

IN THE COMMERCIAL HIGH COURT OF THE WESTERN PROVINCE
(EXERCISING CIVIL JURISDICTION) HOLDEN IN COLOMBO

Before : Hon.S.M.H.S.P.Sethunge, H.C.J.
Case No : CHC. 126/2022/MR
Date : 03.06.2022
Recorded By : Shalika

Dr. Lasantha Hettiarachchi with Mr. Suren Gnanarath, Mr. Himath Silva & Ms. Minali Haputhanthri with Ms. Rashmi Dias instructed by D.L. & F. De Saram for the 1st Defendant.

Representative of the 1st Defendant is also present in Court.

Mr. Sergey Evgenievich Losev, the Regional Manager for India and Sri Lanka of the 1st Defendant is present in Court.

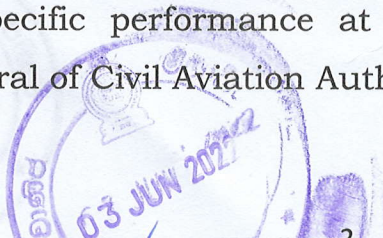
Additional Solicitor General Sumathi Dharmawardhena PC., with Senior Deputy Solicitor General Mr. M. Gopallawa and Deputy Solicitor General Mr. Rajiw Gunathilaka with State Counsel Mr. S. Soyza instructed by State Attorney Ms. Sepalika Thiranagama for the 2nd Defendant.



Mr. Avindra Rodrigo PC., with Mr. Aruna De Silva instructed by M/s F.J. & G. De Saram for the Plaintiff.

Counsel for the 2nd Defendant states thus:

Your honour the 2nd Defendant have brought to the notice of the Honourable Attorney General that yesterday a fiscal officer of your honour's Court has walked into the Bandaranayake International Air Port around 12.15 P.M.- 12.30 P.M. accompanied an attorney at law and submitted a copy of the Order issued by your honour's Court and the 2nd Defendant should immediately take steps not to permit the Flight SU 289 to take off from the Bandaranayake International Air Port. At that time your honour, 191 passengers and 13 crew members were on board the flight SU 289 which belongs to the 1st Defendant. Your Honour air navigation in Sri Lanka is regulated in terms of the Civil Aviation Act No. 14 of 2000 and chapter 3 deals, who is authorized to give orders pertaining to take off and landing and rounding of air craft. Therefore, your honour the said matters set out in chapter 3 of the Civil Aviation Act No. 14 of 2000 are falls within the category of acts of stage. The 2nd Defendant is a servant of Airport and Aviation Services Sri Lanka Private Limited which is a straight forward Company which managers airport in Sri Lanka. We wish to bring to your honour's notice the said enjoining order is not against the Director General of Civil Aviation who is authorized to issue directions in terms of the Act No. 14 of 2000. Anyhow in terms of Section 24 of the Interpretation Ordinance with utmost respect to your honour's Court, your honour's Court is prohibited from issuing any orders for specific performance at this stage which includes the Director General of Civil Aviation Authority.



Your honour therefore, I seek a clarification from your honour's Court whether the said enjoining order has enjoined or prohibited the 2nd Defendant or any officer of the state taking steps in terms of the Civil Aviation Act No.14 of 2000.

Counsel for the Plaintiff states thus:

With the greatest of respect sir, if my learned friend is seeking a clarification of whether there is an enjoining order against the 2nd Defendant I have no objection to that application but what my learned friend is asking is now put on record is something else, is that is clearly what is asking if there is an enjoining order against the 2nd Defendant or not that is evident of the face of the record and that clarification can be given sir. If it is a clarification that there is no order against the 2nd Defendant an enjoining order my learned friend can ask for that.

Counsel for the 2nd Defendant further states thus:

I seek your honour to make a suitable order with regard to the enjoining order delivered with the attorney at law by the fiscal officer of your honour's Court around 12.15 p.m and giving instruction if the 2nd Defendant permits the aircraft to take off it will amount contempt of Court.

Court

According to the submissions of both counsels, there is no any enjoining order related to the enjoining order issued in this case with regard to the 2nd Defendant.



