

MHCC010097972024



H. C. Presented on : 29.01.1997

B.C. C. Presented on : 20.04.2024

B. C. C. Registered on: 24.04.2024

Decided on : 03.01.2025

Duration : YY : MM: DD  
27 : 05 : 05**Exhibit-62****IN THE BOMBAY CITY CIVIL COURT AT MAZGAON, BOMBAY****COMMERCIAL SUIT NO. 1143 of 2024****(OLD H.C. SUIT NO.366 OF 1997)****(OLD H. C. COMMERCIAL SUIT NO.08 OF 2024**

<b>AIRPORTS AUTHORITY OF INDIA,</b> A statutory authority constituted under the Airports Authority of India Act, 1994, having their office at International Airports Division, Mumbai Airport, Mumbai – 400 099.	<b>... PLAINTIFF.</b>
<b>V/s.</b>	
<b>1. AER LINGUS LTD.</b> A Company incorporated under the laws of Ireland and having its registered at Dublin Airports, Dublin, Ireland.  <del><b>2. EAST-WEST TRAVEL &amp; TRADE LINKS LTD.,</b></del> <del>A Company registered under the Companies Act, 1956, having its registered office at 4/8, Silver Apartments, Shankar Ghanekar Marg, Dadar, Mumbai-400-028.</del> <del><b>And Also having its office at Sophia, 18, New Kantawadi Road, Bandra (West), Mumbai – 400 050.</b></del>  <b>2. THE OFFICE LIQUIDATOR,</b> HIGH COURT BOMBAY, the Liquidator of the East West Travel & Trade Links Ltd., (In Liquidation) having his office at Bank of India Building, 5 <sup>th</sup> Floor, M. B. Road, Fort, Mumbai-400 023.	

<p><b>3. EAST WEST AIRLINES,</b> Having its office at 18, New Kantawadi Road, Off. Perry Cross road, Bandra (West), Bombay- 400 050. <b>And a office at</b> 75, Nehru Road, Near Centaur Hotel, Vile-Parle (East), Mumbai- 400 099.</p> <p><b>4. AIRCRAFT VT EWH,</b> Registered under the Aircraft's manufactured by Boeing VT with modern configuration 737-200, having Sr. No.21714, registration Marking EIBED, No. &amp; Type of Engine 2XPRAT and JT8D- 9A Nos. 687723/687846, presently parked at Mumbai Airport.</p> <p><b>5. AIRCRAFT VT EWI,</b> registered under the Aircraft Act, 1934, being aircraft manufactured by Boeing VT with modern configuration 737-200, Having Sr. No.21715, registration marking EIBED, No.&amp; Type Engine 2XPRAT and JTBD-9A Nos. 674346/687831 presently parked at Mumbai Airport.</p>	<p><b>...DEFENDANTS.</b></p>
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**CORAM: HIS HONOUR JUDGE  
SHRI. A. S. KAZI  
(COURT ROOM NO.14)**

**DATE : 03.01.2025.**

**-: Appearances: -**

The Ld. Advocate Santosh Singh a/w. Adv. Shanti Parab for the plaintiff.  
The Ld. Advocate Vinay Taliwal for defendant No.2 / Office Liquidator.  
The Ld. Advocate Archana Deshmukh a/w. Krishan Singhania a/w. Adv.  
Srishti Singhania a/w. Adv. Anjana Devi i/b. Singhania and Co. for  
defendant Nos. 1, 4 and 5.

**JUDGMENT**

By way of present suit, plaintiff prayed for claiming reliefs inter-alia;

- a) For a declaration that, the Plaintiff is entitled to detain defendant Nos.4 and 5 aircrafts until and unless all the aforesaid charges due in respect of the aircrafts are cleared to the plaintiff;
- b) That, the defendants jointly and severally to pay the plaintiff a sum of Rs.2,71,51,058/- in respect of defendants Nos.4 and 5 aircrafts towards the aforesaid charges as per particulars of Claim (Exhibit-I), with further interest thereon @ 18% per annum from the date the said charges became due till the date of the suit and thereafter till payment or realization;
- c) That, defendants jointly and severally to continue to pay the parking charges as per prescribed rate prevailing from time to time until the aircrafts are allowed to be cleared by the plaintiff.
- d) For a declaration that, the plaintiff has a lien over defendant Nos.4 and 5 aircrafts until all charges and expenses payable in respect of defendant Nos.4 and 5 aircrafts are paid and cleared by the aircrafts or the operators or the owners thereof jointly and severally, and the plaintiff is entitled for refusing the permission to anyone to fly these aircrafts until such time.

2) The present suit was filed before the Hon'ble Bombay High Court as Suit No.366 of 1997. Later on, it is converted in to Commercial Suit No.08 of 2024. Thereafter, upon enhancement of pecuniary jurisdiction the suit was transferred to this Court on 20.04.2024.

**CASE OF THE PLAINTIFF:-**

3) Briefly stated facts of the case are as under: -

According to the plaintiff, the plaintiff is a statutory Corporation constituted under the Provisions of Airports Authority of India Act, 1994. the Plaintiff has two divisions, namely International Airports Division and National Airport Division. The plaintiff is a successor of the erstwhile International Authority of India and National Airports Authority of India which were also set up under the Acts of Parliament. The purpose for which, the plaintiff is set up is inter-alia, to develop and manage the airports and all incidental and ancillary activities related thereto including maintaining of run ways, hangers, parking places and provide navigation and X-ray facilities and recover charges therefor. The plaintiff principally operates under the provisions of the following Acts:-

(a) Airports Authority of India Act, 1994.

(b) Management of Airports Regulation, 1982, which were made under Section 37 of the International Airport Authority of India Act.

(c) Aircraft Act, 1934.

(d) Aircraft Rules 1937 made under the Aircrafts Act.

The plaintiff is also governed by such other Rules and Regulations as are framed from time to time.

4) The defendant No.1 is an Irish Company constituted under the provisions of the laws of Ireland. It is claimed that, the entire share capital of the 1<sup>st</sup> Defendant is owned and controlled by the Government of Ireland. The defendant No.2 is a company incorporated under the provisions of the Indian Companies Act and is inter-alia engaged in the business of trade, travel and running an airline, which airline was

known as East-West Airline, whilst it was functioning. The defendant No.3 is a division of defendant No.2.

