

**IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.,**  
**AT DEVANAHALLI**

PRESENT

**Sri. B. DILEEP KUMAR, B.Com., LL.B.,**  
Senior Civil Judge & J.M.F.C.  
Devanahalli

**Dated this the 28<sup>th</sup> Day of September, 2020**

**O.S.No.522/2020**

Air Asia (India) Ltd., : **Plaintiff**  
  
(Pltf. - By Sri.  
G.H.R., Advocate)

**V/s.**

Sri. Gaurav Taneja : **Defendant**  
  
(Deft. - By Sri. G.N.,  
Advocate)

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**ORDERS ON I.A.No.1**

The plaintiff has filed **I.A.No.1** under Order 39 Rule 1 of CPC. and prays to restrain the defendant from divulging, disclosing, revealing, publishing, sharing and/or disseminating **any confidential and proprietary information or any other confidential information to any third person, etc.** without the specific and explicit permission of the plaintiff, resulting in breach of contractual, confidentiality and fiduciary duty, till disposal of the suit.

2. In the plaint and the affidavit accompanying application the plaintiff has contended that, the plaintiff is a company incorporated under the provisions of the company's act 1956 and having its registered office at Devanahalli. The present suit arises out of wrongs done to plaintiff and relates to the material breach of Employment Contract/Appointment Letter dated 01.02.2019 (hereinafter referred to as the "Employment Contract") by the defendant as well as the non-disclosure agreement and the Group Communication Policy (as applicable to all employees of the plaintiff company). Such acts of the defendant are contrary to the employment contract and as such, the defendant, as per the employment contract, has undertaken and is liable to make good the losses caused and indemnify the plaintiff company against any and all losses suffered by it on account of his acts of omission and commission. The plaintiff company is one of the most reputed and leading aviation companies in India and is engaged in the business of operating scheduled domestic. Since 2014, the plaintiff has been involved in the business of providing world class services in the aviation industry at low fares. The plaintiff company has become one of the most known operators in the aviation sector. This has led to the plaintiff company acquiring enviable reputation and goodwill. The plaintiff company employs over 3000 employees in India. A large number of the plaintiff company's employees companies of its flying crew. In this regard, the flying crew which includes pilots, are governed by the regulations, policies and code of conduct as explicitly agreed upon at the time of

entering into the respective employment contracts and the employees are duty bound to act in consonance with such rules that determine the various aspects of their employment. The defendant entered into the employment contract with the plaintiff company and was gainfully employed as a captain with the flight operations department of the plaintiff company since February 01, 2019. The defendant was further bound by the Group Communication Policy (as applicable to all employees of the plaintiff company) as per which the defendant was duty bound to ensure protection of the reputation, goodwill and brand image of the plaintiff. The defendant also entered into a non-disclosure and non-complete agreement with the plaintiff company, which bound the plaintiff from disclosing any information relative to the affairs of the company to any media outlet, third party or on any social media platforms. As a part of the defendant's employment agreement, awarded the defendant with a joining bonus of Rs.15,00,000/- to be paid 50% with the first salary and 50% at the time of the defendant's first year anniversary with the plaintiff company. It was expressly stated in the employment agreement that in case the defendant leaves the employment of the company within 24 months of the date of joining, the amount of joining bonus would be recoverable from the defendant by the plaintiff company. It is submitted that the plaintiff company had disbursed 50% of the joining bonus i.e. Rs.7,50,000/- to the defendant. As part of the employment, the defendant was required to undergo trainings wherein the plaintiff company was to bear the expenses of

