

(2005) 10 MAD CK 0069

Madras High Court

Case No: O.S.A. No. 114 of 2005

Blue Dart Aviation Limited

APPELLANT

Vs

Capt. Puneet Shankta No. 1, 17th
Street, Church Road, Thillai
Ganga Nagar, Nanganallur,
Chennai 600 061

RESPONDENT

Date of Decision: Oct. 28, 2005

Acts Referred:

- Contract Act, 1872 - Section 23, 27

Hon'ble Judges: P.K. Misra, J; N. Kannadasan, J

Bench: Division Bench

Advocate: Arvind P. Dattar, for Mr. Rishi Kumar Dugar, for the Appellant; V. Selvaraj, for the Respondent

Judgement

P.K. Misra, J.

These two appeals are directed against the common order dated 24.5.2005 by the learned single Judge in O.A. Nos. 563 and 564 of 2005 arising out of C.S. Nos. 474 and 473 of 2005 respectively. C.S. No. 474 of 2005 has been filed by the present appellant / plaintiff against the respondent, namely. Cap. Puneet Shankta claiming for a declaration that the defendant is liable to pay the plaintiff a sum of Rs. 4,45.200/- towards payment in lieu of three months notice period as per the terms of employment with interest at the rate of 15% from the date of filing of the suit and for permanent injunction restraining the defendant from taking up any employment as Pilot of any other company /airline/corporation for a period of three months in breach of the terms of employment.

2. The basic allegation in the said suit is to the effect that the defendant, who is a qualified pilot, was trained at the behest of the plaintiff to enable him to be released as a Senior First Officer for B 737-200 aircraft and thereafter to serve the plaintiff and the defendant has abandoned the services of the plaintiff even without giving

three months written notice or payment in lieu thereof. It is alleged that the defendant without any notice suddenly left the services on 4.5.2005 in breach of the terms of his employment. During pendency of such suit, which was filed on 9.5.2005. an application for interim injunction, was filed seeking for interim injunction restraining the defendant from taking up any employment as Pilot of any other company / airline / corporation for a period of three months in breach of the terms of employment. On 11.5.2005. a learned single Judge of this Court passed an ad-interim order in such application.

3. A counter affidavit was filed by the defendant / respondent wherein it was contended that the defendant had undergone training at his own cost and it was further indicated that the appointment letter dated 22.4.2005 and the re-designation letter dated 26.4.2005 had not been served on the defendant and it was prayed that the application for interim injunction should be rejected.

4. The very same plaintiff has filed C.S. No. 473 of 2005 against the defendant Capt. Kulbir Singh Rai inter alia for a declaration to declare that the defendant is liable to pay a sum of Rs. 10,00,000/- for committing the breach of the bond dated 1.10.2003 with interest at 15% from the date of filing of the suit and for permanent injunction restraining the defendant from taking up employment as Pilot of any other company / airline / corporation for a period of three years in breach of the bond.

5. The basic allegations in the said suit are to the effect that the defendant had been trained at the behest of the plaintiff to enable him to be released as a First Officer for B 737-200 aircraft and thereafter to serve the plaintiff and the defendant had abandoned the services of the plaintiff without giving any notice. It has been further indicated that in the bond the defendant had undertaken to serve for a period of three years and. as per the service conditions, the defendant was required to issue three months notice. During pendency of such suit, the plaintiff filed an application for interim injunction, numbered as O.A. No. 564 of 2005. restraining the defendant from taking up any other employment as Pilot of any other company / airline / corporation for a period of three years in breach of the terms of the bond dated 1.10.2003. Learned single Judge passed an interim order on 11.5.2005.

6. A counter affidavit was filed on behalf of the defendant, wherein it was indicated that he had undergone training at his own cost and it was further stated that at the time of obtaining the bank guarantee, the defendant had signed the last page of the draft bond. It was also contended that the bond was not enforceable in view of Sections 23 and 27 of the Indian Contract Act.

7. Both the matters were taken up by a learned single Judge and by common order dated 24.5.2005. the ad-interim orders have been vacated and O.A. Nos. 563 and 564 of 2005 were dismissed.

8. O.S.A. No. 114 of 2005 has been filed by the plaintiff against the order relating to O.A. No. 563 of 2005 arising out of C.S. No. 474 of 2005 and O.S.A. No. 115 of 2005

has been filed against the order passed in O.A. No. 564 of 2005 in C.S. No. 473 of 2005.

9. Learned Senior Counsel appearing for the appellant has submitted in this context that injunction for at least a limited period is required to be issued in public interest as otherwise pilots employed by a particular Airline go on a spree of Airline hopping thus causing irreparable loss and injury not only to the original employer Airline but also to the general public. He has further submitted that three months notice period included in the order of appointment and/bond is a reasonable period incorporated with a view to enable the Airline to make alternative arrangement for selection and employment of any other qualified Pilot. If a trained Pilot, who performs a highly skilled job, is allowed to join any other Airline immediately without waiting for the expiry of the notice period, the work of the original employer will come to a grinding halt by causing not only financial injury but also untold harm to the reputation of such airline. Learned Senior Counsel has also submitted that the contention of the defendant and the conclusion of the learned single Judge that such a clause would be a restraint of trade as envisaged the Contract Act and would be thus void being opposed to public policy, as envisaged u/s 23 of the Contract Act, cannot be upheld as the restraint is not for any period beyond the normal tenure of the contract but for a period during the currency of the contract. Learned Senior Counsel appearing for the appellant has placed strong reliance upon the decisions reported in [Niranjan Shankar Golikari Vs. The Century Spinning and Mfg. Co. Ltd.](#), (1987) FSR 165 (Evening Standard Co. Ltd. v. Henderson) and [Nazir Maricar Vs. Marshalls Sons and Co. \(India\) Limited,](#)

