

CASE NO.:
Appeal (civil) 1477 of 2007

PETITIONER:
FLEMINGO DUTYFREE SHOP PVT. LTD. & ANR

RESPONDENT:
UNION OF INDIA & ORS

DATE OF JUDGMENT: 21/02/2008

BENCH:
Dr. ARIJIT PASAYAT & P.SATHASIVAM & AFTAB ALAM

JUDGMENT:
JUDGMENT
O R D E R

CIVIL APPEAL No. 1477 OF 2007
(Arising out of SLP(C) No. 3943 of 2007)

Heard.

Leave granted.

We have heard learned counsel for the parties at length. From the impugned order we find that the writ petition was not entertained primarily on the ground that the same will be an exercise in futility because of purported delay in approaching the High Court. Learned counsel for the appellant has highlighted as to how there was actually no delay in approaching the High Court and various steps which were being taken by the appellants to press their grievances. It is pointed out that though the High Court declined to entertain the writ petition on the ground of delay, as of today the tendered shops have not

\026 2 -

yet become functional. Learned counsel appearing for respondent No. 5 submits that though the shops may not have become functional, huge investments have been made. This is also the stand of Mumbai International Airport Limited (MIAL), Respondent No. 3.

One of the points highlighted by Mr. F.S.Nariman, learned senior counsel for the appellants is that till now no order either accepting or rejecting the Expression of Interest has been indicated. Learned counsel for MIAL stated that the fact that no bid document was issued to the appellants is indicative of the fact that Expression of Interest was not accepted. Several other grounds have been highlighted to show the ineligibility of the appellants to even bid in the matter and/or submit of the Expression of Interest, as well as the writ petition. We find that all these aspects have not been dealt with by the High Court which refused to entertain the writ petition as indicated above primarily on the ground of delay.

Taking into account all the relevant factors we feel that it will be in the interest of the parties if the writ

\026 3 -

petition is heard on merits. It is open to the parties to highlight their respective stand on merits as well as the maintainability. We express no opinion in that regard. Let the parties appear before the Chief Justice of the High Court with a copy of our order on Monday i.e. 25.02.2008. We request the Chief Justice of the High Court to fix a date and mark the case to a designated Bench which is requested to dispose of the writ petition by

24th March, 2008. If the parties intend to file any additional documents or affidavit, they shall be permitted to do so latest by 03.03.2008.

The appeal is accordingly disposed of. No costs.

JUDIS