

Judgment sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 2141 of 2021

Present

Mr. Justice Muhammad Jaffer Raza

M/s Global Aviation Pvt. Ltd. Plaintiff.

Versus

M/s Saudi Gulf Airlines & others..... Defendants

Syed Mustafa Mehdi, Advocate for the Plaintiff.

None for the Defendants.

Date of Hearing: 24.02.2025

Date of announcement: 24.02.2025

J U D G M E N T

MUHAMMAD JAFFER RAZA – J: The Plaintiff is a company incorporated under the provisions of the Companies Act, 2017, as a private limited company. The Plaintiff is in the business of aviation and operates an Airline Agency in Karachi.

2. It is contended by the learned counsel for the Plaintiff that the Plaintiff was appointed as the exclusive passenger General Sales Agent (‘GSA’) for the territory of Pakistan of Defendant No.1 initially for a period from 27.11.2018 to 30.11.2019 as per General Sales Agency Agreement (‘Agreement’) dated 27.11.2017 (Exhibit PW/6). Thereafter it is contended by the learned counsel for the Plaintiff that Defendant No.1 made Addendum No.1 dated 13.09.2018 (Exhibit PW/7) and agreed to extend the validity of the Agreement from 01.12.2019 to 30.09.2020. Thereafter the Agreement was again extended vide Addendum No.2 dated 19.11.2019 (Exhibit PW/8) and the same was extended till 30.09.2021. Learned counsel has invited my attention to Article-3 of the Agreement dated 27.11.2017, which is reproduced as under:

“ARTICLE-3.

VALIDITY/TERMINATION:

1. This Agreement shall be valid for a period of two years and commence on December 1, 2017 and shall be valid till November 30, 2019 unless earlier terminated by either party

hereto pursuant to any provision(s) of this Agreement, and may be extended for a further period determined by SaudiGulf on the same terms and conditions by a written notification by SaudiGulf, subject to satisfactory performance of the GSA, In the sole opinion of SaudiGulf.

2. GSA's performance will be periodically monitored by SaudiGulf every three months (or on other period as may be decided by Saudi Gulf from time to time); and in case of unsatisfactory performance, the Agreement may be terminated by SaudiGulf with a sixty (60) days written notice, and SaudiGulf may appoint any other party as its general sales agent. In case of termination, the GSA shall have no rights or remedies other than those accrued before the date of such termination.

3. In the event of violation of any terms or conditions of this Agreement by the GSA, SaudiGulf reserves the right to terminate this Agreement forthwith and withdraw its ticketing and reservation access, papers and any of its property from the GSA.

4. In the event the sales reports and remittances are not received on the due dates as stipulated under Article 13, SaudiGulf reserves the right to terminate the GSA Agreement forthwith.

5. This Agreement may be terminated at any time, without assigning any reason, by either party hereto at its option by giving to the other party hereto sixty (60) days written notice through registered mail or courier service. The GSA may be placed on cash basis during the notice period at the option of SaudiGulf.

6. The termination or expiry of the Agreement shall be without prejudice to any outstanding liabilities accrued and arising hereunder between the parties hereto and shall not affect the fulfillment of the respective obligations under this Agreement prior to such termination or expiry. The provisions made in this Agreement for resolution of disputes and confidentiality and such other actions that are by their nature meant to survive the term of the Agreement, shall survive such termination or early expiry.

7. Saudi Gulf may terminate the Agreement at any time if the GSA is convicted of a felony, exposes SaudiGulf's name to defamation publicly, or changes its management/name/ownership without the consent of SaudiGulf. In such case of termination, all rights and obligations of either party shall cease to exist, other than those accrued till the date of the termination.

8. SaudiGulf may terminate the Agreement at any time if SaudiGulf suspends or discontinues its operations in the Territory.”

3. Learned counsel has argued that as per above referred Article-3 the agreement should be terminated by Defendant No.1 within sixty (60) days of giving a written notice, however, the Plaintiff has yet to receive any such termination notice by the Defendant No.1. Subsequently the Plaintiff has no other option but to file the present suit with the following prayers:

DECLARE

- i. That the Plaintiff has an Agency coupled with interest with the Defendant No I under the Agency Agreement dated 27 November, 2017;
- ii. That the Plaintiff is entitled to receive all outstanding amounts that is owed by the Defendant No.1 against the bank accounts maintained by the Defendant No.2 in Pakistan and/or through official remittance.

RESTRAIN

- i. The Defendant No 1 from either directly or indirectly or whether through an employee, agent or servant from appointing any other person as their agent for Pakistan or from conferring on any person any right, benefit or interest pertaining to the services that were being exclusively provided by the Plaintiff under the Agency Agreement dated 27 November, 2017 adverse to the rights, interest and benefit of the Plaintiff or dealing with any other person or company or agents within the territory until disposal of this Suit;
- ii. The Defendant No.1 from encashing/withdrawing amounts from their bank accounts maintained with the Defendant No.2 till the pendency of this Suit.