Counsel for the Plaintiff further states thus:

The Plaintiff has sought an enjoining order against the 1st Defendant this Court was pleased to grant and the 2nd Defendant has been given notice of that and my humble submission sir my learned friend might refer is as a stage authorized entity that the 2nd Defendant will take cognizance of the enjoining order that has been issued by Court preventing the 1st Defendant from flying the aircraft morefully described in the schedule and my humble submission sir is that even though there is no enjoining order against the 2nd Defendant , the 2nd Defendant will act in terms of the notice issued to the 2nd Defendant.

Counsel for the 1st Defendant states thus:

Your honour sees the 1st Defendant according to the plaint has its office in Russia. Papers have not yet been served on the 1st Defendant. However, the 1st Defendant operated the fly with 253 passengers who came into Colombo. There were discharged.....There is an acknowledgment made that no enjoining order was issued against the 2nd Defendant. There was no enjoining order. However, the enjoining order has been made for the 1st Defendant. It has not yet been served. This was made by this Court yesterday. A few, within a couple of hours thereafter, the air crafting 191 passengers of prevented from leaving and the 1st Defendant was therefore, compelled to all these passenger in to a hotel. Take for the tickets where on the flight they were sent to a hotel and this is all because of this surreptitious operation that had been enforced by the Plaintiff when your honour's Court has not given any order against the



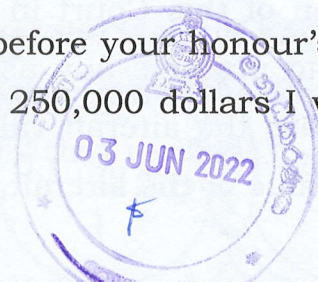
2nd Defendant. They had use this order to illegally enforcing through putting pressure on the 2nd Defendant. Your honour sees I am in Court your honour because this has already created very very serious national embarrassment because already international media and where the state has given and assurance to Russia that its aircraft can fly to Sri Lanka. There is a state guarantee.

There is a fundamental matter because your honour's jurisdiction I am taking about fundamental matter because we have come to a Court without having any right to see the intervention of your Court because there is no jurisdiction. Your honour sees they have come to Commercial High Court and pleaded specifically that your honour and I am reading the High Court of the Provinces Special Provisions Act No.10 of 1996. (reads) I am making this submissions not relying on any new material that ex facie the matters that are pleaded in the Plaintiff the copy which I had.

Your honour sees with utmost respect my submission is parties cannot be agreement come to now this is a contract between two parties one in Ireland one in Russia and originally entered into in 2002. For 20 years it has been going on. This aircraft flies from Moscow to Colombo passing so many countries.

Your honour I am not diverting with against that due your honour. I am only stating with utmost respect that there is a patent that jurisdiction to even entertain this matter.

Now my application your honour is pending filing of formal objections to be permitted to release the aircraft on the submission of the security of the bank guarantee to Court further value that has been categorically pleaded in the Plaintiff filed before your honour's Court as a money recovery action for the sum of 250,000 dollars I will secure that amount and the aircraft specifically.



Counsel for the Plaintiff further states thus:

At this point the papers (copy of the Plaintiff and annexures) are served on the 1st Defendant in open Court.

Counsel for the 1st Defendant states thus:

I acknowledge on behalf of the 1st Defendant receipt of the papers being served in Open Court today. However, subject to any objections that the 1st Defendant takes up. Presently I am seeking the intervention or indulgence of Court to seek Your Honour's authority in granting interim injunctions, enjoining orders are prerogative which is at the discretion of Your Honour's Court where there are certain fundamental requirements that has been complied with. I am only saying that, right now I have come to Court because we have been gravely prejudice by operation of law carriage of Air by act of 29 of 2018, we have to pay a sum of Four thousand one hundred and fifty SDR (Special Drawing Rights) which corresponds to Five thousand six hundred United States Dollars per passenger for each day of delay by law. Now these hundred and ninety one passengers are delayed at the Airport. Even if they are put to other aircraft and they get to their ultimate destination for each day of delay at Five thousand dollars that a loan is close to a Million Dollars. So, the inconvenience that is caused to the 1st Defendant is very grave. I am only seeking Your Honour, Your Honour sees this action has been filed on the basis of a money recovery action, Your Honour sees a caption it is MR. It has been filed as a Money Recovery action. The Plaintiff has stated in paragraph 49 that he has very categorically stated that the Plaintiff values this action for Ninety Million. So, he cannot seek the intervention of this Court in any other way to call either directly or indirectly to preserve any asset, if he was intending to preserve an asset to have the aircraft value, he should have stated that if I don't have the value of the aircraft, this is the value of the aircraft he must

