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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) No. 849 OF 2015

M/s. Seapride Shipmanagement Co. Ltd. ...Petitioners
Vs.
The Director General of Shipping and Ors. ...Respondents

Mr. Ashwin Shankar a/w. Mr.Bimal Rajshekhar & Ms. Richa Sahay i/b.
Ashwin Shankar for Petitioner
Ms. Jyosthna Pandhi a/w. Mr. Ashok Varma for Respondent Nos.1 to 3
Mr.Manoj Khatri for Respondent No.5.

CORAM : V. M. KANADE &
B.P COLABAWALLA, J.J.

DATE : JUNE 10, 2015

P.C. :

1. By this petition, which is filed under Article 226 of the Constitution of India, the Petitioner is seeking an appropriate writ, order and direction, directing Respondent No.1 to forthwith withdraw its direction or issue further orders/direction to Respondent Nos. 2 and 3 to issue the "No Encumbrance Certificate" and "Deletion of Registry Certificate" and "Closed CSR" and other relevant appropriate certificate to the Petitioner in respect of the vessel purchased by the Petitioner.

2. Brief facts, which are necessary for the purpose of deciding the writ petition, are as under:

The Petitioner is a Company, incorporated under the Foreign

Laws. Respondent No.1 is a Director General of Shipping. Respondent No.2 is a Registrar of Indian Ships. Respondent Nos.1 to 3 are the statutory authorities under the Merchant Shipping Act (hereafter referred to as "the said Act").

3. The grievance of the Petitioner is that after purchase of the vessel "BMC Genesis" from Respondent No.4, it applied for registration of the vessel on its name with the concerned authorities. However, Respondent Nos. 1 to 3 have refused to register its name and also refused to issue a Certificate of Deletion on the ground that Respondent No.5 has a claim against Respondent No.4 and on that ground they had refused to grant the Certification of Deletion.

4. The Petitioner has, therefore, approached to this Court by filing the present petition under Article 226 of the Constitution of India. Respondent No.5 has filed an additional affidavit in reply and has stated that it owes certain amount of money which is payable by the Original Owner-Respondent No.4 herein. It is submitted that Respondent No.5 had entered into an agreement with Respondent No.4 for the purpose of supplying the crew, which agreement was termed as "Technical and Crew Management Agreement". It is submitted that since the said amount has not been paid, Respondent Nos.1 to 3 were precluded from granting a Certificate of Deletion, as requested by the Petitioner.

5. In the affidavit of opposition filed by Respondent Nos.1, 2 and 3, they have stated that they were refrained from issuing the Certificate of Deletion only on the ground of request made by Respondent No.5.

6. Before coming to the conclusion of the present case, it is necessary to take into consideration the provisions and rules made under the said Act. Section 38 of the Merchant Shipping Act, 1958 lays down the manner in which the endorsement on certificate of change of ownership is to be made. Section 42 of the said Act also lays down the transfer of ships and shares and also lays down the conditions on which such transfer can be refused. Similarly, a notification has been issued by the Ministry of Transport and Communications dated 17th December, 1960, which has been issued pursuant to the powers conferred on the Central Government under clauses (c), (d), (e), (f), (g), (h), (i), (j), (k), (l) and (m) of sub-section (2) of section 74 read with section 458 of the Merchant Shipping Act, 1958 (44 of 1958). Rule 19 of the said Rules in terms mention that the reasons for closing the entry have to be recorded and the registry shall not pass any order of closure as long as there are un-discharged mortgages on the register. The relevant rules read as under:

“19. Closing of Registry -(1) Where the registry of a ship is transferred under rule 18, the registrar of the original port of registry shall close the registry.

(2) When a notice under section 39 of the Act is received by a registrar of the ship's port of registry, he shall close the relevant entry in the register book and cancel the certificate of registry, if the certificate has been received by him. In all such cases, the reasons for closing the entry shall be recorded. Provided that the registry shall not be closed so long as there are undischarged mortgages on the register.

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(3) The cancelled certificate of registry, if any, shall be forwarded to the Director General together with a report.

(4) When the mortgage referred to in the proviso to sub-rule (2) is discharged, the Registrar shall record the discharge in the usual manner and thereafter finally close the registry and report the fact of closure to the Director General.”

7. Upon conjoint reading of the aforesaid provisions and rules framed under the said Act, the only question which falls for consideration before this Court is whether there is a statutory bar for transfer of ownership on account of the bar imposed under sub-section 2A of section 42.

8. Relevant section 42 (2A) which was inserted by Amended Act, 68 of 1993 clearly envisages that transfer or acquisition is valid only if the wages and amount due to seamen in connection with their employment have not been paid in accordance with the provisions of this Act. We are, therefore, required to consider whether the claim of Respondent No.5 falls within the parameters of section 42 (2A) (a) (b).

9. It is an admitted position that Respondent No.5 have entered into an agreement with Respondent No.4 -who is seller and erstwhile owner and what is known as “Technical and Crew Management Agreement”, which is annexed to the petition. Perused the agreement. The said agreement is also termed as “Vessel and Crew Management Agreement”, which was entered into between Respondent No.5 and Respondent No.4 on 12.5.2010 at Chennai. By the said agreement,

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Respondent No.5 was under an obligation to provide management services to Respondent No.4, as also Respondent No.5 was under an obligation to select and recruit the crew and master and provide their services to Respondent No.4. It is an admitted position that the amount due and payable by Respondent No.4 to Respondent No.5 whose services were provided to Respondent No.4 towards wages have already been paid to the said crew by Respondent No.5.

10. In our view, therefore, the said amount which is now due and payable by Respondent No.4 to Respondent No.5 would not strictly fall under the category of wages of seamen and, therefore, Respondent Nos.1 to 3 cannot refuse to grant registration of ownership to the Petitioner or refuse to issue a Certificate of Deletion.

11. Further it is an admitted position that there are no un-discharged mortgages in the register book and, therefore, the said condition under Rule 19(2) also will not apply to the facts and circumstances of the case. In our view, there is no substance in the submissions made by the learned counsel appearing on behalf of the Respondents. Whatever is the claim of Respondent No.5 against Respondent No.4, Respondent No.5 is at liberty to pursue its right in accordance with law. Reserving the said right of Respondent No.5, which is available in law, the writ petition is allowed in terms of prayer clauses (a) and (b). The writ petition is disposed of.

[B.P COLABAWALLA, J.]

[V. M. KANADE, J.]