training of the defendant during the term of his employment. As a result, the plaintiff company incurred training cost of Rs.2,92,612/-. The defendant has through his misconduct, express acts and omissions, breached the employment agreement, the non-disclosure agreement, the Group Communication Policy, the code of conduct, policies procedures, guidelines, manuals and the Employee Handbook. There is a specific reference in clause 13 to the code of conduct, to which the defendant was required to adhere to upon acceptance of the offer Clause No.16 thereof (Confidentiality"), required the defendant to sign a non-disclosure and non-compete agreement. The employment contract had Annexure - 1, Annexure - II and Annexure - III, giving the details of the terms of employment. The defendant has accepted the terms of offer unconditionally and has signed an acceptance of officer/Appointment Letter on 17.04.2019, and forwarded it to the registered office of the plaintiff. The defendant has failed to abide by the code of conduct agreed upon in the employment contract and the terms of non-disclosure. The defendant, on 24.03.2020, was to report for duty to operate the Flight DEL-CC-DEL (Delhi-Kolkata-Delhi), however, he failed to report for duty without any intimation to the company. The defendant, without any intimation to the plaintiff company and by misusing the Authorization Letter issued to him, admittedly travelled from Delhi to Kanpur. It is further submitted that admittedly, during his journey, the defendant was wearing his company provided Captain's Uniform and was misusing the same along with his company ID Card and Authorization Letter at the state border between the

states of Delhi and Uttar Pradesh to deceive the officials and cross the border. The acts of the defendant of misusing the Authorization Letter, Company ID Card and company provided Captain's Uniform was a severe breach of the provisions of the employment agreement, the code of conduct and the employee handbook. In view of such breaches and misconduct the plaintiff issued show cause notices dated 04.05.2020 and 30.05.2020 to the defendant. Subsequently, the defendant was suspended vide letter dated 14.06.2020 which also contained notice of enquiry. A detailed enquiry was conducted was given as opportunity of filing objections and hearing. The Enquiry Report held after hearing the defendant guilty of the charges framed. After receipt of the Enquiry Report, a second show cause notice dated 23.06.2020 was also issued to the dt6, to show cause against the punishment to be awarded. Subsequently the defendant was dismissed from the services of the plaintiff on 26.06.2020. Hence, the defendant has been given a fair opportunity to defend himself in respect of misconduct alleged against him. That upon intimation to the defendant from the plaintiff company regarding his misconduct and breach of employment agreement, the code of conduct and the employee handbook, the defendant launched a social media campaign to tarnish the reputation of the plaintiff company. In the course of this social media campaign, the defendant revealed confidential information pertaining to the plaintiff company, which was caused grave harm and prejudice to the plaintiff company. It is humbly submitted that, in order to safeguard its legitimate business interests over its confidential, private and sensitive information, as well as its intellectual property rights, the plaintiff company not only enters into employment agreements with its employees at the stage of joining, but the same also include confidentiality clauses, in the event such employees were to leave the plaintiff. The defendant

published several posts, tweets and videos over number of social media platforms inter alia YouTube, Twitter, Facebook and Instagram, under his various accounts with the name of "Flying Beast". It is pertinent to note that the defendant holds a "verified badge" on all these social media platforms, hereby meaning that the respective platform has confirmed his account to be an authentic account representing a public figure, celebrity or global brand. Thus, it can be said that respondent has a large influence on public with strong hold on these social media accounts and innumerable number of followers. That apart from the above, the "Verified" badge further confirms the authenticity of the source and is a source and is a source indicator, thus proving that the confidential information published on the social media platforms was published by the defendant himself and no other person. It is submitted that, in complete disregard to the contractual obligation and fiduciary duty towards the plaintiff, it is apparent that the defendant has misappropriated and published confidential information of the plaintiff, which are false to the knowledge of the plaintiff and defamatory of the plaintiff to the public at large, and the same is required to be immediately restrained by way of an injunction, by this Hon'ble Court. That the said false and defamatory videos and posts on social media, published by the defendant, have caused serious harm, prejudice and great loss to the reputation of the plaintiff company and also tarnished the image and lowered the esteem of the plaintiff company in the eyes of public. At the outset, all contents of the alleged disclosures are not only misplaced and flawed but are also false, frivolous and misleading. The defendant's actions are unwarranted and defamatory, and the false accusations, actions and statements have caused the plaintiff to suffer inter alia substantial loss and damage to the business and to the reputation and brand image. That in

