

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****ADMIRALTY SUIT NO. 53 OF 2011**

World Fuel Services (Singapore) Pte.Ltd. ...Plaintiff
vs.
m.v. Bos Angler & Ors. ...Defendants

with

ADMIRALTY SUIT NO. 24 OF 2011

Sparebanken Sogn og Fjordane ...Plaintiff
vs.
m.v. Bos Angler & Ors. ...Defendants

with

ADMIRALTY SUIT NO. 26 OF 2011

Global Fuels & Lubricants Inc. ...Plaintiff
vs.
m.v. Bos Angler & Ors. ...Defendants

with

ADMIRALTY SUIT NO. 32 OF 2011

Marine Plus ...Plaintiff
vs.
M.V. Bos Angler & Ors. ...Defendants

with

ADMIRALTY SUIT NO. 54 OF 2012

Super Tug Offshore Services Pvt.Ltd. ...Plaintiff
vs.
The Vessel of the vessel m.v. Bos Angler & Ors. ...Defendants

with

ADMIRALTY SUIT NO. 87 OF 2013

Yojaka (India) Pvt.Ltd. ...Plaintiff
vs.
The sale Proceeds of m.v. Bos Angler & Ors. ...Defendants

Mr.A.M. Vernekar, Senior Advocate with Mr.Samarth Pai i/b. M/s.Narichania & Narichania for Plaintiff in ADMS 53/2011 & ADMS 26/2011, and for Defendant Nos.5 & 8 in ADMS 24/2011.

Mr.Zarir Bharucha with Mr.Archit Dhir, Mr.Shivam Singh & Mr.Vaisakh Shaji i/b. Mr.Bimal Rajasekhar for Defendant No.4 in ADMS 53/2011, for Plaintiff in ADMS 24/2011, and for Defendant No.3 in ADMS 26/2011, 32/2011 and 54/2011.

Mr.Arjun Mittal i/b. M/s.Bose & Mitra for Defendant No.4 in ADMS 24/2011 & for Plaintiff in ADMS 32/2011.

Mr.Subra Karamarkar for Plaintiff in ADMS 54/2012 & for Defendant No.9 in ADMS 24/2011.

Mr.Manoj Khatri for Defendant No.3 in ADMS 24/2011.

Ms.Richa Sahay i/b. Mr.Ashwin Shanker for Plaintiff in ADMS 87/2013.

CORAM : S.C. GUPTE, J.

12 JANUARY 2015

P.C. :

This group of admiralty suits is in respect of maritime claims of the Plaintiffs in the different suits described in the cause title against the Defendant vessel, m.v. Bos Angler and the owners. In the course of the hearing of these suits, the owners of the vessel went into liquidation and the vessel was arrested by this Court pursuant to an order of arrest passed on 13 May 2011 in Admiralty Suit 24/2011. Pursuant to the arrest of the vessel and preliminary directions passed by this Court for sale of the vessel by public auction, the Sheriff of Mumbai caused notices for sale of the vessel to be published locally and internationally. In pursuance of these sale notices, the sale of the vessel was concluded. The mortgagee bank, who was the Plaintiff in the suit, Admiralty Suit No.24/2011, had submitted the highest bid of US \$ 33.1 million. The bid was accepted and the sale was confirmed in its favour. The purchase price of US \$ 33.1 million was deposited by the Plaintiff Bank in this Court. The amount was invested by the Prothonotary & Senior Master of this Court in a fixed deposit. As of 13 February 2015 (i.e. the date of maturity) the amount of the fixed deposit together with interest aggregates to US \$ 35,362,528.57. The Defendant owners

of the vessel have, despite service, not entered an appearance in any of these suits. The Plaintiffs are thus entitled to have their claims decreed and satisfied from the sale proceeds of the vessel. However, since the aggregate claims of the Plaintiffs brought against the vessel / its sale proceeds exceed the sale proceeds, with accrued interest, each Plaintiff is entitled to intervene in and contest the suits brought by the other Plaintiffs. The Plaintiffs in all these suits have now arrived at a settlement agreement *inter alia* providing for the distribution of the sale proceeds together with the accrued interest thereon amongst the various Plaintiffs in the manner stated therein. The settlement agreement has been signed by all the Plaintiffs to these admiralty suits.

2 The settlement agreement has been opposed by Defendant No.3 in Admiralty Suit No.24/2011. It is the case of the Defendant that it has a maritime claim against the Defendants which it is entitled to enforce against the Defendant vessel. Defendant No.3 had filed a suit in respect of its claim against the Defendants, being Civil Suit No.387/2011, before the High Court of Judicature at Madras. The suit was filed on 6 June 2011. During the pendency of this suit, the Defendant vessel was sold, as noted above, in the Admiralty Suit No.24/2011. The vessel was sold on 30 November 2011 and in January 2012, the sale proceeds of the vessel were brought into this Court. As required by Rule 949 read with Rule 951 of the High Court Original Side Rules, at the time of the order for sale of the vessel, by consent of the parties, a notice inviting claims was directed to be issued in the format finalized by the parties to the suit. Defendant No.3 was represented by Counsel when that order was passed by consent of the parties. The notice inviting claims so finalized by the parties *inter alia* required that any person with a claim against the vessel or the proceeds of sale thereof, on which he intends to proceed to judgment, should apply to this Court for leave to intervene and prove his claim before this Court and obtain a decree before the expiration of a period of six months from the date of the notice. This was in accordance with the requirement of Sub-Rule (2) of Rule 951 of the Bombay High Court Original Side Rules. A Division Bench of this Court in an appeal arising from a Notice of Motion in the present Admiralty Suit, Admiralty Suit No.24/2011, had whilst directing such notice to be issued (in response to which direction, the

notice, as noted above, was finalised by a learned Single Judge of this Court), had explained the object underlying the issuance of such notice. This Court noted that the object underlying the issuance of a notice under Sub-Rule (3) of Rule 951 was to furnish intimation to all persons who might have a claim in respect of a vessel or the proceeds of the sale thereof. This Court noted that such notice constituted intimation of the institution of the proceedings before this Court, the sale of the property and an invitation to all claimants seeking to establish a claim or persons having any claims against the property in vessel or the sale proceeds to prove their claims within the stipulated period.

