

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION NO. 1185 OF 2015****IN****SUIT NO. 1209 OF 2009**

M/s.Neptune Marine Pvt.Ltd.	...Plaintiff / Applicant
vs.	
M/s.Sansui Shipping Pvt.Ltd. & Ors.	...Defendants
and	
State Bank of India	...Respondent

Mr.Karl Tamboly with Ms.Vrishali Kabare i/b. Harish Joshi & Co. for Plaintiff.
Mr.Simil Purohit with Mr.Faran Khan, H.K. Sudhakara, Ms.Neha Ahuja i/b.
Prompt Legal for Defendant Nos.1 to 3.
Mr. G.N. Pandit for Respondent.

CORAM : S.C. GUPTE, J.**23 DECEMBER 2015****P.C. :**

The Respondent bank has filed an affidavit in pursuance of the order dated 7 December 2015. A copy of the affidavit is served on Defendant Nos.1 to 3 in court.

2 This notice of motion is taken out by the Plaintiff for appointment of a court receiver in respect of a vessel described as Hull No.37 situated and lying at Versova village, Ghodbunder with powers to take possession of the same and to sell the same by public auction and retain sale proceeds in the court until further orders.

3 The application is on the footing that the Plaintiff is a shipbuilder working at a shipyard taken on licence. The Plaintiff has been constructing the suit vessel under a works contract entered into by Defendant No.1 with the Plaintiff for manufacture of the vessel. The Plaintiff has various claims against Defendant No.1 arising out of the works contract. The licence agreement for the shipyard at which the Plaintiff works is due to come to an end on 31 December

2015 and currently, the suit vessel is the only vessel under construction at the shipyard. Since the Plaintiff does not propose to retain the shipyard after 31 December 2015 and has a claim against Defendant No.1 in respect of the suit vessel and its construction, the Plaintiff applies for sale of the suit vessel through a court receiver and retention of sale proceeds in court.

4 As I have noted in my order of 7 December 2015, State Bank of India has a claim against the Defendants and for which, it has filed an original application, being Original Application No.44 of 2007, before the Debt Recovery Tribunal-I ('DRT') in Mumbai. In its order dated 28 December 2012, the DRT has decreed State Bank of India's original application by passing a joint and several decree against Defendant Nos.1 to 3 herein. The decree also provides that State Bank of India shall be entitled to the sale proceeds of the suit vessel and shall adjust the same towards its dues. This provision in the decree is purportedly on the footing that the suit vessel has been equitably mortgaged by Defendant Nos.1 to 3 in favour of State Bank of India. This position has been contested both by the Plaintiff and Defendant Nos.1 to 3 herein. The Plaintiff and Defendant Nos.1 to 3 have filed their own separate appeals challenging the decree passed in the original application of State Bank of India. Whilst the appeal of Defendant Nos.1 to 3 is dismissed for default and there is no application for restoration, the appeal of the Plaintiff has been dismissed for default, but an application for restoration of that appeal is pending before the DRAT.

5 In the premises, we are faced with two separate claims against Defendant Nos.1 to 3, one by State Bank of India, in its original application decreed by the DRT, but the decree is challenged by the Plaintiff herein before the DRAT and its application for restoration of that appeal is pending before the DRAT, and the other by the Plaintiff in the present suit seeking a decree in the sum of Rs.2,34,63,700/- as per particulars claim annexed to the plaint towards expenses incurred by the Plaintiff for manufacture and upkeep of the suit vessel and a further amount of Rs.2 crores as damages. The Plaintiff claims a valid lien on the suit vessel in respect of its unpaid dues and seeks an order for sale of the vessel and recovery of costs of its construction as well as expenses incurred by

the Plaintiff for manufacture and upkeep of the vessel from out of the sale proceeds. Whilst the DRT is an appropriate court for consideration of the claim of State Bank of India, it is this Court which is primarily concerned and can adjudicate upon the claim as between the Plaintiff and Defendant Nos.1 to 3. There is no doubt that State Bank of India is affected by any order that may be passed in the present suit, just as the Plaintiff herein would by an order in State Bank of India's original application. For that reason, the present notice was issued, in the first place, to State Bank of India.

6 Defendant Nos.1 to 3 do not show any cause to the present notice of motion. There is no reply filed by Defendant Nos.1 to 3 to the present notice of motion. Learned Counsel for Defendant Nos.1 to 3, in fact, supports the application of the Plaintiff for sale of the vessel and retention of sale proceeds in court. It is only State Bank of India which opposes such application.

7 On these facts, *prima facie*, there is a case for protection of the Plaintiff's rights in the suit vessel and protection of any sale proceeds that may be recovered from out of the sale of the suit vessel till the inter-se rights between the parties are decided. Since, however, the sale of the suit vessel is already underway in accordance with the orders passed by the DRT, it is in the interests of justice (and neither the Plaintiff nor Defendant Nos.1 to 3 herein have any objection for the same) that the DRT conducts the sale, but the sale proceeds are not disbursed till there is adjudication of inter se rights between the parties.

8 It is, accordingly, ordered that though DRT-I, Mumbai may proceed to conduct the sale of the suit vessel, the sale proceeds be retained in court till after the restoration application of the Plaintiff herein is decided by the DRAT and a period of three weeks thereafter. It is agreed between the parties that the restoration application filed by the Plaintiff herein shall be heard expeditiously by the DRAT. The DRAT may, accordingly, do so. The Advocates of the Plaintiff shall, within four days from today, hand over a fresh set of the restoration application together with the appeal to the Advocates of State Bank of India. The Plaintiff shall be at liberty to surrender the licence of the shipyard with effect from

31 December 2015. In that case, State Bank of India shall arrange to protect the suit vessel pending conclusion of the sale, by arranging for an alternative accommodation to keep the vessel safe or arranging for licensing of the shipyard where the vessel lies presently or otherwise howsoever. The parties shall co-operate with each other for this purpose.

9 The notice of motion is disposed of accordingly. Liberty to the parties to apply. It is clarified that the Plaintiff's claim is only in respect of the suit vessel and this order shall not in any way affect the order passed by the DRT against Defendant Nos.1 to 3 herein insofar as the other properties of the latter are concerned.

(S.C. Gupte, J.)

CERTIFICATE

Certified to be true and correct copy of the original
signed Judgment/ Order