furtherance of the show cause notice dated 04.05.2020, which was issued to the defendant, a reply was received from the defendant dated 06.05.2020. the plaintiff responded to the same by letter dated 30.05.2020, to which the defendant replied on 04.06.2020. the defendant was suspended from his employment on 14.06.2020 and a suspension Order and Notice of enquiry was communicated to the defendant on the same day intimating him that a proper disciplinary enquiry was set up by the plaintiff company as per the procedure and policies of the plaintiff company. The defendant replied to the same vide replies dated 16.06.2020 and 17.06.2020. that the report and findings of the enquiry committee dated 22.06.2020 were communicated to the defendant and show second show cause notice dated 23.06.2020 was issued to the defendant. The defendant replied to the same, through his counsel, on 25.06.2020. Upon following the transparent and due protocols and after affording due opportunity to the defendant to show cause, respond and defend his stand keeping in view the principles of natural justice, the defendant's employment contract was terminated and he was dismissed and relieved from the service of the plaintiff company with immediate effect vide Dismissal Order dated 26.06.2020. In view of the illegal actions of the plaintiff, it issued a notice of demand dated 01.07.2020, calling upon the defendant to repay the bonus amount of Rs.7,50,000/-, paid at the time of joining, Rs.2,29,612/- being the cost of training incurred by the plaintiff and Rs.1,00,000/- being damages for the scurrilous attack, false and defamatory messages. Hence, plaintiff filed this suit and maintained the present application.

3. After service of summons the defendant appeared through his counsel & filed objection, the defendant contended that the application filed by the plaintiff is neither

maintainable in law nor in facts and circumstances of the case. This court has no territorial or subject matter jurisdiction to entertain this matter and the pleadings is vague and no specific cause of action is pointed out in the plaint or in the interim application. Hence, is liable to be rejected in limine. The plaintiff is guilty of suppression of material facts pertaining to the case and has approached the Hon'ble court with unclean hands. The plaintiff company suppressed that the Regulator, i.e. the DGCA had taken action on the plaintiff company based on the complaint of the defendant and has suspended the top officers of the plaintiff company. The Director of operations and the Chief of Flight Safety have been suspended by the DGCA based on the complaint of the defendant. The interim order has been obtained by the plaintiff by playing fraud upon this Hon'ble court. Hence, the interim order is nonest in the eye of law. The crux of the suit and the I.A. is that the defendant is indulging in disclosing Confidential Information. The plaint, the I.A's has not a single averment as to what that 'confidential information is. The order passed by this Hon'ble court is also stating that the defendant is barred from disclosing Confidential Information' without even remotely identifying what that information is. The defendant clearly states that the defendant being a Pilot does not have 'confidential information' related to the company and therefore, has not disclosed any confidential information. The real motive of the plaintiff company is dissuading the defendant from disclosing the fact that the plaintiff company is indulging in unsafe acts that endanger human lives. These acts constitute a criminal act and the defendant has already filed a complaint with the DGCA on 5<sup>th</sup> June 2020 and a complaint disclosing criminal acts has been filed with the Lodhi Colony Police Station, New Delhi on 5<sup>th</sup> September 2020. The defendant has also written to the PMO, to the Ministry of Civil Aviation etc. and intends



to continue to write to various authorities including the Hon'ble Supreme Court of India. The I.A.No.2 shows the real intention of the plaintiff company to surreptitiously achieve that aim and this also shows how they intend to continue to play fraud upon this court. The plaintiff company indulged in several unsafe acts intended to cut operational costs. The treating of 'sick leave' as a 'rest period, forcing pilots to land on Flap 3 irrespective of external conditions, not complying with the DGCA circular on Covid 19 all were intended to save costs. The defendant is a whistle blower who stood up against such unsafe acts and the fact that the DGCA acted against the pc and its officers is a standing testimony to that fact. After having stood up, there have been more disclosures done by third parties which even showed that the plaintiff company had a project called 'Project Shikar' which was about saving 'fuel costs'. The top officers of the company would have been entitled to 'bonus payments' on achievement of targets and the whole scheme of introducing 'unsafe acts' in operations were the design of the top officers of the company against whom the DGCA have now taken action against. In order to grant the relief of Interim Injunction. The plaintiff company has to prove that there is a prima-facie case. In addition to this, it needs to Bengaluru proved that there would Bengaluru irreparable loss to the plaintiff which cannot Bengaluru monetarily compensated and the balance of convenience is in favour of the plaintiff company. As stated above and detailed out below, the consequences of silencing the defendant is potential loss of lives. There is nothing more irreparable than loss of lives. Therefore, the balance of convenience is heavily tilted in favour of the defendant. This Hon'ble Court in its order records that "Plaintiff has prima-facie made out a case that defendant has violated the Employment conditions". This court has no powers as related to violation of Employment conditions. If this court was inclined to

