

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

WA.No. 1723 of 2015 () IN WP(C).19014/2015

AGAINST THE JUDGMENT IN WP(C) 19014/2015 DATED 31-07-2015

APPELLANT(S)/WRIT PETITIONERS :-

1. CAPT. ROBIN CHAKALAKAL GEORGE, AGED 42 YEARS
S/O.CHAKALAKAL GEORGE, CHACKALACKAL HOUSE
KUMARAKOM P.O., KOTTAYAM, KERALA.
2. THITTATHARA MADHAVAN BHASI, AGED 59 YEARS
S/O.THITTATHARA KOCHOL MADHAVAN, THITTATHARA HOUSE
EDAVANAKAD P.O., ERNAKULAM, KERALA-682502.
3. SAYOOJ JOSEPH P.J., AGED 38 YEARS
S/O.P.P.JOHN JOSEPH, PARAMBALOTH HOUSE, NAYARAMBALAM
ERNAKULAM, KERALA-682 509.
4. CAPT. K.K.PEETHAMBARAN, AGED 51 YEARS
S/O.KANDA, SAHYADRI, UDAYAGIRI NAGAR
UDAYAMPEROOR P.O., ERNAKULAM, KERALA-682 307.
5. SHAJAN THOMAS, AGED 46 YEARS
S/O.MANJAKUNNEL MATHAI THOMAS, MANJAKUNNEL HOUSE
MUNDANKAL POST, PALA, KOTTAYAM DISTRICT-686 574.

BY ADVS.SRI.JOY THATTIL ITTOOP
SRI.A.G.ADITYA SHENOY
SRI.BIJISH B.TOM
SRI.JACOB TOMLIN VARGHESE

RESPONDENT(S)/RESPONDENTS :-

1. THE DIRECTOR GENERAL OF SHIPPING
DIRECTORATE GENERAL OF SHIPPING
9TH FLOOR BETA BUILDING, KANJURMARG (EAST)
MUMBAI-400 042.

2. THE REGISTRAR OF INDIAN SHIPS
C/O.THE PRINCIPAL OFFICER, MMD, ANCHORGATE BUILDING
RAJAJI SALAI, CHENNAI-600 001.
3. THE NAUTICAL SURVEYOR CUM DDG (TECH)
MERCANTILE MARINE DEPARTMENT, ANCHOR GATE BUILDING
RAJAJI SALAI, CHENNAI-600 001.
4. TRADEX SHIPPING CO. PVT.LTD.
26/1896, BRISTOW ROAD, WILLINDON ISLAND
COCHIN-682 003.
5. M.V.BMC GENESIS
A VESSEL FLYING THE FLAG OF INDIA, IMO NO.9381938
REPRESENTED BY HER REGISTERED OWNER
M/S.BHARAT MARINE COMPANY INDIA PVT.LTD.
REG.OFFICE AT BMC HOUSE, 32-2, HALLAS ROAD
EGMORE, CHENNAI-600 008.
6. M/S.BHARAT MARINE COMPANY INDIA PVT.LTD.
REG.OFFICE AT BMC HOUSE, 32-2 HALLAS ROAD
EGMORE, CHENNAI-600 008.
7. M/S.SEAPRIDE SHIPMANAGEMENT CO.LTD.
TRUST COMPANY COMPLEX, AJELTAKE ROAD, AJELTAKE ISLAND
MAJURO MARSHALL ISLANDS.

BY SRI.S.VAIDYANATHAN, CGC
BY SRI.M.JITHESH MENON
BY SRI.K.N.SIVASANKARAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 05-08-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jvt

**ASHOK BHUSHAN, C.J &
A.M. SHAFFIQUE, J.**

W.A. No.1723 of 2015

Dated this the 5th day of August 2015

J U D G M E N T

Shaffique, J

The petitioners in W.P.(C) No.19014 of 2015 have filed this appeal challenging the judgment dated 31.7.2015, by which, the learned Single Judge had dismissed the writ petition.

2. The short facts involved in the writ petition would disclose that the petitioners, who are seafarers being employed in the vessel, M.V BMC GENESIS, contend that wages are payable by the vessel owners, the 6th respondent. However, to avoid payment, they have transferred the vessel to the 7th respondent. It is stated that several attempts were made by the 4th respondent, who is a registered recruiting agency, to recover the wages of the seafarers, who are 25 in number, from the owner of the vessel, the 6th respondent and that several attempts were made to arrest the vessel from Khana. However, such attempts ended in failure. They have also moved Madras High Court, in which, appropriate directions have been issued to prevent transfer of the vessel in the name of the 7th respondent.

