

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ADMIRALTY & VICE ADMIRALTY JURISDICTION

NOTICE OF MOTION NO. 33 OF 2015

IN

ADMIRALTY SUIT NO. 25 OF 2010

Rushab Ship International LLC
C/o. Rushab Ship Consultant Inc.

...Applicant

In the matter between:

Allseas Holding Limited

.... Plaintiff

vs.

M.T. Pavayacu & Anr.

...Defendants

Mr. P. Pratap, Senior Advocate, along with Mr. Ashwini Sinha, instructed by Mr. H.G. Pratap, for the Plaintiff.

Mr. V.R. Dhond, Senior Advocate, along with Mr. P. Shenoy, instructed by M/s. M.P. Vashi & Associates, for Defendant No.1/Applicant.

CORAM: S.J. KATHAWALLA, J.
DATE : 27th OCTOBER, 2015

P.C.

1. The Plaintiff has filed the present suit, inter alia, seeking the arrest sequestration, condemnation and sale of the Defendant vessel, for securing and/or satisfying a claim of USD 977,050.84 and accrued interest at the rate of 12 per cent per annum from the date of the Suit till payment/realization. The Plaintiff's claim arises out of an alleged breach of a Memorandum of Agreement

dated 12th February, 2010 ("the MOA") for sale of the Defendant vessel.

2. In the above Suit, the Defendant vessel was ordered to be arrested by an order dated 27th April, 2010. By Notice of Motion No. 1705 of 2010 filed in this Court., the Applicant/Defendant sought to have the order of arrest vacated and/or set aside. By an ad-interim order dated 4th May, 2010, this Court directed the Applicant to furnish security in the sum of US \$ 9,00,000/-. The Applicant filed Appeal (L) No. 299 of 2010 and by an order dated 6th May, 2010, the Hon'ble Division Bench reduced the security to US \$ 3,00,000/- and further directed the Applicant/Appellant to make payment of US \$ 3,95,269.19 to the Plaintiff. Pursuant to this order, the Applicant provided a Bank Guarantee in the sum of US \$ 3,00,000/- which continues to be in force till date. The Applicant also made payment of US \$ 3,95,269.19 to the Plaintiff as directed. Thereafter the Plaintiff commenced arbitration proceedings in Singapore in accordance with the arbitration clause contained in the Agreement between the parties which arbitration proceedings are pending.

3. The said Notice of Motion No. 1705 of 2010 was finally disposed off by an order dated 7th March, 2011 and the aforestated orders were continued.

4. The Applicant/Defendant thereafter filed Notice of Motion No. 1907 of 2010 for the following relief:

"(a) That the Plaintiff be ordered to deposit or give a security to the satisfaction of Prothonotary and Senior Master, High Court, Bombay for a sum of USD\$ 556,324.50 together with interest thereon @ 9% per annum from the date of wrongful arrest of the Defendant No. 1 vessel i.e. from 27th April, 2010 till the date of deposit or giving security."

By an order dated 6th March, 2014, the Applicant/Defendant was allowed to withdraw the Notice of Motion with liberty to file a fresh Notice of Motion including the reliefs that were sought in the Motion. However, the Applicant/Defendant was directed to pay to the Plaintiff a sum of Rs. 50,000/- as costs.

5. In the meantime the Applicant/Defendant filed counter claim No. 9 of 2012 in the above Suit for damages alleging wrongful arrest of the vessel.

6. On 9th April, 2014, when the Admiralty Suit as well as the Counter Claim came up before this Court (Coram: K.R. Shriram, J.), when the following order was passed:

"1. The counterclaim is for damages alleging wrongful arrest of

the vessel. For the same head of claim, the plaintiff to the counterclaim, who were defendant nos. 1 and 2 in the suit, had taken out a notice of motion claiming damages. That notice of motion was withdrawn on 6.03.2014. The reason why the notice of motion was withdrawn was because the arbitration was still pending in Singapore.

2. In the circumstances, both the counsels state that the suit and the counterclaim cannot proceed unless the arbitration in Singapore is concluded. They request that the suit and counterclaim be stayed until the conclusion of the arbitration proceedings in Singapore.

*3. The suit and the counterclaim stayed accordingly.
Liberty to apply."*

7. Therefore, though in the order dated 6th March, 2014, no reason is set out as to why the Notice of Motion was allowed to be withdrawn with liberty to file a fresh Notice of Motion, in the order dated 9th April, 2014, this Court has recorded that the said Notice of Motion was withdrawn on 6th March, 2014 because the Arbitration proceeding was still pending in Singapore.

8. The Applicant/Defendant has now taken out the above Notice of Motion inter alia for the following reliefs:

"(a) That the Plaintiff be ordered and directed to deposit in this Hon'ble Court or give security to the satisfaction of the Prothonotary & Senior Master, High Court, Bombay a sum of

USD\$907,105.50 together with interest thereon @ 9% per annum from the date of wrongful arrest of the Defendant No. 1 Vessel i.e. from 27th April, 2010 till the date of deposit or giving security;

(b) that the Applicant be allowed to apply for release and withdrawal of the Bank Guarantee of USD\$ 300,000 furnished by the Applicant under order dated 6th May, 2010 passed by this Hon'ble Court."

9. Admittedly, the arbitration proceedings are still pending in Singapore. Liberty granted by the Court by its order dated 6th March, 2014, can, in my view, be used only in changed circumstances. Having once withdrawn the Notice of Motion on the ground that the arbitration was still pending in Singapore, the question of again taking out a fresh Notice of Motion for the same relief as well as the additional relief cannot be allowed. The submissions of the Plaintiff in their Affidavit-in-reply, in support of their case that the Plaintiff cannot be granted reliefs as prayed for in the above Notice of Motion are correct. The Notice of Motion is therefore dismissed with liberty to the Applicant/Defendant to take out a Notice of Motion seeking the same reliefs only under the changed circumstances.

(S.J. KATHAWALLA, J.)