grant the interim injunction, then this court had to record the specific violation of the Confidential Information. The defendant is not even aware what confidential information has been violated by him and he continues to maintain that he does not have any confidential information about the plaintiff company. While the 'Interim order' seems to have been obtained by the plaintiff company by playing fraud upon this Hon'ble Court, continuing with the Interim order would endanger Human Lives. Even if the defendant believes that the orders of this court are invalid, the defendant is a 'common man' who does not have the financial resources the plaintiff company has at its disposal. If this Hon'ble Court prevents the defendant from informing the general public about the unsafe acts of the plaintiff company, the same will prevent people from making 'informed' choice and endanger their life because the operations of the plaintiff company are continuing to be unsafe. The real motive of the plaintiff company is to silence the defendant who is a whistleblower. The defendant denies every averment of the plaintiff company made in its affidavit in support of its I.A. All allegations made therein are denied in toto unless specifically admitted herein. The defendant herein entered the service of the plaintiff company as a captain in flight operation department on 17.04.2019. It is submitted that, the defendant herein holds a license to fly commercial Airplanes from the Director General of Civil Aviation ("DGCA"). The defendant has been flying since 2009 and has an excellent service and safety record. It is submitted that, any pilot who is authorized to fly a plane under the license issued by DGCA has his primary duty the safety of the passengers and the aircraft he/she flies. A pilot is duty bound to ensure that all safety protocols are adhered to in the manner prescribed by the DGCA so as to ensure that safety standards are effectively maintained by the Company's operating flights. The

plaintiff is one such company which operated flights domestically in India. It is submitted that, subsequent to joining the services of the plaintiff company, the defendant herein started to notice certain anomalies in the flight operations undertaken by the plaintiff company, which would lead to jeopardizing the safety of the passengers. It is submitted that, on several occasions prior to the incident alleged in the plaint, the defendant has brought to the notice of the company such anomalies, both orally and in writing. It is submitted that, these repeated communications appear to have irked the higher management of the plaintiff company. On several occasions when the defendant raised the concerns regarding the safety issues, the defendant would be met with evasive replies and no action would be initiated to rectify the concerns raised by the defendant. The straight forward approach and strict discipline of the defendant in his official duty was not liked by the top management and the defendant became an eyesore for the management. The top management even threatened to dismiss the defendant from services for the failure of the defendant to mend his ways in accordance with the whims of the management. The only reason the plaintiff did not do it at the time was the dearth of captains available in the market. However, Covid 19 hit the industry so hard that overnight all aviation companies had an excess of captains. The defendant's illegal termination from service was merely an action that carried out the threat of dismissal. It is submitted that, the policies of the plaintiff company were tweaked in such a manner that the pilots would be prevented from availing sick leaves and/or Sick Leaves were treated as 'Rest' in violation of the DGCA Regulations. After having raised the issue several times orally, the defendant had put it in writing by e-mail was by Capt. Mukesh Nema. The first line of that e-mail read "We fully appreciate and understand your concern, Whether also agree with