It is submitted that, after filling the suit, the defendant No.2 went into liquidation in the Company Petition being No.339 of 1997 filed by Karvy Consultants Limited against East-West Travel & Trade Links Ltd., and vide Order dated 02.08.2005, the Hon'ble High Court has appointed Official Liquidator as Liquidator of East-West Travel & Trade Links Ltd., viz., the defendant No.2.

5) The defendant Nos.4 and 5 are the two aircrafts, which are currently parked in the premises of the plaintiff at Bombay (subsequently released and permitted to be flown by the order of the Hon'ble Bombay High Court). The Said aircrafts were also flown, landed and parked at Trivendrum airport and other airports under the control and management of the Plaintiff. The plaintiff has to recover from all the defendants jointly and severally various charges, cost and expenses as described in details hereinafter. These two aircrafts are registered in India and under the Aircrafts Act and Rules and various International Conventions, these aircrafts are of Indian Nationality.

6) It is submitted that, pursuant to the policy of allowing private Taxi Operators to run the business of airlines, the defendant No.2 Company started their airlines operations in the name of East-West Airlines. East-West Airlines is a scheduled Airline. For that purpose, they leased aircrafts from various persons. The plaintiff is concerned with defendant Nos.4 and 5 Aircrafts and it is claimed by the defendant No.1 that, these aircrafts belong to them and have been leased by them to the defendant No.2 under two Agreements of lease, both dated 27.11.1992

on the terms and conditions set out therein. These agreements apparently decided the inter-se rights and obligations between the defendant No.1 and defendant Nos.2 and 3. The said two aircrafts which are claimed by the defendant No.2 are leased from defendant No.1 and were brought into India and have been registered with the authority of a) Central Government and b) Director General of Civil Aviation. The plaintiff provides various facilities as also allots space for such aircrafts. The said two aircrafts have been assigned numbers being VT-EWH for defendant No.4 and VT-WEI for defendant No.5. Both the aircrafts therefore fall under the Aircrafts Act and Rules thereunder as also under the International conventions and are Nationals of India.

7) It is further stated that, under the International Airports Authority of India (Management of Airports) Regulations, 1982, the plaintiff is empowered to manage and maintain the airports and recover charges as are prescribed. These regulations, which were framed under the provisions of the International Airports Authorities of India Act are in force. These regulations briefly make the following provisions:-

- a) Under Regulation 4 there are restrictions on aircrafts, vehicles and persons using the airport;
- b) No person shall tamper or interfere with any aircraft or anything used in connection with any aircraft;
- c) Under Regulation 4(14), it is provided that no person shall, without obtaining no objection from the General Manager of the Airport, run up an aircraft engine in hanger;
- d) Under Regulation 4 (21), it is provided that, no person shall place an aircraft anywhere at the airport other than at the areas and position designated by the General Manager of the Airport; and

e) Sub-Regulations 22 and 23 are relevant for the purpose of the present suit which read thus:-

*22. Unless otherwise provides under the Act or by general or special order in writing by the Central Government, the use of the movement area of an aircraft by an aircraft carrier shall be subject to payment of such landing, parking or housing fees or charges as are levied by the authority from time to time.*

*23. In the process of landing, taking off, taxing or parking an aircraft or in any way using the airport, if any damage is caused to the lighting or other airport fixtures, the owner of the aircraft concerned shall be liable for damage as may be determined by the authority.*

8) The plaintiff has also cited Section 17 of the International Airport Authority of India Act, 1971, which is pari-materia with section 17 of the National Airport Authority Act, 1985 and also Section 22 of Airport Authority of India Act, 1994 and it empowers the authority to levy charges, fees, rent etc.

9) It is further averred that, under Aircraft Act, 1934 and Rules framed thereunder the aircraft operating in India is required to be registered with the Director General of Civil Aviation and the Central Government. Under Section 8 of the Said Act, the plaintiff has power to detain the aircraft which has not paid and / or cleared the charges payable by any person operating the said aircraft or the owner of the aircrafts or the said aircraft itself.

10) Under Rule 33(d) as also Rule 82 read with Schedule 5 of the Aircraft Rules, 1937 made under the provisions of the Aircrafts Act, 1934, the plaintiff is entitled to levy the landing and parking charges as also to detain the aircraft for recovery of such charges.

**11)** According to the plaintiff, there are outstanding charges for Route Navigation Facilities Charges (RNFC) and Terminal Navigation Landing Charges (TNLC) in respect of Mumbai Airport. The said charges of navigation are leviable for both defendant Nos.4 and 5 aircrafts separately with normal flights, training flights and quick returns flights. The charges outstanding in respect of Mumbai Airport are for the period from 1<sup>st</sup> January 1995 to 31<sup>st</sup> January 1993 and from 1<sup>st</sup> February 1996 to 31<sup>st</sup> March 1996. These charges are compiled in his chart alleged as Exh.A1 to A4 to the plaint. The total charges payable in respect of defendant No.4 aircraft are Rs.96,72,197/- and in respect of defendant No.5 it is Rs.86,06,790.50/-.

**12)** According to the plaintiff, parking charges are also due and payable from defendant No.4 and 5 aircraft from the time when they were grounded at Mumbai Airport at the instance of defendant No.1 till the date of the suit i.e. till 27.01.1997. The plaintiff is entitled to recover such charges from defendant Nos.4 and 5 in respect of other airports also. The number of arrivals at Mumbai Airport of defendant Nos.4 and 5 aircrafts giving the detailed particulars about the number of training flights, number of quick return flights, number of passengers and the charges payable are also shown in Exh.A. the defendants are also liable to pay to the plaintiff passenger service fees aggregating to Rs.58.98 Lakhs for Mumbai Airport besides the other airports as shown in Exh.A.

**13)** According to the plaintiff, the landing and parking charges have been worked out by the plaintiff for defendant Nos.4 and 5 separately for the entire period in question for Mumbai Airport as per



Exh.B to the plaint. The landing and parking charges in respect of above two aircrafts at Trivendrum Airport Rs.60,600/- similar charges are payable in respect of other airports also.