AWARD

- i. Decree in favor of the Plaintiff against the Defendant No.1 for the outstanding amounts total amounting to PKR 29,101,963, along with 10% mark-up per annum from the date of Agency Agreement;
- ii. Damages against the Defendant No.1 for an amount of PKR 50,000,000/- Rupees Fifty Million on account of the financial losses suffered by the Plaintiff with markup at the official rate till realization of the decretal amount;

GRANT

- i. Costs of the Suit;
- ii. Any other relief which this Hon'ble Court deems fit in the facts and circumstances.

4. The instant Suit was filed on 29.09.2021 and on 04.10.2021 this Court was pleased to restrain the Defendant No.1 from taking any adverse/coercive action against the Plaintiff. This Court in the above order also restrained the Defendant No.1 not to deal with any other person or company or appoint any GSA in place of the Plaintiff and further directed the said Defendant to abide by the terms and conditions as specified in the agreement entered in between the parties.

5. I have examined the Agreement and the two addendums mentioned in paragraph-2 above. The Plaintiff, according to learned counsel, worked extensively in setting up the infrastructure for the Defendant No.1 and established offices throughout Pakistan, most notably in Karachi, Lahore, Islamabad, Sialkot and Peshawar. Learned counsel has also during the course of arguments stated that the performance of the Plaintiff was more than satisfactory and due to which the Defendant No.1's turnover was successfully increased substantially. The breakup what is due to the Plaintiff from Defendant No.1, according to learned counsel, is reflected in the table below:

| Sr. No. | Head of account | Amount |
|---------|---|-----------------|
| 1 | Advance paid to CAA (Pakistan Civil Aviation Authority) on behalf of Saudi Gulf Aeronautical Charges (Exhibit PW/9) | Rs.16,261,500/- |
| 2 | 2.4% ORC (Overriding Commission due on SBP sale from March to July 2020 (Annexure P/1) | Rs. 956,644/- |
| 3 | Outstanding Hajj Payment from Ministry of Religious Affairs (Not available) | Rs. 990,585/- |
| 4 | Cost incurred on maintaining 04 offices (Annexure P/2) | Rs.10,893,234/- |
| | Total outstanding amount | Rs.29,101,963/- |

6. It is also evident that the Plaintiff made efforts to approach Defendant No.1 to various modes including emails (Exhibit PW/11, PW/12, Annexure-P/1, Exhibit PW/22, PW/22-A, PW/23 and PW/23), calls and legal notice (Annexure-P/4). However, despite numerous reminders, the Defendant No.1 did not give any response.

7. After filing of the suit all modes were adopted including publication in International newspaper. The same is reflected in the diary of Additional Registrar

(OS). Subsequently the Defendant No.1 was debarred and the matter was referred to Court as per orders of Additional Registrar (OS) dated 06.10.2022 and 22.11.2022. Thereafter Defendant No.2 filed a bank statement for account bearing No.0010049335850016 of Defendant No.1 at Timber Market Lahore, showing credit balance of Rs.20,220,770.39. The order sheet dated 18.01.2022 reflects that this Court attached the account of Defendant No.1 maintained with Defendant No.2. Thereafter vide order dated 10.02.2023 Plaintiff was directed to file affidavit-in-ex-parte proof and the same was done by the Plaintiff and the same was taken on record vide order dated 27.02.2023. Subsequently Ms. Rukhsana Ahmed Advocate was appointed as Commissioner vide order dated 21.11.2023.

8. Learned Commissioner issued notices to all the Defendants and only representative of Defendant No.3 appeared before the learned Commissioner and categorically stated that Defendant No.3 is a proforma Defendant and do not wish to cross-examine the Plaintiff's witness.

9. Diary of the learned Commissioner reflects that on 21.02.2024 examination-in-chief of the Plaintiff on the basis of affidavit-in-ex-parte proof was conducted and a final report and the reference by learned Commissioner was sent to this Court on 24.02.2024.

10. Specific question was put to the learned counsel for the Plaintiff with reference to the jurisdiction of this Court in adjudicating this matter in light of Article-34 of the agreement. The same is reproduced as under:

“ARTICLE - 34

APPLICABLE LAW.

Notwithstanding the provision of services in the Territory and in case of any contradiction conflicts of laws provisions in local and/or international legislation, the parties hereby expressly and irrevocable agree that this Agreement shall be exclusively governed and construed in accordance with English Law.”

11. Learned counsel in reply states that the reference to English Law in Article-34 is only in the case of any contradiction or conflict in the in local and international laws and in the absence of such contradiction it is the local law that will prevail. I agree

with the said contention of the learned counsel and hold that since there is no contradiction or conflict therefore this matter can be adjudicated under the local law.