what you are espousing, except that the message may have come across differently". This clearly shows that the management of the plaintiff company were unhappy with the fact that the defendant had put it in writing. The plaintiff wrongfully attributes the delay of flight on the defendant because the plaintiff company had ample time to arrange for the stand by even if it is assumed that, they did not notice the intimation of the defendant. The defendant was scheduled for a training session before his flight duties and the company failed to notice his absence. The plaintiff company failed to comply with the Covid 19 protocols directed by the DGCA. The plaintiff company, which was already irked by the actions of the defendant in raising repeated safety concerns in flight operations, was looking for an opportunity to terminate the employment of the defendant. The defendant has over 60 lakh subscribers to his social media platforms. The defendant gave a detailed reply to the showcause notice dated 04.05.2020. The plaintiff company had practices that threatened safety which consequently endangered human lives. There are two ways of normal landing, flap 3 and flap full. As per regulation, the rule is very simple. It is completely pilot in command's decision. Flap 3 landing can be dangerous, hence as per regulation the PIC may decide to do full flap landing. The plaintiff company mandated a flap 3 landing because it resulted in fuel saving. When the defendant's complaint having fallen on deaf ears, he approached the DGCA by way of a written complaint dated 05.06.2020. Immediately, the plaintiff begun to prosecute the defendant for the alleged acts. Thereafter, on

14.06.2020, in arbitrary order came to be passed by the plaintiff company and suspended the defendant from the job. The issue raised by the defendant was very serious and threatened safety and endangered human lives, both of the passengers and people on the ground. The DGCA itself acknowledged that, it has identified systematic deficiencies with the plaintiff company. The DGCA has passed an order suspending the Officers of plaintiff company from holding post for their failure to ensure safety. The plaintiff suppressed this aspect and obtained an order of injunction from this court. The plaintiff company nowhere in the entire plaint as specifically stated that, that confidential information which was violated by defendant. The plaintiff company not approached this court with clean hands. The defendant being responsible employee requested the plaintiff to rectify the draw backs, when they not heard it, he approached proper authority. The defendant has not violated any of the conditions as alleged by the plaintiff company. Hence, prays to dismiss the suit and application.

4. Heard the arguments and perused the records.
5. The following points arise for my consideration:-

#### **POINTS**

1. Whether the plaintiff has made out prima-facie case for grant of an order of equitable relief of temporary injunction against the defendant?

2. Whether the plaintiff will be put to irreparable injury and hardship, in case an order of temporary injunction is not granted against the defendant?
  3. Whether the balance of convenience lays tilts in favour of the plaintiff?
  4. What order?
6. My findings to the above points are as follows;
- |              |                                       |
|--------------|---------------------------------------|
| Point No.1 : | In the Negative                       |
| Point No.2 : | In the Negative                       |
| Point No.3 : | In the Negative                       |
| Point No.4 : | As per final order for the following; |

### **REASONS**

7. **Points No.1 to 3:-** Since these Points are inter related with each other, hence in order to avoid repetition, they are taken up together for consideration.

8. The gist of the plaintiff's and defendant's case stated above, hence not reiterated to avoid repetition.

9. The plaintiff in support of its version produced Copy of the Board Resolution, Copy of the Employment Contract, Non-disclosure and Non-compete Agreement dated 17.04.2019, Showcause Notices, Suspension Order, Notice of

Enquiry, Enquiry Report, and Dismissal Letter, Copies of the Twitter Account, C.D. and Demand Notice.

10. The defendant produced E-mail Communications, Voyage Report, Reply to Showcause Notice, E-mail Communications regarding Flap-3 Landing Issues, Complaint Written to DGCA, Reply to Suspension to order, Reply issued by DGCA, Order of Hon'ble High Court of Bombay and E-mail Communications regarding Leave Policy.

11. The advocate for the plaintiff submits that the plaintiff has established prima-facie case and balance of convenience lies in their favour while praying to allow the application, that if the application is not allowed it will lead to multiplicity of proceedings and that they will suffer irreparable loss. Hence he prays to allow the application.

12. The defendant counsel submits that the plaintiff has not made out prima-facie case and the balance of convenience does not lies in his favour on the other hand balance of convenience tilts in favour of the defendant, he pray for rejection of the application.