**14)** According to the plaintiff, the defendants are also liable to pay to the plaintiff X-ray charges of Rs.13,77,600/- in respect of defendant No.4 and Rs.12,31,300/- in respect of the defendant No.5 aggregate of Rs.26,08,900/- as per particulars of Claim Exh.C.

**15)** It is further averred that, the defendant Nos.2 and 3 have virtually closed down and have not paid the charges and lease rental payable by them to the defendant No. 1 and accordingly defendant No.1 filed suit against defendant No.2 bearing Suit No.2683 of 1996. But according to the plaintiff, the defendants are not entitled to reliefs claimed in the suit in the absence of the plaintiff and plaintiff accordingly informed the advocates of defendant No.1 on 29.09.1996 that, the plaintiff was not deliberately not made a party to the suit and that unless and until all the dues are paid fully, aircrafts will not be allowed to be removed from the airport.

**16)** In this background, the defendant No.1 filed a Writ Petition before the Hon'ble High Court bearing Writ Petition Lodging No.2399 of 1996 seeking certain directions against the plaintiff and for permitting it to fly the aircrafts out of India without creating any obstruction or levying any demand and other reliefs. In the said Writ Petition, the plaintiff was directed to release the defendant Nos.4 and 5 aircrafts on defendant No.1 furnishing a Bank Guarantee of Rs.2 Crores being approximate amount of arrears of aforesaid charges in respect of

Mumbai Airport. The said order was passed without prejudice to the plaintiff rights in the suit. Hence, the plaintiff filed the present suit for recovery of the aforesaid dues.

**17)** The plaintiff submits that, defendant No.1 claiming to the owners of aircrafts and defendant No.2, being the operator of the aircrafts in India to whom the licenses to fly the aircrafts were granted by the concerned authorities, are liable to pay all charges in relation to the flights operated by them as also incidental parking and other charges. While defendant Nos.4 and 5 are the aircrafts in respect of whom charges are due and payable and on failure to pay are liable to be detained in custody by the plaintiff.

**18)** Hence, an aggregate amount of Rs.2,71,51,058/- are due and payable by the defendants along with interest thereon @ 18% p. a. from the date when it became due till its realization in full. Hence, the plaintiff is constrained to file the above suit.

**CASE OF THE DEFENDANTS:-**

**19)** The suit claim was opposed by the defendant Nos.1, 4 and 5 by filling their written statement on record. It is submitted that, the present suit has filed against the defendant Nos.1, 4 and 5 are not maintainable in fact and in law as they do not have any juridical personality in law. They are mere assets / specie of property. They therefore, cannot be sued in law. Hence, suit against them ought to be dismissed at threshold.

**20)** It is further submitted that, the provisions of the Aircraft Act, 1934 (the Aircraft Act) and the rules made thereunder do not apply to these plaintiff and therefore the plaintiff cannot claim any benefit under the said Act or Rules. Assuming for the sake of argument that, the Aircraft Act and the Rules made thereunder apply to the plaintiff, the plaintiff has breached the same and therefore, cannot claim rights or benefits thereunder.

**21)** It is further submitted that, the plaintiff has no right in personam against the defendants. The suit claim for services, which were sought and rendered to defendant Nos.2 and 3. Defendant Nos. 2 and 3 were billed in respect thereof. Defendant Nos.2 and 3 had in the past paid for the same. Liability in relation thereto is of defendant Nos.2 and 3. Hence, the defendant Nos.1, 4 and 5 are not liable in respect thereof.

**22)** It is further averred thereof that, the defendant No.2 had been permitted by the Government of India to operate as an air taxi operator. Therefore, defendant No.2 leased defendant No.4 and 5 from defendant No.1, by two Lease Agreement dated 27<sup>th</sup> November 1992. The Government of India further permitted temporary registration of foreign aircraft leased for the purpose of air taxi operations. Accordingly, defendant Nos.4 and 5 (being foreign aircrafts) were registered with the DGCA. The said registration was co-terminus with the lease and lapsed with the lease. These defendants are not concerned with the secondary registration, as defendant Nos.4 and 5 were at all material times registered in Ireland and are therefore, assets of Irish Nationality.

**23)** It is also further averred that, as an air taxi operator, defendant No.2 was liable to pay diverse fees / taxes. These included indirect taxes / levies collected and / or deemed to be collected by defendant No.2 for and or behalf of an / or for the account of the plaintiff and / or the Union of India. In fact, the defendant No.2 specially as an agent of the Union of India collected some of these charges, especially the passenger services fees / tax.

**24)** It is also further averred that, during the period set out in the plaint, for which the plaintiff is claiming dues, the fees / taxes were to be collected by the defendant No.2 from passengers and to be handed over to the plaintiff. However, the plaintiff in breach of the rules entered into private agreements with defendant No.2 permitting defendant No.2 to retain these amounts. The plaintiff therefore acted in breach of the rules and to the detriment of the public and / or this defendant by allowing defendant No.2 to retain taxes and fees.

**25)** The plaintiff having wrongfully and / or illegally, allowed to the defendant No.2 retain the fees / taxes to be collected from defendant No.2 for services provided to defendant No.2 as the service operator are now seeking to recover the same from these defendants. Therefore, the suit is misconceived, fraudulent and a dishonest ploy to cover up the plaintiff's illegal acts.

**26)** These dishonest actions/ dereliction of duty of the plaintiff is laid bare in the Minutes of the Meeting dated 8<sup>th</sup> January 1996 between the chairman of the plaintiff and representatives of the defendant Nos.2 and 3 where the plaintiff informed defendant Nos.2 and 3 that

Rs.12,00,00,000/- were due from defendant Nos.2 and 3 and the same admitted by those defendants. Despite the admission of liability the plaintiff gave defendant Nos.2 and 3 additional time, leading to accumulation of more dues.

**27)** The remaining averments in so far as pertains to the constitution, status, functions and role of the plaintiff are within the knowledge of the plaintiff. Hence, the plaintiff be put to strict proof of the same. The plaintiff is not entitled to recover any charges against defendant Nos. 1, 4 and 5 and they are only recoverable and should be recovered from defendant No.2. The defendant Nos.2 / 3 are under liquidation and no proceedings can be initiated and continued against said defendants without the leave of the Official Liquidator.