3 In pursuance of the order passed by this Court, the Plaintiff mortgagee (Plaintiff in Admiralty Suit No.24/2011) filed an application before the High Court of Judicature at Madras in Civil Suit No.387/2011 filed by Defendant No.3 herein, seeking an order directing Defendant No.3 to pursue its claim against the owners of the vessel and/or against the sale proceeds of the vessel only before the admiralty division of this Court and for a consequent stay of all further proceedings in Civil Suit No.387/2011. The Madras High Court, by its order dated 25 April 2014, accepted the contentions of the Plaintiff mortgagee. The Madras High Court held that in accordance with Rule 951 of the Bombay High Court Original Side Rules and as held by the Division Bench of this Court in its Order dated 30 November 2012, Defendant No.3 could pursue its claim by taking appropriate steps under Rule 951 before this Court in the Admiralty Suit of the Plaintiff mortgagee pending before this Court. The Madras High Court observed that no useful purpose would be served by Defendant No.3 prosecuting Civil Suit No.387/2011 and obtaining a decree and thereafter, approaching the admiralty jurisdiction of this Court in Admiralty Suit No.24/2011 by making an application to adjudicate upon its claim culminated in a decree for the purpose of ordering of priorities. The Madras High Court held that Defendant No.3 could straightaway file its claim before this Court, get the same adjudicated and thereafter, apply for ordering of priorities by filing a necessary application before this Court. The order of the Madras High Court was accepted by Defendant No.3. No appeal is carried from this order.

4 It is an admitted position that in spite of the various orders passed by this Court as well as the Madras High Court, as noted above, all that Defendant No.3 has done in pursuance of the notice issued under Rule 951 of the Bombay High Court Original Side Rules was to apply for joinder in the present Admiralty Suit by way of an intervention application. After the intervention application of the Defendant was allowed, the Defendant has not taken any steps to prove its claim before this Court. The Defendant has admittedly not filed even a statement of its claim before this Court, leaving aside the proving of such claim by following the process of law.

5 The position that, thus, emerges is this. In November 2011, the vessel was sold under the orders passed by this Court. Soon thereafter, i.e. in January 2011, the sale proceeds were brought into Court. A public notice was issued under Rule 951 of the Bombay High Court Original Side Rules. After the draft of such notice was finalised with consent of Defendant No.3, the notice was duly issued requiring all claimants including Defendant No.3 herein to prove their claims and apply for order of priorities within a period of six months from the date of the notice. About two years have elapsed from the date of the public notice under Rule 951 and here we have a defendant, who, leaving aside proving its claim, has not even taken steps to file its claim before this Court. In these premises, the Defendant cannot be permitted to oppose the decree that is sought by consent of all other parties to these Admiralty Suits. Defendant No.3 has neither filed its own claim nor does he have anything to oppose the claim of the Plaintiffs in these Admiralty Suits against the property of the said vessel or the proceeds of the sale thereof. In the premises, there is no merit in the opposition of Defendant No.3 to these Consent Terms being taken on record.

6 Accordingly, the Consent Terms recorded in the settlement agreement between all the Plaintiffs to these Admiralty Suits are taken on record and marked "X" for identification; the statements and undertakings contained therein are accepted; and the suits are decreed in terms of the Consent Terms *inter alia* by directing distribution of the sale proceeds of the Defendant vessel held in this Court in the manner stated in the settlement agreement.

7 The settlement agreement, in the Recital 'E' thereof under the caption "Facts" contains blanks as far as the aggregate amount of the Fixed Deposit together with accrued interest lying in the State Bank of India. Learned Counsel for all parties have ascertained that the amount lying with the State Bank of India in Fixed Deposit aggregates to US \$ 35,362,528.57 as on 13 February 2015. Learned Counsel further agree that having regard to the fact that if the amounts were to be disbursed to the respective parties as provided in Clause 5 of the Consent Terms forthwith, it would entail substantial cause associated with an early breakage of the Fixed Deposit, which is due on 13 February 2015, the disbursement of the amount in terms of Clause 5 of the Consent Terms shall be effected by the Prothonotary & Senior Master of this Court after 13 February 2015, i.e. after the maturity of the Fixed Deposit. It is ordered accordingly.

8 The typographical error in the settlement agreement, contained in Clause 4 thereof, namely, Admiralty Suit No.54/2012 being incorrectly mentioned as ADMS 14/2012, is corrected. Accordingly, the words "ADMS 14/2012" in Clause 4 of the settlement agreement shall be substituted with the words "ADMS 54/2012". The same correction may be carried out in Annexure-A to the Settlement Agreement as well. All the suits are accordingly disposed of.

(S.C. Gupte, J.)