

(2006) 04 DEL CK 0172

Delhi High Court

Case No: IA No. 3087 of 2005 and OMP No. 306 of 2004

Cosmos Travels and
Tours and Another

APPELLANT

Vs

Tajikistan Airlines and
Others

RESPONDENT

Date of Decision: April 19, 2006

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 9
- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 2A
- Contempt of Courts Act, 1971 - Section 12, 2

Citation: (2006) 04 DEL CK 0172

Hon'ble Judges: Anil Kumar, J

Bench: Single Bench

Advocate: Raghu Mathur, for the Appellant; B.B. Gupta, for the Respondent

Final Decision: Dismissed

Judgement

Anil Kumar, J.

This is an application by the petitioners under Order XXXIX Rule 2A of CPC read with Section 215 of the Constitution of India and Section 12 of the Contempt of Courts Act, 1971 contending that the respondents have violated the order dated 14th September, 2004 passed in OMP No. 306/2004 and consequently praying that the action be taken against them for violation of order and for attachment of their bank accounts.

2. The petitioners/applicants contended that they are exclusive Sales Agent in India of Tajikistan Airlines. The petition u/s 9 of the Arbitration and Conciliation Act. 1996 was filed seeking restraint against the respondent Tajikistan Airlines, from dealing with or appointing third parties and/or accepting sales of cargo and passenger tickets from third parties for the flights operated by them from Delhi. The applicant contended that the respondent Tajikistan Airlines, in breach of terms of sales agency agreement and in

particular, the negative covenant allowed/appointed third party, namely, M/s. Albatross and also others to operate in the territory assigned to the petitioners in terms of the Sales Agency Agreement.

3. The applicant contended that by order dated 14th September, 2004, the respondents were restrained from dealing with or appointing third parties and/or accepting sales of cargo and passenger tickets from third parties for the flights operated by them from Delhi till further orders.

4. The grievance of the petitioners is that respondent No. 1, Assistant Station Manager of Tajikistan Airlines, Respondent No. 2, the General Director, Respondent No. 3 the Dy. Director General International Cooperation and Commerce and the Respondent No. 4 the commercial Director of the Airlines have individually or collectively violated and flouted the orders of this Court and continue to deal with third party for the sale of passenger tickets and cargo space for all their flights operated by them from Delhi. The applicant also complained that the respondent entered into an agreement with M/s. Albatross Enterprises (P) Ltd. who has been acting as the sales agent of Tajikistan Airlines despite the order communicated to the respondents. The applicant have also produced some documents to substantiate their plea that the order of the court dated 14th September, 2004 has been violated. In the circumstances, the applicants have contended that there has been willful disobedience of the order passed by this Court and consequently the present application under Order 39 Rule 2A of the CPC has been filed by the applicant.

5. In reply to the allegations made against the respondent a reply was filed by the respondents who tendered their unconditional and unqualified apology for any violation of the order passed by this court. The respondents contended that they are law-abiding citizens of a Republican Country and hold the Indian Judiciary in the Highest esteem and would not violate any order passed by any court in India and had not intentionally and willfully violated any order of this Court.

6. The respondent also contended that they did not even attempt to violate any order passed by this Court intentionally and willfully. Regarding respondent No. 1, it was stated that there is no such person with the name of Mr. Sayed Rakhmon and in fact it is Mr. Sayrahmon.

7. It was also contended by the respondents that agency agreement was signed by M/s. Tajikistan Airlines with M/s. Albatross Enterprises Pvt. Ltd. on 15th March, 2004 after the petitioner had showed their disinclination to operate the flights on Delhi-Sharjah-Delhi sector vide their letter dated 5th February, 2004, however, they showed their interest in continuing handling the flights between Delhi-Dushanbe-Delhi resulting into appointment of M/s. Albatross Enterprises Pvt. Ltd. as an agent for Delhi-Sharjah-Delhi vide said agreement much prior to the order dated 14.9.2004 The respondents contended that agreement with M/s. Albatross Enterprises Pvt. Ltd. was not cancelled by letter dated 24th May, 2004 and the petitioner continued to handle the flights between

Delhi-Dushanbe-Delhi till September, 2004 as the last stock of tickets were given to them on 2nd September, 2004. The respondents denied having appointed any new sales agents after the passing of interim order dated 14th September, 2004 for any of their flights between Delhi-Dushanbe-Delhi sector or between Delhi-Sharjah-Delhi sector. Regarding the documents filed by the petitioner, it was stated that the payments were made to M/s. Tajik Air who are the separate and independent sales agent of M/s. Tajikistan Airlines in United Arab Emirates. Regarding the agreement, it was contended that the agreement between the petitioners and the respondents, Tajikistan Airlines, also came to an end by efflux of time on 31st December, 2004 and no sales agent was appointed after the interim order dated 14th September, 2004 was passed and M/s. Albatross Enterprises Pvt. Ltd. was carrying on business with M/s. Tajikistan Airlines since March 2004 and continued to do so thereafter on Delhi-Sharjah-Delhi sector.

8. The respondents also clarified that earlier petitioner used to give tickets/airway bills to IATA agents and/or custom house agents. These IATA agents used to take tickets etc. from the petitioners. These IATA agents are not sales agents appointed by M/s. Tajikistan Airlines. The respondents also clarified that when these tour operators have a large number of persons in a tour, they approach M/s. Tajikistan Airlines directly to take tickets for a group of the travelers. It was stated by the respondents that giving tickets to such tour operators did not mean that they were appointed as sales agent. It was asserted that none of the documents filed by the petitioners show that the order dated 14th September, 2004 has been violated by the respondents in the facts and circumstances.