**28)** It is further admitted that, the defendant No.1 leased out defendant Nos. 4 and 5 to defendant No.2. However, it is denied that defendant No.2 was a schedule airline. It is admitted that the defendant Nos.4 and 5 were leased out to the defendant No.2 pursuant to Lease Agreement dated 27<sup>th</sup> November 1992. As per the said Lease Agreement, the defendant No.2 was liable for taxes and charges that may be incurred with respect to the operation of the said aircrafts during the lease period. The plaintiff were aware fully that, the aircrafts were leased out to the defendant No.2 for the purpose of his own business as an air taxi or transport operator and the contesting defendants never carried or intended to carry on any business in India as operators or otherwise. Therefore, only by virtue of and for the duration of such lease, the defendant No.2 was permitted to register the said aircrafts in India with the Central Government and the DGCA. The

registration with the Government of India / Director General of Civil Aviation specifically records the ownership defendant No.1 and the nationality of the defendant Nos.4 and 5 and the fact that the defendant No.2 was the operator. All services purportedly given by the plaintiff were given to the defendant No.2 at the instance of and request of the defendant No.2 along with public notice of these defendants independent right of ownership, and no service was asked for by these defendants, and none was given. All services requested for by these defendants after the termination of the lease have been paid for in full by these defendants. The plaintiff had no authority to detain the defendant Nos.4 and 5 in respect of the suit claim.

**29)** It is further contended that, the plaintiff illegally and unauthorisely and in collusion with defendant No.2 deliberately did not enforce payment as required by the rules and regulations and wrongfully granted time to defendant No.2 in breach of and in excess of the said rules and regulations. The same is evident from the fact that, a public notice dated 6<sup>th</sup> July 1996 in the Indian Express was issued by the plaintiff, stating therein that on account of failure to fulfill the commitment to clear the accumulated dues in respect of landing, parking and navigation charges by the defendant No.2, the plaintiff are constrained to stop the aircrafts from plying with effect from 7<sup>th</sup> July 1996. Despite the Public Notice, the aircrafts were allowed to ply up to mid July 1996, when they were grounded by the order of the Hon'ble Bombay High Court dated 11<sup>th</sup> July 1996, but for the wrongful arrangement between the plaintiff and the defendant No.2, the present situation would not have arisen and therefore, the plaintiff estopped from claims for dues with respect to services provided to the defendant

No.2 against these defendants. Hence, present defendants are not liable to pay any of the suit amount. The Hon'ble Bombay High Court by order dated 9<sup>th</sup> March 2011 allowed the Writ Petition holding that, the defendant No.1 was not liable to the plaintiff for dues claimed in the present suit and ordered that the Bank Guarantee be returned. The plaint does not disclose any cause of action against present defendants, hence, it is prayed that the suit be dismissed against present defendants with exemplary costs.

**30)** In view of the rival pleadings of the parties, the Hon'ble Lordship Mrs. Roshan Dalvi. J. framed the following issues by order dated 02.03.2015 and issue No.7 was thereafter framed by His Lordship S. C. Gupte, J. by order dated 23.03.2015 and issue No.8 was framed by me on 15.10.2024. Out of them, issue Nos.1 and 5 were directed to be tried as preliminary issues and were decided in favour of the defendant Nos.1, 4 and 5 by order dated 27.06.2024 by my Ld. Predecessor. The remaining issues arise for determination before me and I record my findings thereon for the reasons enumerated hereinafter:-

Sr. No.	Issues	Findings
1.	Whether the plaintiffs are entitled to claim charges for services and facilities rendered and lending charges from defendant No.1, who leased its aircrafts to defendant Nos.2 and 3 under the Aircraft Act, 1934 and the Rules thereunder?	<b><u>In the Negative.</u></b>
2.	Whether the defendant Nos.2 and 3 are alone liable in respect of the aforesaid charges to the plaintiff?	<b><u>In the Affirmative.</u></b>

3.	Whether the plaintiff has colluded with defendant No.2 and 3 to claim the dues from defendant No.1?	<u>In the Affirmative.</u>
4.	Whether the plaintiff has forfeited its right to recover dues by such collusion?	<u>Yes, plaintiff forfeited its right against the defendant Nos.1, 4 and 5.</u>
5.	Whether the suit is maintainable against defendant Nos.4 and 5, which are aircrafts?	<u>In the Negative.</u>
6.	What relief, if any, is the plaintiff entitled to?	<u>As per final order.</u>
7.	Whether the plaintiff is entitled to compensate defendant Nos.1, 4 and 5 towards the Bank Guarantee furnished and extended from time to time by the defendant Nos.1, 4 and 5?	<u>As per final order.</u>
8.	Whether the plaintiff proves that, it is entitled to amount claimed?	<u>Partly, in the affirmative against defendant Nos.2 and 3.</u>
9.	What Order & Decree?	<u>As per final order.</u>

### REASONS

#### AS TO ISSUE NOS.1 AND 5: -

**31)** At the costs of repetition, it needs to be pointed out here that, as per the directions of the Hon'ble High Court issues Nos.1 and 5 were decided as Preliminary issues by my Ld. Predecessor by order dated 27.06.2024 and were answered in favour of the defendant nos.1, 4 and 5, thereby holding as under in para No.30:-

*“Upon bare perusal of the provisions quoted by the plaintiff there is nothing wherein the owner is held liable to pay the due charges for use of airport for its aircrafts, in absence of contract of the owner i.e. defendant no. 1*



*with the Airport Authority i.e. plaintiff. When the Aircrafts were in possession of defendant no.2 being its lessee and the plaintiff entered into an agreement with the defendant no.2 for availing services of its airport and for charges therein, then the plaintiff has to recover it only from the defendants no.2 and 3, if any. Defendant no.1 has nothing to do with said contract.”*

32) Similarly, while recording findings on above issues, it was held by my Ld. Predecessor, that, the suit is not maintainable against defendant Nos.4 and 5 because they are inanimate objects and are neither a natural person nor a juristic person. Therefore, both the above issues have been decided finally as preliminary issues and now, they are not open for fresh agitation before this court in view of the settled principles of law laid down by the Hon'ble Apex Court in number of judgments cited below.