12. It has already been noted above that the instant suit is proceeding ex-parte, however, under order IX Rule 6(a) it is a well settled principle of law that the Court cannot pass an ex-parte judgment in a mechanical manner, shutting its eye to the record, which is before the Court. The Court even in ex-parte cases has the power to dismiss the suit if the Plaintiff fails to discharge his burden. The Plaintiff in this regard has to stand on his own feet to satisfy the Court as to the existence of any right. In other words, mere absence of the Defendant does not justify the presumption that the whole of the Plaintiff's case is true.

The said principles are enumerated in detail in the following judgments: -

- (1) **Munawar Ahmed, Chief Director Samma v. Muhammad Ashraf**¹
- (2) **Federation of Pakistan v. Farrukah International Pvt. Ltd**²
- (3) **Chairman, National Highway Authority v. Moon Traders**³
- (4) **Kabir Ahmed v. Saudabad Trust**⁴

13. I have heard the learned counsel at length and have examined the Agreement and the necessary addendums. Further, with the assistance of the learned counsel, I have also examined the correspondence between the parties, from which it is apparent that the Defendant No.1 is circumventing the requests made by the Plaintiff. It is also evident that the Plaintiff performed his obligations under the Agreement. I find no reason to disbelieve the version advanced by the Plaintiff and am satisfied at least in respect of the amounts stated in the table in Paragraph number 5 above.

14. Regarding the prayer of damages, question was put to the learned counsel regarding the benchmark which the court ought to set in regards to grant of damages. Learned counsel in response has relied upon the following judgments: -

- (i) **Sufi Muhammad Ishaque v Metropolitan Corporation**⁵ in which it has been held that: -

¹ PLD 2021 SC 564

² 2023 SCMR 1118

³ PLD 2020 Islamabad 361

⁴ 2007 CLC 288

⁵ PLD 1996 SC. 737

“8. Once it is determined that a person who suffers mental shock and injury is entitled to compensation on the principles stated above, the difficult question arises what should be the amount of damages for such loss caused by wrongful act of a party. There can be no yardstick or definite principle for assessing damages in such cases. The damages are meant to compensate a party who suffers an injury. It may be bodily injury loss of reputation, business and also mental shock and suffering. So far nervous shock is concerned it depends upon the evidence produced to prove the nature extent and magnitude of such suffering, but even on that basis usually it becomes difficult to assess a fair compensation and in those circumstances it is the discretion of the Judge who may, on, facts of the case and considering how far the society would deem it to be a fair sum, determines the amount to be awarded to a person who has suffered such a damage. The conscience of the Court should be satisfied that the damages Awarded would, if not completely, satisfactorily compensate the aggrieved party.”

- (ii) In another Judgment of **Dr. Hassan Fatima Jaffery and 2 others v Royal Saudi Consulate** Karachi⁶ the same principle was highlighted and the relevant paragraph is reproduced as under:

“18. Broadly, damages are of two kinds; general and special. Special damages are awarded only when a party successfully proves actual losses suffered by him / her. In the present case, the Plaintiffs have not produced any evidence in support of their claim of Rupees Eight Hundred Thousand incurred on repairs / restoration and Rupees Three Million towards compensation and damages, which fall within the category of special damages. Notwithstanding this aspect of the case, the Superior Courts have held in number of decisions, Abdul Majeed Khan case (supra), being one of the leading cases, that if circumstances so warrant, general damages can be awarded by invoking the rule of thumb; particularly where violation of legal rights exists. Similarly, in the case of Sufi Muhammad Ishaque (ibid), the damages vis- -vis mental agony has been discussed and the conclusion is that there can be no yardstick or definite principle for assessing damages in such cases, which are meant to compensate a party who suffers an injury. The determination criteria should be such that it satisfies the conscience of the Court, depending on the facts and circumstances of the case.”

15. The Plaintiff in the instant suit has prayed for damages in the amount of Rs.50,000,000 on account of financial losses suffered by the Plaintiff. No specific evidence has been led by the Plaintiff in respect of the said financial losses. Even in the affidavit of ex-parte proof filed by the Plaintiff no details of the same have been

⁶ PLD 2020 Sindh 352

furnished and the statement of the Plaintiff in this regard is generic at best. In light of the same my I am not inclined to grant the damages sought.

16. In light of what has been held above the suit of the Plaintiff is decreed to the extent of Rs. 29,101,963/- alongwith interest at the rate of 14% from the date of filing of this suit till realization. The above are the reasons of the short order dated 24.02.2025, whereby the suit was partially decreed in favour of the Plaintiff.

Office is directed to prepare the decree in favour of the Plaintiff in the above terms.

JUDGE

Nadeem Qureshi "PA"