9. The respondents emphasized that even after interim order dated 14th September, 2004, the petitioner continued to handle flights in the sector Delhi- Dushanbe-Delhi and had been performing the normal functions and duties and obligations which were being performed by them earlier. The respondent contended that rather the petitioner owed a sum of \$ 63000 till September, 2004 and for the loss and damages suffered by the respondent No. 1, they also claimed an amount of \$ 7,00,000 from the petitioners. The respondent categorically denied giving any ticket of Delhi-Dushanbe-Delhi Sector to M/s. Albatross Enterprises Pvt. Ltd., M/s. Oasis Tours India Pvt. Ltd. or M/s. Capital Travels Pvt. Ltd. Regarding M/s. Indeo Airways Pvt. Ltd. the respondents were categorical that these persons were not appointed as agents. It was also emphasized that the IATA or Tour operators who may be purchasing tickets directly to meet the requirement, at times, for bulk passengers were not appointed as the sales representatives or sales agents.

10. No rejoinder to the averments made by the respondents that they have not appointed any sales agent for Delhi-Dushanbe-Delhi Sector after 14th March, 2004 has been filed. There is no rebuttal to the averments made by the respondents that purchase of tickets by IATA tour operators directly from the respondents does tantamount to their appointment as a sales agent. As far as M/s. Albatross Enterprises Pvt. Ltd. is concerned, the respondents have clarified that the petitioners who were appointed as sales agents were for Delhi-Sharjah- Delhi sector only and no business which was carried by the petitioners, was given to them after the interim order was passed. In case petitioners had

agreed to do business for Delhi-Dushanbe-Delhi sector, they could not claim any rights in respect of any other business by the Tazakistan Airline in respect other sectors. The averments of the respondents that M/s. Albatross was appointed as a sales Agent for Delhi-Sharjah-Delhi sector after petitioner did not agree to do business for that sector has also been not denied and now the petitioners cannot have any grievance about it.

11. From the correspondence produced by the petitioners in support of their plea that the order has been willfully violated it does not appear that the order has been violated. Mere sale of tickets to some of the IATA tour operators does not reflect that the purchasers had been appointed as sales agent or the terms of the agreement were violated.

12. The petitioners themselves have alleged that the respondent had entered into third-party agreement with M/s Albatross Enterprises Pvt. Ltd prior to the interim order passed and his appointment was objected to by the petitioners. The petitioners, however, stated that the agreement entered by the first party before the interim order was passed were cancelled which fact has been denied by the respondents and petitioners themselves were not agreeable to handle the business on Delhi-Sharjah-Delhi sector.

13. The learned Counsel for the respondent have also stated that the Tajikistan Airlines have already closed all its operations from India and consequent thereto the petition u/s 9 of the Arbitration and Conciliation Act, 1996 has already been disposed of. Since the respondent No. 1 has already closed its operation, no business is carried on with any one.

14. It is well settled that the proceedings under Order 39 Rule 2A CPC, though civil in nature, involve penal consequences. The burden of proof lies on the petitioner to allege and prove facts and circumstances enabling fixing of liability of breach on the person proceeded against. The underlying concept behind proceedings contemplated by Order 39 Rule 2A CPC is to maintain and uphold the dignity of the court and sanctity of the orders passed by it. It also aims at securing compliance with the orders of the court. Undoubtedly, the orders of the court are too sacrosanct. The court would not bear or connive at their violation.

15. It will suffice to record that powers under the Act should be exercised with utmost care and caution and that too rather sparingly and in the larger interest of the society and for proper administration of the justice delivery system in the country. Exercise of power within the meaning of the provision shall thus be a rarity and that too in a matter on which there exists no doubt as regards the initiation of the action being bona fide. It may also be noticed that mere disobedience of an order may not be sufficient to amount to a ?civil contempt? within the meaning of Section 2(b) of the Act of 1971 the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act and lastly, in the event two interpretations are possible and the action of the alleged contemnor pertains to one such interpretation the act or acts cannot be ascribed to be otherwise contumacious in nature. A doubt in the matter as regards the willful

nature of the conduct if raised, question of success in a contempt petition would not arise.

16. The respondents have asserted that for the business which was carried on by the petitioners under the agreement, no changes were effected by the respondents after the interim order nor it was terminated prior to its termination by efflux of time. The petitioners themselves had not agreed to carry out the business on Delhi- Sharjah-Delhi sector and M/s Albatross Enterprises Pvt. Ltd was appointed as sales agent prior to passing of interim order. It has not been established that any other person or firm had been appointed as sales agent after interim order was passed.

17. Another relevant circumstance is that Tazakistan Airlines have stopped their operation in India and the respondents have tendered their unconditional and unqualified apology and have shown their willingness not to violate any order which may be passed. None of the respondents, who are not the Indian Nationals were directed to remain in India and now they have already left the country. In the circumstances it will be fit and appropriate not to initiate any contempt action against the respondents.

18. In the circumstances, the application is disposed of without any action as prayed by the petitioners against the respondents and the notice issued by the Court is discharged.

OMP No. 306/2004

19. The learned Counsel for the respondents, Tajikistan Airlines, stated that the Airlines has stopped all their operations in India and are not doing any business now.

20. In view of the statement made by the learned Counsel for the respondents that the Tajikistan Airlines have stopped all its operation in India and consequently no business is carried on, the learned Counsel for the petitioners seeks to withdraw the petition without prejudice to the pleas and rights and contentions of the petitioners in the arbitration proceedings.

21. In view of the statements of the counsels for the parties, the petition is dismissed as withdrawn.