33) It was laid down by the Hon'ble Supreme Court in ***Bhanu Kumar Jain v. Archana Kumar, (2005) 1 SCC 787: 2004 SCC of OnLine SC 1623***, that the principle of res judicata applies to the different stages of the same suit. Once a question is decided by a Court at one stage of the suit, it constitutes res judicata in subsequent stages and cannot be questioned at the subsequent stage. It was observed at page 796: *"It is now well settled that principles of res judicata apply in different stages of the same proceedings. (See Satyadhyhan Ghosal v. Deorajin Debi [AIR 1960 SC 941 : (1960) 3 SCR 590] and Prahlad Singh v. Col. Sukhdev Singh [(1987) 1 SCC 727] ) .*

*In Y.B. Patil [(1976) 4 SCC 66] it was held: (SCC p. 68, para 4), "It is well settled that principles of res judicata can be invoked not*

*only in separate subsequent proceedings, they also get attracted in subsequent stages of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent stage of that proceeding."*

**34)** *In Vijayabai [(1999) 1 SCC 693] it was held: (SCC p. 701, para 13) , "We find in the present case the Tahsildar reopened the very question which finally stood concluded viz. Whether Respondent 1 was or was not the tenant of the suit land. He further erroneously entered into a new. premise of reopening the question of the validity of the compromise which could have been an issue if at all in appeal or revision by holding that the compromise was arrived at under pressure and allurements. How can this question be up for determination when this became final under this very same suit?"*

**35)** Apart from the above factual and legal position, though no more discussion is necessary on the above issues Nos. 1 and 5, even on merits a number of admissions are elicited in the cross examination of PW-01 Sunil Sawant before Exh.35. One of such admission is that, the services were "expressly demanded by the defendant No.2" and that airlines collect fares from the passengers which includes the landing, parking, route navigation and other services charges and thereafter pays to the plaintiff. This admission is given in para no.2 of the cross examination. Again an admission is given in para No.5 that, the plaintiff has raised the bills at Exh.33 with rate applicable to scheduled airlines as defendant No.2 is a scheduled airlines and admittedly therefore, as rightly argued on behalf of the defendant Nos.1, 4 and 5, they were not raised in the name of defendant Nos.1, 4 and 5 nor, the bills were

served upon them. The most vital admission given by the PW-01 is that, the services were rendered to defendant No.2 for its airline operation business.

**36)** It is also rightly submitted on behalf of the the contesting defendant that, the defendant no.1 is an Irish Company and is only lessor / owner of the defendant Nos.4 and 5 aircraft and is not an airline operator and cannot be said to have availed any services from the plaintiff.

**37)** The Ld. Advocate for the plaintiff heavily relied upon regulation 4 (22) and 4 (23) of the International Airport Authority of India (Managment of Airports) Regulation, 1982, which states that, the owner of the aircraft is laible in came any damage is caused to the airport / its fixtures or property of the airport. However, as rightly submitted on behalf of the constesting defendant that, the present case pertains to the bills raised towards landing / parking route navigation etc., charges incurred by the defendant No.2 during its Airlines operations. The said fact is admitted by PW-2 in his cross- examination in para no.9. The witness admitted that, “it is true to say that the bills raised by us on defendant No.2 are in respect of landing, parking and navigation charges and not in respect of damage caused to any property of the Airport Authority. Hence, the reliance of the plaintiff on the said regulations is misplaced as no damage is caused to the property of the palintiff by the defendant No.4 and 5 Aircrafts for which the owner i.e. defendant No.1 could have been made liable.”

38) Therefore, the decision given on issues Nos.1 and 5 by earlier order of this court is still in force and has not been set aside by any Appellate Court and cannot be decided afresh. For the said reasons, I reiterate the answer to issue Nos.1 and 5 in the negative.

**AS TO ISSUE NO.2:-**

39) So far as issue No.2 is concerned, it deals with the liability of the defendant Nos.2 and 3 in respect of aforesaid charges payable to the plaintiff. However, at the outset, it needs to be pointed out that, defendant Nos.2 and 3 neither contested the suit by filing the written statement, nor by leading any evidence. Though, their advocate was permitted to conduct the cross-examination, not even a single suggestion is given that the raised bills are false. The only suggestion is given that they have wrongly calculated by the plaintiff, but nothing is brought on record on behalf of the defendant Nos.2 and 3 to show how the wrong calculation are made and what is correct calculation. Therefore, issue No.2 needs to be answer in the affirmative.

**AS TO ISSUES POINT NOS. 3 AND 4:-**

40) It is the case of the contesting defendants that, there is collusion between the defendant Nos.2, 3 and the plaintiff and hence, they are not liable to pay the suit amount. These issues therefore, to be decided by appreciating the evidence on record. Now, it is the contention of the defendant Nos.1, 4 and 5 that, the plaintiff in breach of the rules entered into private agreements with the defendant No.2 and allowed the defendant No.2 to retain the fees / taxes collected by the defendant No.2 by way of ticket fares from the passengers without paying the charges to the plaintiff. The plaintiff acted in breach of rules

and to the detriment to the public and the present defendants. The Plaintiff allowed the defendant No.2 to operate the Airlines in spite of continuous defaults on the part of the defendant No.2 for 1 and half years even when the bills were raised on weekly basis and were to be paid within a period of 15 days as per the testimony of PW-01.

**41)** The said submission appears to be probable because the plaintiff has not produced any notice or demand letter on record to show that they called upon the defendant No.2 to pay the outstanding landing / parking charges between the period of 1995-96, during which the bills were allegedly raised and were outstanding. On the contrary, the report of Comptroller and Auditor General of India which conducts the Audit and performance Audit of all PSU's including the plaintiff has severely criticized acts of the plaintiff of allowing the defendant No.2 to continue its airline operations in spite of huge outstandings. PW-1 was confronted in the said report at Exh.48 and he admitted contents of the said report.

