

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION

ADMIRALTY SUIT NO. 61 OF 2014

Bhambhani Shipping Ltd.

.... Plaintiff

vs.

m.t. AL NIMS and Ors.

.... Defendants

Ms. Ritcha Sahay, instructed by Ashwin Shanker for the Plaintiff.
None for the Defendants.

CORAM : S.J. KATHAWALLA, J.

DATE : 29th July, 2015

ORAL JUDGMENT:

1. This is an action in rem by the Plaintiff who is a bunker supplier. The Plaintiff supplied bunkers to Defendant No.1 vessel, m.t AL NIMS which is owned and/or beneficially owned and/or controlled by Defendant No.2. The Plaintiff states that it has a maritime claim and that it is entitled to proceed against the sale proceeds of the Defendant vessel No.1, m.t AL NIMS and sale proceeds of any other vessel which is owned and/or controlled by Defendant No.2. The sale proceeds of the Defendant No.1 vessel is presently lying deposited in this Court. The Plaintiff states that it tried serving the writ of summons upon Defendant No.2 at its registered address. The said office was shut and therefore the packet containing the writ of summons was returned to the office of Sheriff of Bombay. Affidavit in proof of service dated 30th June'15 which proves the status of service is on record. I have been informed by the Plaintiff that the office of Defendant No.2 has been sealed by the Collector's office, a

similar remark is also found on the envelope containing the writ of summons. I am satisfied with the validity of the service of the writ of summons upon the Defendants.

2. The Defendants have so far not entered appearance and no one has come forward to contest the claim of the Plaintiff. The suit is therefore placed for ex-parte decree.

The Plaintiff has lead evidence of Mr. Narayan D. Bhambhani, who is General Manager of the Plaintiff Company, by filing his Affidavit of Evidence in lieu of Examination in Chief dated 20th July'15. Mr. Bhambhani was present in Court on 29th July'15 and confirmed the correctness of the contents of his said Affidavit. The Affidavit of Mr. Narayan D. Bhambhani is taken on record and marked "X" for identification. The Plaintiff has also tendered the Compilation of Original Documents comprising of 15 documents which are relied upon by the Plaintiff and in respect of which the Plaintiff's said witness has deposed in his Affidavit of Evidence. The said compilation of original documents is taken on record and marked as Exhibit "P-1(colly)".

3. It is the case of Plaintiff that pursuant to work orders placed by the Defendant No.2, the Plaintiff sold and supplied bunkers to the Defendant vessel No.1, m.t AL NIMS, which is owned by Defendant No.2. The bunkers supplied were consumed/accepted by the Defendants without any demur or protest. After the supplies were made, bunker delivery notes and tax invoices were issued by the Plaintiff. The Bunker delivery notes bear signature of the Chief Engineer of the Defendant vessel No.1. The tax invoices also bare acknowledgement stamp of Defendant No.2 on them. It is further submitted by the Plaintiff that it received part

payment amounting to INR 50,00,000 from Defendant No.2 on 18th February'13. Thereafter, the Plaintiff sent reminders to Defendant No.2 for the outstanding sums that had fallen due. It is further submitted by the Plaintiff that as per the contract between the parties Defendant No.2 was liable to pay interest @1% if the bills were due over 15 days. Invoices for late payment charges also have been annexed to the compilation of documents and these invoices bear acknowledgement stamps of Defendant No.2.

4. The Plaintiff filed admiralty suit *inter alia* praying for a decree in its favour against the Defendants for a sum of INR 1,87,64,994 together with interest @ 12% per annum from the date of filing of the suit till payment and realization together with costs and poundage as set out in prayer clause (c). In the said Suit, the Plaintiff sought arrest of the Defendant No.1 vessel, m.t AL NIMS and an order of arrest of the Defendant vessel was passed on 31st July,13 by this Court.