10. Learned counsel appearing for the respondents on the other hand has placed reliance upon the decisions reported in [M/s. Gujarat Bottling Co. Ltd. and others Vs. Coca Cola Company and others](#), Supp. 3 S.C.R. 196 (Indian Oil Corporation Limited V. Antrilsar Gas Service And Others) [Lalbhai Dalpatbhai and Co. Vs. Chittaranjan Chandulal Pandya, Jet Airways \(I\) Ltd. Vs. Mr. Jan Peter Ravi Karnik](#), and [Star India Private Limited Vs. Laxmiraj Seetharam Nayak and Another,](#)

11. Even though the submission of the learned Senior Counsel for the appellant that the ratio of the decisions of the Supreme Court in [Niranjan Shankar Golikari Vs. The Century Spinning and Mfg. Co. Ltd.](#), and [Nazir Maricar Vs. Marshalls Sons and Co. \(India\) Limited,](#) is applicable to the present case, may appear to be *prima facie* justified, it is not necessary for us to decide that aspect while considering the question of injunction as ultimately the matter has to be decided by the learned single Judge at the time of final decision in the trial. Therefore, we do not propose to go into the question of applicability of the decisions relating to Section 27 of the Contract Act at this stage. We confine ourselves to the question whether the injunction should have been continued or not.

12. As a matter of fact, to be fair to the learned Senior Counsel for the appellant, it has to be placed on record that even though in O.S.A. No. 1 15 of 2005 and the

connected O.A. No. 564 of 2005 the prayer for injunction was for the period of three years as contemplated in the bond, the counsel has submitted that it should be considered whether the injunction should be granted for a reasonable period or for a period envisaged as the notice period in the contract of employment / letter of employment / bond.

13. Law is well settled that while considering the question of injunction, the Court is required to find out whether there is a *prima facie* case in favour of the plaintiff, whether the plaintiff would sustain irreparable loss unless the injunction is granted and the question of balance of convenience. In these matters, it has been held in [Dalpat Kumar and another Vs. Prahlad Singh and others,](#) as follows :-

4. ...It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff defendant: (2) the court's inference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensure before the legal right would be established at trial: and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

14. While considering the question of irreparable loss and balance of convenience in a matter like this, where the sudden departure of a Pilot of one Airline in search of a "greener pasture" or "Bluer sky", so as to say, the question whether the plaintiff can be compensated by money value has to be considered in a slightly different perspective as compared to the traditional approach. It is no doubt true that in such matters some bonds were executed indicating a particular figure. Whether such amount would be payable or not would obviously depend upon the evidence in each case and even assuming that ultimately the amount or damages would be payable, the question of public convenience cannot be ignored.

15. There is no two opinion regarding the fact that a Pilot is a highly specialised skilled person having particular training and it is always difficult for any Airline to immediately replace a Pilot. If a Pilot is allowed to leave a particular Airline even without waiting for the notice period to expire, it would be indeed very difficult for the original employer Airline to make the alternate arrangement, which would inevitably cause certain operations to be suspended thereby causing untold mystery and inconvenience to the primary customers, namely, the passengers or the cargo operators. Such eventuality, in turn, would tar the image of the Airline and mar its reputation. Apart from the fact that it is not easy to weigh such aspects in a golden scale for the purpose of ascertaining the compensation payable, the inconvenience caused to the ultimate consumers, namely, the passengers or the cargo operators, must be minimised. Therefore, in such matters, the Courts should lean in favour of granting injunction for a reasonable period or notice period. In such context, a

period between 3 and 6 months may be *prima facie* said to be reasonable. At such stage, the Court should not be bogged down by any consideration relating to applicability of Section 27 of the Contract Act as applicability of such provision should be left to be decided at the time of final decision in the suit.

16. In the above context, it is also essential to note that the defendant in such cases, namely, the Pilot, would not suffer any undue hardship as even though he would be deprived of some higher earning in other Airline, who would be obviously alluring him more financially job. rewarding the salary under the original employer is also not a pittance but is fairly high. The so called financial hardship in the sense the Pilot would be deprived of higher emoluments, is required to be ignored in such matters. At any rate, judicial notice can be taken note of the fact that the salary offered by any of the Airlines is fairly high. The luxury of getting a much higher salary is to be eschewed by the concerned pilot at least for a reasonable period.

17. Examined from the aforesaid point of view, the learned single Judge has committed an error in vacating the interim order of injunction. In this context, we may also point out that while considering the similar matter relating to injunction, a Division Bench of this Court in O.S.A. Nos. 74 & 75 of 2005 had passed an interim order of injunction for a limited period.

18. Even though we do not agree with the order passed by the learned single Judge, the question is whether in the changed circumstances any further injunction can be granted by us at this stage.

19. It is not in dispute that in the meantime the two Pilots in question have joined some other Airlines. If we would force the Pilots to rejoin the present Airline, similar inconvenience would be caused to the other Airlines.

20. Having regard to this peculiar situation, we observe that even though the learned single Judge was not correct in not granting the injunction at least for the period of notice, we desist from directing restoration of *status quo ante* in the facts and circumstances of the case. It goes without saying that it would be open to the plaintiff/appellant to claim any compensation, if necessary, by amending the plaint and such matter has to be decided on its own merits in accordance with law. For the aforesaid reasons, the appeals are disposed of with the aforesaid observations. No costs. Consequently, the connected miscellaneous petitions are closed.