**42)** The report of the Comptroller and Auditor General of India, mentions in para No.1.1.4.5.3.1 that, *"it was also noticed that these airlines constituted approximately 60 per cent of the total debtors. It was noticed that the, "Authority had been allowing them to operate on credit basis. Had the Authority taken security deposits from these airlines also in terms of rules stated in para 1.1.3.5.3 above, the outstandings from them could have been reduced."*

**43)** It is pertinent to note here that, the officials of the plaintiff took only Rs.1.75 lakhs as security deposit from defendant No.2 and

allowed them to operate their airlines, when they were in fact liable to pay Security Deposit of Rs.17.58 Crores for conducting their Airtaxi / Airlines Operations. This huge anomaly in the said amount gives rise to the inference that, there was collusion between the officials of the plaintiff and the defendant No.2. Another fact discovered in the said Audit was that, there was a delay of 1 to 233 days in raising the bills. Therefore, this conduct rightly gives rise to the inference that something was fishy between the plaintiff's officials and the defendant No.2. Hence, in view of the above discussions, I answer issues No.3 in the affirmative. Now, the contention of the defendant Nos. 1, 4 and 5 that, on this count, the plaintiff is not recover any dues from any of the defendants does not appeal to me because the liability of the defendant Nos.1, 4 and 5 is already held to be nil. But, there is no contest on behalf of the defendant Nos.2 and 3. Moreover, a person cannot take the advantage of its own wrong. Hence, even if, collusion between the plaintiff's officials with defendant No.2 is held to be proved, due to wrong acts of the officials, plaintiff cannot be made to suffer by holding that, even against defendant No.2 it cannot recover the dues. Hence, I answer Issue No.3 in the affirmative and Issue No.4 in the partly in the affirmative, so far as defendant Nos.1, 4 and 5 are concerned by holding that, the plaintiff forfeited its rights to recover any amount from defendant Nos.1, 4 and 5.

**AS TO ISSUE POINT NO.7:-**

**44)** The defendant No.1 has claimed compensation from the plaintiff towards the Bank Guarantee furnished and extended from time to time by the defendant Nos.1, 4 and 5. It is submitted on behalf of the defendant No.1 that, due to collusion between the plaintiff's officials

and the defendant No.2, the Plaintiff, did not stop their services nor canceled the permit through DGCL, in spite of huge outstandings but allowed the defendant No.2 to continue its Airlines Operations. The defendant No.1 is a foreign company based in Ireland and has no operation in India. PW-1 has admitted in its cross examination that DGCA has given Air Taxi Operator's permit to the defendant No.2 and they rendered services to the defendant No.2 for conducting its Airlines business. The said services for which invoices were raised by the Plaintiff were not availed by the defendant Nos.1, 4 and 5. the defendant No.1 was never responsible to pay for the services allegedly availed by the defendant Nos.2 & 3. It is also an admitted fact that, the defendant No.1 terminated the lease of the defendant No.2 in respect of the defendant Nos.4 and 5 Aircrafts in the year 1996 and filed a suit in the Hon'ble Bombay High Court for outstanding lease rent and for getting possession of the Aircrafts.

**45)** It is further submitted that, the Hon'ble Bombay High Court in Notice of Motion No.1984 of 1996 filed in suit no.2683 of 1996 on 13.09.1996 and ordered for the de-registration of the Aircrafts with the DGCA and handing of the possession of the Aircrafts to the defendant N.1. Hence, the fact that, the defendant No.1 is entitled to the possession of its aircrafts without any resistance was held by the Hon'ble Bombay High Court in the notice of motion filed in suit No.2683 of 1996 in the year 1996 itself. However, the plaintiff illegally restrained the defendant No.1 from flying its Aircrafts back to Ireland and hence, the defendant No.1 had to file a Writ Petition in the Hon'ble Bombay High Court and it was pleased to hold that, the defendant No.1 is entitled to get the possession of the aircrafts and fly it out of India

vide order dated 27.12.1996. As the plaintiff opposed the grant of the relief to the defendant No.1 of flying the aircrafts out of India without any demand in respect of the charges payable by the defendant No.2, the Hon'ble Bombay High Court directed the defendant No.1 to furnish a bank guarantee of Rs.2 Crores. Had the plaintiff not have illegally opposed the flying of aircrafts out of India by the defendant No.1, the order for furnishing the bank guarantee would not have been passed. The plaintiff also filed the present suit and a Notice of Motion No.586 of 1997 to detain the 2 aircrafts. The said notice of motion was heard along with the Writ Petition and was dismissed.

**46)** It is further submitted that, in Writ Petition No.618 of 1997 along with Notice Of Motion No.586 of 1997 in Suit No.386 of 1997, the Hon'ble Bombay High Court held that the defendant No.1 is not liable to pay the dues demanded by the plaintiff as there was no contract between the them or nor any law made owner of the aircrafts liable to pay these dues incurred by the operation of the aircrafts. Even the Hon'ble High Court directed the Ld. Prothonotary and Senior Master to cancel the bank guarantee furnished by the defendant No.1, but the plaintiff maliciously filed the SLP No.8344–8345 of 2015 before the Hon'ble Supreme Court and thereby the order of bank guarantee was continued till disposal of the suit.

**47)** It is further submitted that, on the bank guarantee of Rs.2 Crores, the Citi Bank is charging an amount of Rs.1.75 % of the bank guarantee amount per year towards a commission charges for renewing the bank guarantee from time to time i.e. Rs.3.50 Lakhs per year. Hence, the defendant No.1 had paid a sum of Rs.96,25,000/- till



October 2024. Hence, the plaintiff is liable to pay the bank guarantee charges to the defendant No.1 as per Section 35 of the Commercial Courts Act and also due to malicious prosecution from the past 27 years and therefore, plaintiff is also liable to compensate of Rs.50 Lakhs to cover the litigation expenses and exemplary costs of Rs.1 Crore for filling the malicious and vexatious litigation against defendant No.1.

