

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. NO. D-5983 / 2014

Date	Order with signature of Judge
------	-------------------------------

- 1) For katcha peshi.
- 2) For hearing of CMA No. 31833/2014.

6.10.2015.

Mr. Shafaat Nabi Khan Sherwani Advocate for Petitioner.
Mr. Khurram Rasheed Advocates for Respondent No. 1.
Mr. Ashfaq Rafiq Janjua Standing Counsel.
Mr. Taha Ali Zai Advocate for Respondent No. 3.

Through instant petition, the petitioner has prayed that respondent No. 1 (Civil Aviation Authority) be restrained from allowing respondent No. 3 (lessor of Aircrafts) from seeking deregistration of two Aircrafts from the Aircraft Register as well as their possession.

Counsel for the petitioner submits that the petitioner through two separate agreements both dated 7.1.2013 had leased Boeing 737-300 Aircrafts owned by respondent No. 3 and during a terrorist attack at the Airport on 9.6.2013 the Aircraft bearing serial No. 27469 was destroyed against which an insurance claim filed by the petitioner is pending. Counsel further submits that the petitioner is still paying the rent to respondent No. 3 whereas despite pending of insurance claim and its settlement the respondent No. 3 intends to get the Aircraft deregister from petitioner's name before respondent No. 1 and to take back the Aircraft and its components without consent of the petitioner, which shall seriously prejudice the petitioner's insurance claim. Counsel submits that respondent No. 1 may be directed not to allow such deregistration and release of the Aircraft in question.

Conversely, Counsel for respondent No. 3 submits that after having defaulted in timely payments of rent, the lease agreement stands terminated and in view of various provisions of the agreement, the ownership of the Aircraft in such situation vests with respondent No. 3 who is entitled to seek the deregistration of the Aircraft and to take the same into its possession. Counsel has specifically referred to clause 2.2, 4.1, 5.3(g) and clause 14 to support such contention. Counsel has also referred to the applicability of Cap Town Convention vide clause 16 of the agreement and notification dated 27.1.2004 issued by Ministry of Defence, Government of Pakistan, whereby, under Section 4 of the Civil Aviation Ordinance, 1960, Rules in respect of the applicability of Cap Town Convention and Aircraft Protocol (Implementation Rules) 2004 have been framed. In view of such position, Counsel submits that the dispute if any, between the parties is of civil nature and no writ lies against private respondent No. 3.

Similarly Counsel for respondent No. 1 contends that they have strictly acted in accordance with the law and cannot refuse the permission for deregistration and possession of the Aircraft sought by respondent No. 3, the lessor of the Aircraft, and pursuant to the aforesaid rules, such permission cannot be refused.

We have heard all the Counsel and perused the record. At the very outset we had confronted the Counsel for the petitioner that as to whether and in what manner, instant petition is maintainable under Article 199 of the Constitution, whereby, the petitioner is seeking enforcement of and interpretation of contractual obligations between private parties, to which the Counsel for petitioner could not satisfactorily respond. It is a settled proposition that this Court does not extend its writ jurisdiction to decide and resolve such dispute with regard to such agreements between the private parties as appropriate

remedy through a proper forum is made available. Reliance in this regard may be placed on the judgment of the apex Court in the case of *Nizamuddin and others Vs. Civil Aviation Authority (1999 SCMR 467)* and *Pak Com Limited Vs. Federation of Pakistan & others (PLD 2011 SC 44)*. The only submission in this regard made by the Counsel for the petitioner is to the effect that respondent No. 1 is acting in violation of the law, however, could not refer to any such law or provision whereby the respondent No. 1 had acted in derogation to any such law.

In view of hereinabove facts and circumstances of the case, we are of the view that the dispute between the petitioner and the respondent No. 3 is purely of a civil nature, and requires adjudication of financial dispute that too between the private parties an exercise normally not undertaken by this Court.

Accordingly, instant petition being misconceived in facts and law is hereby dismissed in limine. However, needless to state respondent No. 1, being a statutory Government functionary is required to act strictly in accordance with law.

Petition stands dismissed.

J U D G E

J U D G E

ARSHAD/