement dated April 1, 1988. A bank guarantee in the sum of Rs. 15,00,000 (fifteen lakhs only) dated August 26, 1988, was given by the plaintiff to defendant No. 1 In order to transact the business on behalf of defendant No. 1, permission from the Reserve Bank of India was required and, admittedly, the Reserve Bank of India had declined such permission to the plaintiff and the parties then entered into an amendment of the agreement dated July 19, 1988, by which the plaintiff was appointed a general sales agent even in respect of territory of Panipat (Haryana). The bank guarantee was got extended by the plaintiff and forwarded to defendant No. 1, vide letter

dated August 8, 1989. The bank guarantee was to expire on August 25, 1990. On July 8, 1989. The bank guarantee was to expire on August 25, 1990. On July 8, 1990, defendant No. 1 cancelled the agency of the plaintiff in respect of the territories of Jalandhar and Phagwara as no permission had been granted by the Reserve Bank of India to the plaintiff for transacting the business on behalf of defendant No. 1 in the said territories. The plaintiff had got renewed the aforesaid bank guarantee on August 24, 1990, and got it extended up to August 25, 1991. Vide notice dated September 15, 1990, the agency agreement of the plaintiff had been terminated on the expiry of 90 days. In the plaint, the plaintiff has pleaded that the bank guarantee had not been given in respect of any business transaction at Panipat and had been given only in respect of the business which was to be transacted at Jalandhar and Phagwara and as no business could be transacted at those places on account of refusal by the Reserve Bank of India to grant permission, thus, the bank guarantee remained inoperative and defendant No. 1 has no right to invoke the said bank guarantee on demand. It is pleaded that as no amount is due from the plaintiff to defendant No. 1 in respect of any transaction of any business at Jalandhar and Phagwara, the question of defendant No. 1 having any right to invoke the bank guarantee does not arise. It was also pleaded that defendant No. 1 has illegally terminated the agency agreement of the plaintiff even in respect of Panipat territory causing loss to the plaintiff.

4. In the written statement, defendant No. 1 has pleaded that the bank guarantee in question covers the business transacted at Panipat by the plaintiff on behalf of defendant No. 1 and a total sum of Rs. 25,94,372 is due from the plaintiff on account of the business transacted by the plaintiff at Panipat for the period October 16, 1990, to November 7, 1990, and this amount has not been paid and the plaintiff has not come to the court within clean hands inasmuch as the plaintiff has suppressed these material facts in the plaint. It is pertinent to mention that, in the plaint, the plaintiff has not at all admitted that any amount is due from the plaintiff to defendant No. 1. In the replication, initially, the plaintiff did not specifically reply to paras 11 to 21 of the written statement where details have been furnished with regard to the business transacted at Panipat by the plaintiff on behalf of defendant No. 1 and the amount due from the plaintiff to defendant No. 1 and the amounts paid also for some period. Later on, on counsel for defendant No. 1 insisting that the plaintiff be called upon to give specific replies to these averments made in such paras of written statement, the plaintiff filed the additional replication in which these facts have not been disputed that a sum of Rs. 25,94,372 was collected by the plaintiff on behalf of the defendant No. 1 by sale of tickets, etc., for the period October 16 to November 7, 1990, and which amount was not paid by the plaintiff to defendant No. 1 and, admittedly, this amount became payable on or before November 15, 1990.

5. The plaintiff has come out with fresh averments in the replication that defendant No. 1 had issued instructions to all international airlines for not

entertaining the tickets issued by the plaintiff and, as a result of which, the passengers who had been issued tickets by the plaintiff had been stranded abroad and had to incur extra expenditure for procuring fresh tickets and they have filed their claims against the plaintiff. No particulars were given of any customer who had filed any such claim against the plaintiff.

6. During the course of arguments, a copy of the telex issued on November 17, 1990, by defendant No. 1 was produced. A perusal of the same shows that defendant No. 1 had not issued any categorical directions that the tickets issued by the plaintiff are not to be entertained and the only direction given is that they are not to be honoured for revalidation or exchange for any issuance toward travel without reference to the local officials of defendant No. 1. Counsel for defendant No. 1 has pointed out through arguments that the plaintiff was acting fraudulently inasmuch as certain concessional excursion tickets were issued by the plaintiff on showing that the tickets were O.K. on flights of defendant No. 1 or any other airlines but, in the copies issued to the passengers, some of the flights were kept open in the manner that certain other airlines could derive benefit of such open tickets causing loss to the flights being carried on by defendant No. 1 and certain copies of such tickets have been also produced by defendant No. 1 on record. At any rate, there is no prima facie evidence produced by the plaintiff to show that any regular tickets issued by the plaintiff had not been honoured by the carries mentioned in the tickets of which copies were supplied to defendant No. 1 during the course of business of the plaintiff. It is also not established, prima facie, by producing any evidence on record that any claims had been made by any passengers against the plaintiff on the basis of any instructions issued by defendant No. 1 for not honouring any tickets issued by the plaintiff. The principles which should govern regarding the invocation of bank guarantees and letters of credit have been analysed by the Supreme Court in U.P. Cooperative Federation Ltd. Vs. Singh Consultants and Engineers (P) Ltd., and it was clarified in this judgment that, in order to restrain the operation either of irrevocable letters of credit or of confirmed letters of credit or of bank guarantees, there should be a serious dispute and there should be a good prima facie case of fraud and special equities in the form of preventing irretrievable injustice between the parties. Otherwise, the very purpose of bank guarantees would be negated and the fabric of trading operations will get jeopardised. In para 34, it was laid down that, on the basis of these principles, it is reiterated that commitments of banks must be honoured free from interference by courts. In the aforesaid case, a contention was raised that there was delay in the performance of the agreement, and defective machinery had been supplied and if the bank guarantee is allowed to be enforced, damage would be done. The Supreme Court held that it was not a case where a strong prima facie case of fraud in entering into a transaction was made out and thus, the order of the High Court restraining the invocation of bank guarantee was set aside.