**48)** I find force in the above submissions advanced on behalf of the defendant No.1, because, as per the admissions given by PW-1, Sunil Sawant, it is clear that, the plaintiff knew very well that, they provided services to the defendant No.2 such as parking, landing, route navigation etc., for its airline operation business, in which the defendant Nos.1, 4 and 5 were unconnected. The collusion between the officials of the plaintiff and the defendant No.2 becomes obvious due to the apparent negligence in allowing the defendant No.2 to continue to use its services, though, it defaulted in making the payments. Not only this, the report of the Comptroller and Auditor General of India also shows that, instead of Rs.17.58 Crores a paltry sum of Rs.1.75 Lakhs was taken towards security deposit from the defendant No.2 and therefore, in the Audit adverse observations were passed against the plaintiff by the authority not less than the Comptroller and Auditor General of India. The most vital admission given by the PW-1 is that, if the breach of the terms and conditions is committed, the permit is liable to be cancelled. Then one fails to understand why no action was taken against defendant No.2. Again, an important admission which shows how, the defendant Nos.1, 4 and 5 are deliberately joined as a party to the suit is elicited in the cross-examination of PW-1 to the effect that, “we were aware that the defendant No.2 has gone into liquidation

before filling the suit. We were aware that, we cannot recover any amount from the defendant No.2 and therefore, we joined defendant No.1, 4 and 5 as parties.” This admission clinches the issue that, the plaintiff maliciously dragged defendant Nos.1, 4 and 5 into the suit. Again, PW-1 admitted that, they were aware that, in order to obtain bank guarantee one needs to pay commission @ 1.75 % p.a. on the amount of bank guarantee and for its subsequent renewal. Therefore, the said expenses were saddled upon the defendant Nos.1, 4 and 5 only due to false and malicious suit filed against them by the plaintiff. If, the plaintiff had not filed the above suit against present defendant Nos. 1, 4 and 5, the defendant No.1 would not have to pay the hefty amount of Rs.96,25,000/- till today.

**49)** At this stage, it will be useful to point out that, the plaintiff has relied upon the judgment of the Hon’ble Supreme Court passed in the case between, *Delhi International Airport Ltd., V/s. International Lease Finance Corpn. And Ors., reported in AIR 2015 SC 1903*, in which the Bank Guarantee was ordered to be invoked. However, in reply as per additional written notes of argument filed below Exh.59, the Ld. Advocate for the defendant Nos.1, 4 and 5 submits that, from the above judgment it is not clear and specified as to whether the Bank Guarantee was given by the Lessor or the Operator of the Aircrafts. Further, it is submitted that, in the said judgment, the Aircrafts were released on the basis of order of a minister based on the minutes of the meeting and therefore, the Hon’ble Court considered it to be in contravention of the provisions of regulations 10 of the Airport Authority of India (Management of Airports) Regulations, 2003 and hence, ordered invocation of the Bank Guarantee.

**50)** On perusal of the above judgment, in view of the submissions advanced by both the sides, I find that with due respects the facts of the present case differ from the facts of the above judgment. Moreover, it is rightly pointed out that, the present suit was filed in year 1997 as suit No.366 of 1997 and the Regulations were passed in the year 2003 and came into force on 09.11.2011 and cannot be applied retrospectively.

**51)** For the sake of convenience, earlier, the Regulation 4 (22) of the International Airport Authority of India (Management of Airports) Regulations, 1982 as relied upon by the plaintiff in his suit stated that, *“Unless otherwise provided under the Act or by a general or special order in writing by the Central government, the use of the movement area of Airport, by an aircraft shall be subject to payment of such landing, parking or housing fees or charges as are levied by the Authority from time to time”*.

**52)** However, A corresponding Regulation 10 is inserted in the new regulations of the Airports Authority of India (Management of Airports) Regulations, 2003 and is as follows:-

*Unless otherwise provided under the Act or by a general or special order in writing by the Central Government, the use of the movement area of Airport, by an aircraft shall be subject to payment of such landing, parking or housing fees or charges as are levied by the Authority from time to time. **In the event of non-payment of the requisite fee or charges, the Competent Authority shall have a right to detain or stop departure of the aircraft till the fees or charges are paid to Authority, which may include the current and accumulated dues.***

53) It is rightly pointed out on behalf of the defendant Nos.1, 4 and 5 that, the emphasized part was inserted newly in the year 2003 and came into force on 09<sup>th</sup> November 2011 and was not a part in the earlier regulations when the suit was filed. My attention is invited to Regulation No.1 (2) of the said regulations of 2003 is states that, “These Regulations shall come into force from the date of their publication in the official gazette”. Hence, it is rightly argued that, there cannot be retrospective application of the said regulations.

54) Hence, in view of the above discussion, the plaintiff, as rightly pointed out, dragged the defendant Nos.1, 4 and 5 unnecessarily in the litigation only because defendant No.2 was not in a position to pay the dues as per the own admission of PW-01 in para No.4 of his cross-examination, which runs as under:-

*“It is true to say that in the year 19996, in the interim order in writ petition filed by the defendant No.1, the Hon’ble High Court held that, the defendant No.1 is not liable to pay any charges. We were aware that, the defendant No.2 has gone in liquidation before filling the suit. We were aware that, we cannot recover any amount from the defendant No.2 and therefore, we joined defendant No.1, 4 and 5 as parties”.*

55) It appears that, the defendant No.2 had been permitted by the Government of India to operate as an air taxi operator. Therefore, defendant No.2 leased defendant No.4 and 5 from defendant No.1, by two Lease Agreement dated 27<sup>th</sup> November 1992. The Government of India further permitted temporary registration of foreign aircraft leased for the purpose of air taxi operations. Accordingly, defendant Nos.4 and

5 (being foreign aircrafts) were registered with the DGCA. The said registration was co-terminus with the lease and lapsed with the lease. Hence, as a discussed above while appreciating the evidence and while discussing the preliminary issues already decided by my Ld. Predecessor, these defendants are not concerned with the secondary registration, as defendant Nos.4 and 5 were at all material times registered in Ireland and are therefore,assets of Irish Nationality.

**56)** From the evidence on record, it appears that, as an air taxi operator, defendant No.2 was liable to pay diverse fees / taxes. These included indirect taxes / levies collected and / or deemed to be collected by defendant No.2 for and or behalf of an / or for the account of the plaintiff and / or the Union of India. It is also brought on record during the cross-examination of PW-1 as discussed above. Hence, it is rightly argued on behalf of the defendant Nos.1, 4 and 5 that, in fact, the defendant No.2 specially as an agent of the Union of India collected some of these charges, especially the passenger services fees / tax and is liable to pay the said charges.

**57)** Again, the Ld. Advocate for defendant Nos.1, 4 and 5 while cross-examining the PW-1 of elicited important admission that, during the period set out in the plaint, for which the plaintiff is claiming dues, the fees / taxes were to be collected by the defendant No.2 from passengers and to be handed over to the plaintiff. As seen from the report of an Agency not lesser than the Comptroller Auditor General of India, the plaintiff therefore acted in breach of the rules and to the detriment of the public and / or this defendant by allowing defendant No.2 to retain taxes and fees.