produce some proof to Court and he must demonstrate that if he does not have that amount secured. So, none of that has been done. Here he has come to Court filed an affidavit said the value of the action is Ninety Million Rupees or Two Hundred fifty thousand Dollars. First of all subject to any further objections that I am into taking first of all I am saying even to come to stand and tell Court that I have to get a bank guarantee for a higher value it is *ludicress*. I am saying Your Honour with utmost respect he has come to Court saying the maximum amount that he going to ask the value is Ninety Million. I am securing that Ninety Million, I have asked my client to have a guarantee ready and I think he is must be on way he already. We can submit that Your Honour so. I will secure his claim whatever he is making in Court, I am seeking Your Honour's indulgence now for permission to be granted so that this aircraft can be taken out because each day I am incurring a one million damage because this action that they have taken is utterly illegal both in international local also. Totally contrary statutory provision, I can demonstrate. Only thing I am not going to bother Your Honour with that because filing any further papers relying on the material that have been filed by the Plaintiff and the averments in his plaint, I can demonstrate to this Court by relying on the legal provisions that this enjoining order ought not had been issued that a positive law a statutory provision prohibits aircraft seashells in Sri Lanka. The Government of Sri Lanka by law international convention and by the air navigation act has undertaken to facilitate the safe passenger of aircraft to come and go from other international countries, all those I can demonstrate. Your Honour, what I am trying to say is Your Honour indicated previously that Your Honour took into consideration to cognizance that the aircraft had no insurance. That is an utter falsehood that the Plaintiff has submitted to this court. In fact the State which represents the Civil Aviation Authority can verify where the insurance if they verified.



Counsel for the 2nd Defendant states thus:

I confirm that he has clarified from the Director General Civil Aviation by a whatsapp message and I was informed that the 1st Defendant Company has a valid insurance cover with regard to the subject aircraft and it is sufficient for the purposes set out in the Civil Aviation Act No. 14 of 2010.

The 2nd Defendant reserve the right to file objections if required.

Court

Further, it is clarified that there is no enjoining order and any type of interim injunction sought against the 2nd Defendant as supposed to what is being claimed against the 1st Defendant.

Further, Registrar is directed to issue a certified copy to the Attorney General without cost and with cost to the other parties.

Counsel for the 1st Defendant states thus:

The 1st Defendant moves to file objections to the interim injunction application and the answer and reserves the right to do so after the inquiry into the present matter on the basis of application which is to be filed by the 1st Defendant on Monday the 06th of June as indicated to Court.

Counsel for the Plaintiff states thus:

I will reserve my right to respond to the papers at my learned friend files to set aside the enjoining order and I move that I may be permitted to do so on the 07th of June 2022 which is Tuesday in the afternoon. Both parties respectfully move that the matter be fixed for

inquiry on Wednesday the 08th of June 2022. The 1st Defendant will serve on Monday morning the application is making to vacate the enjoining order before 12.30 p.m. on the Plaintiff's lawyers.

Court

According to the application made by the counsels of all the parties, this matter is fixed for inquiry based on the application of the 1st Defendant on 08.06.2022.

S.M.H.S.P.Sethunge
Judge of the Commercial High Court
Colombo 12.

I do hereby certify that the foregoing is a true copy of the proceeding dated 03.06.2022 filed of record in case No. CHC. 126/2022/MR. (1-9 Pages) issued free of charge to the attorney general's Department.

Prepared by: *[Signature]* (Shalika)

Comp with: *[Signature]* (Shashini)

[Signature]
Registrar

Additional Registrar
Commercial High Court
Colombo 12