7. Learned counsel for defendant No. 1 did not dispute the legal principle that, if, by invoking the bank guarantee, defendant No. 1 is trying to unjustly enrich itself

or is practicing any fraud, the court is within its powers to grant a temporary injunction but he has vehemently argued that, prima facie, it is clear that the plaintiff, without any good reasons, is withholding the trust money of defendant No. 1 to the tune of Rs. 25,94,372 and thus, the court should not exercise its discretion in favor of the plaintiff. I come to the conclusion that prima facie, the plaintiff has failed to show that defendant No. 1 is practicing any fraud by invoking the bank guarantee in question or, invoking the said bank guarantee, defendant No. 1 is trying to unjustly enrich itself; rather, if an injunction is granted, the plaintiff would be unjustly withholding the huge amount due from the plaintiff to defendant No. 1. Learned counsel for the plaintiff has vehemently argued that this bank guarantee had been given in respect of the business which was to be transacted at Jalandhar and Phagwara after the Reserve Bank of India was to give its permission and thus, it cannot be allowed to be invoked in respect of any dues of Panipat branch and he has pointed out that, even in the written statement filed by defendant No. 2-Canara Bank, it has been pleaded by the bank that the bank guarantee had been given in respect of the business to be transacted at Phagwara and Jalandhar. The bank guarantee in question reads as follows :

"Pan American World Airways,
Chanderlok, 36, Janpath,
New Delhi.

In consideration of your having appointed Horizon Travels (P.) Ltd., F-20, Geetanjali Enclave, New Delhi, as your general sales agent in the territories comprising of Phagwara, Punjab. To handle all your revenue documents such as airway bills, tickets, etc., in the above territories.

And whereas you have now requested the general sales agent, Horizon Travels (P.) Ltd., to furnish a guarantee from a scheduled bank agreeing to reimburse to you immediately on demand the sum of Rs. 15,00,000 (rupees fifteen lakhs) in the event of the general sales agent failing to pay to you the dues on the appropriate dates.

We, the Canara Bank, F-19, Connaught Circus, New Delhi, having its head office at 112 J. C. Road, Bangalore-560 002, hereby guarantee as our principal obligation and undertake to pay you, on demand, a sum not exceeding Rs. 15,00,000 (rupees fifteen lakhs only). This guarantee is valid for a period of one year, from the date it is issued.

Notwithstanding anything contained hereinabove, our liability under this guarantee is limited to Rs. 15,00,000 (rupees fifteen lakhs only) and shall not extend beyond.

(Sd.) Stamped and signed by authorized
signatory of the bank.

Date 26 August, 1988.

8. A perusal of the contents of the bank guarantee clearly shows that, in the operative part, defendant No. 2 has guaranteed to pay Rs. 15,00,000 to defendant No. 1 on demand. In the operative part of the guarantee, no other conditions have been imposed. Counsel for the plaintiff has, however, contended that, in the recitals, it is indicated that the plaintiff had been appointed as an agent in territories comprising Phagwara and defendant No. 1 had requested the plaintiff to furnish a guarantee from the bank for reimbursing defendant No. 1, immediately on demand, a sum of Rs. 15,00,000 in the event of plaintiff failing to pay to defendant No. 1 the dues of the appropriate dates. So, it is contended that this bank guarantee could be invoked only if some amount is found due from the plaintiff to defendant No. 1 in respect of the business which was to be done at Phagwara and it cannot be invoked for any transactions which had been done at Panipat. I do not agree. The recitals of the bank guarantee would not control the operative part of the bank guarantee prima facie. It is an unequivocal bank guarantee given that a sum of Rs. 15,00,000 shall be paid on demand by defendant No. 1 and so, in my view, prima facie, the plaintiff cannot stop the payment of the said amount on the plea that no amount is due from the plaintiff to defendant No. 1 in respect of any business being done at Phagwara Jalandhar. Prima facie, it is clear that a sum of Rs. 25,94,372 is due from the plaintiff to defendant No. 1 and thus, defendant No. 1 is within its rights to invoke this bank guarantee. It is also significant to mention that, after the plaintiff has ceased to be the agent in respect of the territories of Jalandhar and Phagwara, the plaintiff had renewed this bank guarantee when he was acting as agent only in respect of the territory of Panipat (Haryana). So, it cannot be said that the bank guarantee in question is not applicable to the business transacted at Panipat by the plaintiff as agent of defendant No. 1. I find no prima facie case in favor of the plaintiff and also do not find any balance of convenience in favor of the plaintiff so that the plaintiff could be granted injunction. In the arguments, learned counsel for the plaintiff contended that defendant No. 1 is not in sound financial position as it has filed some bankruptcy petitions and it would become difficult for the plaintiff to recover the amount from defendant No. 1 in case the plaintiff ultimately succeeds in this suit. Counsel for defendant No. 1 very fairly has agreed that defendant No. 1 may be directed to furnish a bank guarantee to reimburse the plaintiff in case the plaintiff succeeds in this suit ultimately.

9. I, hence, while dismissing the application, direct that, in case defendant No. 1 invokes the bank guarantee and obtains the payment from defendant No. 2, defendant No. 1 shall furnish a bank guarantee to this court for reimbursing the plaintiff in the event of the plaintiff, ultimately, succeeding in this suit. Nothing stated in the above order shall prejudicially affect the rights of the parties on merits which are to be determined after trial. The application is dismissed and the interim injunction already granted is vacated.