**58)** So, on a conspectus of the above discussion, the malicious conduct of the plaintiff stands proved that the suit is false, frivolous and vexatious as against the defendant Nos.1, 4 and 5 and therefore, exemplary costs along-with direction to pay Rs.96,25,000/- towards the bank charges incurred by the defendant No.1 for getting the bank guarantee extended from time to time also needs to be imposed. So, also costs of the litigation, expenses spread over a period of 27 years need to be paid to the defendant Nos.1, 4 and 5. The defendant No.1 has prayed for imposition of costs of Rs.1 Crores as exemplary costs upon the plaintiff for filling malicious and vexatious litigation.

**59)** In my opinion, therefore, the contention of the defendant Nos.1, 4 and 5 that, it was unnecessarily dragged into the controversy for a number of 27 years and had to bear the expenses for obtaining and renewing bank guarantee is a true and correct. When the Hon'ble High Court was pleased to observe in so many observations that, defendant No.1 was not liable to pay the above charges, the plaintiff ought to have at-least withdrawn the suit against it, but as elicited in the cross-examination of PW-1, the plaintiff knew that, nothing could be recovered from the defendant No.2 and hence, unnecessarily joined defendant Nos. 1, 4 and 5 as parties to the suit. Therefore, their claim for recovery of an amount of Rs.96,25,000/- spend on Bank Guarantee and its renewal deserves to be allowed.

**60)** So far as, the litigation expenses are concerned, it is a matter of record that, the defendant No.1 had to face various courts during the past 27 years and therefore, it has claimed an amount of Rs.50 Lakhs towards litigation expenses and costs. In my opinion, the said claim

deserves to be allowed in view of the above vexatious suit filed against them.

**61)** Now, the third claim made by the defendant Nos.1, 4 and 5 is towards exemplary costs of Rs.1 Crore. As already discussed above, from the very own admissions given by PW-1 in para No.4 of his cross-examination it is apparent that, how without any cause, the present defendant Nos.1, 4 and 5 were frivolously, vexatiously and maliciously dragged into the suit stretching to over 27 years. Hence, in my opinion, this is a fit case to award exemplary costs of Rs.1 Crore to the defendant Nos.1, 4 and 5 in the interests of justice. I accordingly answer issue No.7 in the affirmative.

**AS TO ISSUE NO. 6 & 8:-**

**62)** In view of the above discussion, it is amply clear that, as an air taxi operator, defendant No.2 was liable to pay diverse fees / taxes. These included indirect taxes / levies collected and / or deemed to be collected by defendant No.2 for and or behalf of an / or for the account of the plaintiff and / or the Union of India. It is also brought on record during the cross-examination of PW-1 as discussed above. Hence, it is rightly argued on behalf of the defendant Nos.1, 4 and 5 that, in fact, the defendant No.2 specially as an agent of the Union of India collected some of these charges, especially the passenger services fees / tax.

**63)** It is also clear from the evidence of record that, due to some lapses on the part of officers of the plaintiff, a very less amount of security deposit was taken from the defendant No.2 and defendant No.2 continued to operator its Taxi Operations as an Airline and collected the

charges from the passengers in the total ticket amount. Therefore, there cannot be unjust enrichment of defendant No.2 at the costs of public money. Even, the Comptroller and Auditor General of India in its report No.4 of 2002 for the period ending in March 2001 at Exh.48 shows the lapses committed by the officers of the plaintiff in not checking the payments and recovering the same from defendant No.2 in time. Hence, the public money needs to be recovered in favour of the plaintiff from the defendant No.2. I accordingly answer issue Nos. 6 and 8 in the affirmative against the defendant No.2. As an aftermath, I proceed to pass the following order:-

### **ORDER**

- 1)** Commercial Suit No.1143 of 2024 is partly decreed against the defendant Nos.2 and 3 with costs.
- 2)** The defendant Nos.2 and 3 do jointly and severally pay an amount of Rs.2,71,51,058/- (Rupees Two Crores, Seventy One Lakhs, Fifty One Thousand and Fifty Eight only) to the plaintiff within three months from the date of passing of decree with the interest thereon @ 9 % p. a. from the date it became due till realization in full.
- 3)** The plaintiff do pay to the defendant No.1 amount of Rs.96,25,000/- towards Bank Guarantee charges and such further Bank Guarantee charges as may accrue till the Bank Guarantee is canceled by the Prothonotary and Senior Master of the Hon'ble Bombay High Court with interest thereon @ 9 % p. a. from the date of decree till its realization in full.
- 4)** The plaintiff do further pay exemplary costs of Rs.1 Crore and litigation costs of Rs.50 Lakhs to the defendant No.1 with interest thereon @ 9 % p. a. from the date of decree till its realization in full.



5) The Prothonotary and Senior Master of the Hon'ble Bombay High Court is hereby directed to cancel the Bank Guarantee in the above suit submitted vide order dated 27.12.1996 passed by the Hon'ble Bombay High Court being Bank Guarantee No.5717015001, GL31308 Bank name Citibank N. A., branch Mumbai in WP No.618 of 1997 (Lodging No.2399 of 1996).

6) Decree be drawn up accordingly.

7) Commercial Suit No.1143 of 2024 disposed off accordingly.



Date: 03.01.2025.

Direct Typed On : 03.01.2025.

Signed on : 06.01.2025.

(A. S. Kazi)  
Addl. Sessions Judge,  
City Civil & Sessions Court,  
Mazgaon, Gr. Mumbai  
(C. R. No.14)

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

UPLOAD DATE: 07.01.2025

NAME OF STENOGRAPHER

TIME: 03.50 p.m.

Mr. Ashok Sudhakar Patil

Name of the Judge (With Court room no.)	HHJ Shri. A. S. Kazi. (Court Room No.14)
Date of Pronouncement of JUDGEMENT/ORDER	03.01.2025
JUDGMENT/ORDER signed by P. O. on	07.01.2025
JUDGEMENT/ORDER uploaded on	07.01.2025

**(Note:- As per Roznama dated 07.01.2025, judgment corrected and re-uploaded.)**