

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No.976 of 2002

Date	Order with signature of Judge
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Present: **Mr. Justice Nazar Akbar**

Plaintiff : Muhammad Anis Marfani,
None present for the plaintiff.

Defendant : M/s. Gulf Air Line
through M/s. Mahmud Alam and
Muhammad Siddique Advocates.

Date of hearing: 16.03.2018.

Date of order: 26.04.2018.

JUDGMENT

NAZAR AKBAR-J:- The plaintiff has filed the instant suit for recovery of damages amounting to Rs.12.50 million against the defendant M/s. Gulf Air Line. It is stated by the plaintiff in his plaint that plaintiff deals in manufacturing of Textile items and usually prepare the export quality having its manufacturing unit under the name and style of “ISMAIL CORPORATION” at Plot No.C-267, Sector 35-A, Korangi Industrial Area, Karachi for the last several year. The plaintiff has extended vast business relations in European countries and in order to export his products to European countries the plaintiff paid many multi visits to European countries. On 09th August, 2001 a meeting of the plaintiff was scheduled to be held with a well reputed firm M/s. North Star Textile Ltd. at Oman and the plaintiff got his reservation on Flight No.GF-751 on 09th August, 2001 for KHI – BAH – AMN – DOH – BAH – KARACHI through M/s. Tour Operators and Travel Agents

from defendants Air Line. He had confirmed ticket issued by the defendant after satisfaction of all travel documents and visa stamped upon his Passport. The plaintiff on 09th August, 2001 reached at Karachi Airport and presented ticket for boarding on Aircraft two hours before the departure time. The defendant adopted delaying tactics and asked him to wait and lastly the defendant denied boarding without assigning any reason due to which the plaintiff had suffered losses to the tune of Rs.12.50 million. Therefore, the plaintiff after sending legal notice dated 21.8.2001 giving detail of his loss has filed the instant suit for recovery of damages amounting to Rs.12.50 million.

The defendant filed their written statement and denied the allegations of the plaintiff claiming that the plaintiff did not have proper documents to travel abroad, therefore, he was not issued the boarding card. The plaintiff's Visa was not a business Visa and in similar circumstances other businessmen were refused entry in Jordan and were deported back. In the written statement it was also stated by the defendant that the defendant is an airline and the plaintiff is a valued client of the defendant, therefore, there is no question of denying boarding without any plausible ground.

5. This Court on **05.05.2003** adopted the following consent issues:-

1. *Whether the plaintiff is exporter / manufacturer, of Textile items under the name and style of M/s. Ismail Corporation, and have textile manufacturing unit at*

Plot No.C-267 Sector 35-A, Korangi Industrial Area, Karachi?

2. *Whether the plaintiff possesses the other European Countries Business Visa and had travelled the European Countries, including (AMAN) JORDAN and was invited by M/s. North Star Textile, a European Firm for business contract?*
3. *Whether the defendant have issued confirmed ticket for boarding on 9th, August, 2001, by the Gulf-751 after necessary verification of visa and his status?*
4. *Whether the Plaintiff was restrained for Boarding on Flight No.GF-751 on 9th August, 2001 by the defendant at Karachi Airport without assigning any reason in writing and their act was an amount of malafidness?*
5. *Whether the damages claimed by the plaintiff at the rate of US\$ 8000/- per annum equivalent to Rs.500,000/- (Five Lacs) against Textile Production of one knitting machine are practicable per annum?*
6. *What should the decree be?*

6. I have heard learned counsel for the defendant and perused the record. My findings with reasons on the issues are as follows:-

Issues No.1 & 2

7. Both these issues seem to have been unnecessarily framed. The defendant has nothing to do with the business run by the plaintiff and his possession of visa to visit different countries. The defendant in his written statement has shown lack of knowledge to the contents of such averments, therefore, both the issues need not to be answered.

Issues No.3 & 4

8. These two issues are material and burden of these issues are on the plaintiff. The plaintiff has proved both these issues with overwhelming evidence. The defendant has not disputed and denied that the plaintiff had confirmed ticket on

9.8.2001 of Gulf Air Flight No.GF-751 for Jordan. The ticket has been issued by travel agent appointed by the defendant who after proper examination of the travel documents has issued a confirmed ticket to the plaintiff. The plaintiff has produced copy of air ticket and relevant page of passport showing visa for Jordan as well as legal notice sent to the defendant and their reply. The plaintiff evidence is consistent with the averment that he had a confirmed ticket to fly to Jordan on a valid visa to land in Jordan. In reply to legal notice the defendant has not denied the issuance of confirmed ticket to the plaintiff. However, they have justified non-boarding on account of some legal formalities which could not be fulfilled by the plaintiff and, therefore, the defendant were not in a position to allow boarding to the plaintiff. The defendant's witness in his cross-examination admitted:-

“It is correct to suggest that the ticket is the property of Gulf Air and has been issued by travel agent. It is correct to suggest that flight GF-751 on 9.8.2001 was operated as per schedule but I do not remember exact time of the departure. It is correct to say that the plaintiff reached at the checking counter within time. I do not remember whether the boarding pass was issued to the plaintiff or not. It is correct to suggest that no written letter for refusal to travel was given to the plaintiff”.

In view of the admitted evidence discussed herein, issues No.3 & 4 are decided in affirmative.

Issue No.5

9. This is the main issue, the plaintiff's counsel has never come forward to advance his arguments since 7.3.2003 and

he is absent for more than seven consecutive dates. However, I have examined the evidence. In the plaint the plaintiff has not specified any loss in the nature any harassment/ mental torture/agonny. The only loss suffered by him has been mentioned in para-7 of the plaint and reiterated in para-9 of affidavit-in-evidence in the following terms:-

9. That I say that I had lost a contract for installation of (5) knitting machines for the period of five years from 2001 to 2004, as such there was minimum profit ratio of US \$ 8000/- per annum equivalent to Rs.5,00,000/- against each machine per annum and by this way it was to be completed within five years, as such I had met losses to the tune of US\$ 2,00,000/- equivalent to Pak Rs.10.00 Million on account of Profit ratio and Rs.2.50 Million on account of installation of Machinery for specific purpose, which come to Rs.12,50 Million in total losses. Moreover it has also caused losses to earn foreign exchange also.

The burden of this issue was squarely on the plaintiff to establish by tangible evidence that he had suffered damages at the rate of US\$8000 per annum equivalent to Rs.500,000/- under a contract for installation of five knitting machines. In this context unfortunately the plaintiff's evidence is zero. He has not filed any document with the plaint as well as in evidence to even point out the kind and category of the machine he was required to install under a contract with his foreign client. Merely on the ground that he had a business meeting with somebody in Jordon even if it is established that for that purpose he did not require business visa, it cannot be presumed that in just one meeting everything was going to be settled. Had there been any serious business of such a high

magnitude, the plaintiff should have made another attempt to contact his client. The none seriousness of the counterpart to whom he wanted to meet for a business deal is obvious from the fact that when he could not reach in time his prospective client never meet him again. Even alleged contract for installation of knitting machines between the plaintiff and his customer is not on record. No evidence has been placed on record to prove the quantum of losses. The plaintiff has miserably failed to establish damages @ US\$ 8000 per annum. Therefore, this issue is decided in negative.

Issue No.6

11. In view of the facts and evidence discussed above, the plaintiff has no case and the suit is dismissed with no order as to costs.

JUDGE

Karachi
Dated: 26.04.2018