13. This court carefully gone through the rival pleadings and document relied by the parties.

14. The plaintiff company contended that, the defendant has committed wrongs to them in relation to the material breach of employment contract/appointment letter

dated 01.02.2019 as well as the non-disclosure agreement and group communication policy. The plaintiff in para No.25 of the plaint stated about various instances wherein the defendant published or revealed confidential information and communication of the plaintiff company. This aspect leads the plaintiff to file this suit and also to avoid further breach maintained the interim application.

15. On the other hand, the defendant specifically contended that, the plaintiff suppressed the material facts pertaining to the above allegation and obtained an order of injunction. The plaintiff has not stated what that, confidential information which was disclosed by the defendant. He being a pilot does not have any confidential information related to the company. The plaintiff company trying to avoid the defendant from disclosing the fact that, the plaintiff company is indulging in unsafe acts that endanger human lives. What he twitted in the social media is the truth about the plaintiff company.

16. This court meticulously examined the averments of plaint para No.25, it consisting of Point No.(a) to (f), where the plaintiff company stated the act of the defendant. This court compared the above aspect with the alleged documents i.e. employment contract and non-disclosure and non-compete agreement. This court has not found any violation as alleged by the plaintiff company.

17. The defendant being the pilot did as per the regulation of DGCA. He being the responsible employee



intimated several drawbacks of its company to the plaintiff company, but when his words having not considered, he approached the authority i.e. DGCA by way of a written complaint.

18. When the defendant filed written complaint, the plaintiff started issuing notice and calling explanation from the defendant. Thereafter, the defendant who being active participant in the social media disclosed the above aspect in his account. As per his version, he has not stated any false statements against the plaintiff company. When he admitted the above aspect, the plaintiff is having all right to sue for defamation against the defendant and claim damages if the defendant did wrong.

19. As stated above, the DGCA after receipt of the complaint conducted appropriate action against the plaintiff company and its Officers. On 10.08.2020 the DGCA has passed an order suspending the Chief of flight safety and the Director of operations of the plaintiff company from holding the post for their failure to ensure safety. The plaintiff company suppressing this aspect moved an application and obtained an order of injunction. This is due to silencing the defendant from raising the safety issues and to minimize the fall out of the suspension order of the DGCA. It means, what the defendant published in social media is the truth and it was properly enquired by the authority. Wherefore, it is not confidential information. The defendant raised on safety violation through social media and ensures that the general

public could make an informed choice of their options while flying. The information put out in the social media is public information which forms a part of his complaint with the regulator. Based on the same, the DGCA acted upon it and suspended the Officers of plaintiff company. Hence, the allegations of the defendant about violations of the safety are indeed correct.

20. The plaintiff company suppressed the above all aspects while presenting its case before this court. This court believing the averments of plaintiff and documents granted an order of injunction holding that it cannot be compensated in terms of money. After appearance of defendant, the documents produced by the defendant and the re-joinder filed by the plaintiff shows that, the plaintiff not disclosed each and every aspect to get an order of equity. The defendant for the purpose of public safety informed the same to the plaintiff company, when they failed to take proper action, he lodged written complaint. The authority conducted enquiry and hold the officials of plaintiff company guilty. When such being the case this court has not found any mistake on the part of defendant who disclosed the above all aspect in social media. Hence, this court holds that, plaintiff has not made out prima-facie case and balance of convenience. If at all any damages caused to plaintiff it can be monetarily assessed. Hence, I answered Points No.1 to 3 in the Negative.

21. **Point No.4:-** In view of the above all aspect, I proceed to pass the following:

**ORDER**

The I.A.No.1 filed by the plaintiff  
is hereby dismissed.

The exparte temporary  
injunction granted in favour of plaintiff  
is stands vacated.

(Dictated to the Stenographer directly on computer, same is corrected  
and then pronounced by me in the open court on this the 28<sup>th</sup> day of  
September, 2020).

**(B. DILEEP KUMAR)**  
**Senior Civil Judge & JMFC.,**  
**Devanahalli.**