5. The Plaintiff further submits that the Defendant No.1 vessel, m.t AL NIMS was ordered to be sold by this Court on 3rd October'13 in Admiralty Suit (L) 693 of 2013. On 6th December'13, this Court allowed sale of the Defendant vessel to the highest auction bidder who offered INR 55 lakhs. The sale proceeds received out of the sale of the Defendant No.1 vessel are presently lying deposited with the Prothonotary and Sr.Master. The sale proceeds of Defendant No.1 vessel represent the Defendant No.1 vessel and the Plaintiff is therefore entitled to proceed against the same.

6. I have gone through the averments made in the plaint and the original documents referred to in the Affidavit of Evidence of Mr. Narayan D. Bhambhani and separately filed in the form of Compilation of Documents which is marked as

Exhibits "P-1 (colly)". The Document at sr.no.1 is a print-out from the internet website Maritime- Connector.com. The Document at sr no.2 is a print-out of an email dated 25th January'13 which contains the terms and conditions for supply of the bunker. At sr. no.3 is the original bunker delivery note dated 30th January'13 bearing signature of the Chief Engineer of Defendant No.1 vessel which evidences supply of bunkers to the Defendant no.1 vessel, m.t AL NIMS. At sr.no.4 is the original invoice (office copy) dated 31st January'13 raised upon Defendant No.2, which bears acknowledgement stamp of Defendant No.2. At sr. no.5 is the original bunker delivery note dated 5th February'13 which bears signature of the Chief Engineer of the vessel, m.t AL NIMS. At sr.no.6 is the original invoice (office copy) dated 5th February'13 raised upon Defendant No.2, the said invoice bears acknowledgment stamp of Defendant No.2. At sr. no.7 is a print-out of the email dated 19th February'13 which contains the terms and conditions for supply of bunker. At sr.no.8 is the original bunker delivery note dated 23rd February'13 which bears signature of Chief Engineer of Defendant No.1 vessel evidencing supply of bunkers to the vessel. At sr.no.9 is the original invoice (office copy) dated 23rd February'13 raised upon Defendant no.2, which bears the acknowledgement stamp of Defendant No.2. Document at sr no.10 is the original print-out of an email which has been sent by the account department of the Plaintiff acknowledging that a part-payment of an amount INR 50,00,000 has been received from Defendant No.2 into its Union Bank of India account on 18th February'13. The documents at sr no.11 to sr.no.13 are payment reminders sent by the Plaintiff to Defendant No.2. At sr.no.14 is statement of account prepared by the Plaintiff which shows an outstanding sum of INR 1,84,08,612 due

and payable by Defendant no.2 as on 15th July'13. Documents at sr.no.15 are interest invoices raised upon Defendant no.2 towards late payment.

7. There is nothing on record that militates against anything that has been averred in the plaint and deposed to by the witness. The deposition of the witness is supported by the documents which are produced on record and marked as Exhibit "P-1 (colly)". The evidence thus remains uncontroverted.

8. In the circumstances aforementioned, the Plaintiff has proved its case. The suit is accordingly decreed in terms of clause (c) to the effect that the decree in favour of the Plaintiff shall be in the sum of INR 1,87,64,994 together with interest @ 12% p.a from the date of filing of this suit till payment/realization together with costs and poundage as prayed. Disbursements by the Admiralty Registrar/Prothonotary and Sr.Master of the decretal amount out of the sale proceeds of vessel, m.t AL NIMS in this court to the Plaintiff in terms of prayer clause (c) shall be subject to and only in accordance with determination of the priority of claims against the sale proceeds by this court. The Plaintiff shall also be at liberty to proceed against any other asset belonging to/owned by Defendant No.2 for recovery of the decretal amount or any part thereof that remains unsatisfied.

9. Since the suit is decreed ex-parte, the Plaintiff shall be entitled to refund of the court-fees if any as per rules.

10. The office shall return the compilation of original documents to the Plaintiff's Advocate upon the Plaintiff's Advocate furnishing a True Copy of this order along

with the Photostat copy of the compilation of documents duly certified by him as True Copy.

(S.J. KATHAWALLA, J.)