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3. On these allegations, the petitioners submit that the 7th respondent had approached the Bombay High Court seeking for a direction to the Director General of Shipping and other competent authorities to issue various certificates, which are required for transferring the vessel, which has been allowed by judgment dated 10.6.2015. The petitioners submit that they were not parties to the said proceedings and if the documents required for transferring the vessel are issued by respondents 1 to 3, it will cause serious hardship to the petitioners and other seafarers, who are entitled for huge amounts from the 6th respondent. The petitioners contend that they have a right to exercise lien on the aforesaid vessel and therefore, the writ petition was filed seeking for the following reliefs :-

- “a) Issue a writ of Mandamus or other appropriate writ or order or direction directing Respondent Nos.1 to 3 not to proceed with the issuance of the No Objection Certificate/ Encumbrance Certificates and Deletion Certificate in respect of the Respondent No.5 vessel to the Respondents 6 and 7 and their agents and brokers, until and unless the outstanding dues of the Petitioners and other crew are cleared in full.
- b) Issue a writ of Mandamus or other appropriate writ or order or direction directing Respondent Nos.1 to 3 not to give approval for the sale of the 5th respondent vessel by the 6th respondent to the 7th respondent or any other person, until and unless the outstanding dues of the Petitioners and other crew are cleared in full.”

The learned Single Judge, by the impugned judgment, dismissed the writ petition holding that the writ petition is an abuse of process of court.

4. Learned counsel appearing for the appellants would submit that the findings of the learned Single Judge are liable to be set aside especially on account of the fact that the learned Single Judge failed to consider the respective claims of the seafarers, who have no remedy other than approaching the Tribunal under Sec.150 of the Merchant Shipping Act, 1958 (in short 'the Act'). As the matter stands now, the vessel owner, namely, the 6th respondent had already transferred the vessel to the 7th respondent and if the documents for effecting transfer is permitted to be issued, it will affect the right of the petitioners. Further, it is contended that they were not parties to the proceedings before the Bombay High Court. The Bombay High Court has only considered the question as to whether there is any statutory bar imposed for transferring the ownership in favour of the 7th respondent as per the provisions of Sec.42(2A) of the Act in respect of the present vessel. It was found that there was no claim for exercising lien as far as the vessel was concerned and it was in

the said circumstances that the Bombay High Court has issued the directions.

5. The learned counsel appearing for the 7th respondent submits that the petitioners have absolutely no claim. Even according to them, their claims are barred by limitation and that apart, there was not even a mention in their claim as to what amount is actually payable to them and what remains to be paid. It is further submitted that by virtue of the judgment of the Bombay High Court, it is not open for this Court to entertain the above writ petition and the petitioners, consciously did not produce the judgment of the Bombay High Court.

6. Having heard the learned counsel appearing on either side, we are of the view that since appropriate directions had already been issued by the Bombay High Court in the very same matter relating to the writ petition filed by the 7th respondent, it may not be possible for this Court to entertain another writ petition seeking for restrictive orders against the Director General of Shipping and others.

7. A reference to the judgment of the Bombay High Court dated 10.6.2015 would clearly indicate that the relief sought for by

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the 7th respondent as petitioner was for a direction to the Director General of Shipping to withdraw its direction or to issue further orders to respondents 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 them. The vessel, which was the subject matter there is the same vessel, M.V BMC GENESIS, which was purchased by the 7th respondent from the 6th respondent. The Bombay High Court, in paragraphs 10 and 11 of the judgment held as follows :-

“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.”

In fact, the Bombay High Court was considering the case relating to amount payable by respondent No.4 to respondent No.5 and it was held that, it does not strictly fall under the category of wages of seamen.

8. Having regard to the aforesaid finding that the mandamus have been issued against the Director General of Shipping, we do not think that this Court will be justified in restraining the Director General of Shipping and other competent authorities from issuing the certificates as prayed for. The remedy, if any of the petitioners is to approach the Bombay High Court and to seek review/recall of the said judgment. It may not be appropriate for this Court to exercise its jurisdiction of judicial review considering the claim of the petitioners, since the very claim of the petitioners had already been taken up by the 4th respondent before the Bombay High Court.

9. Under such circumstances, we do not find any error in the judgment of the learned Single Judge dismissing the writ

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petition. However, it shall always be open for the petitioners to take other appropriate remedy as available under law to recover any amount that may be payable either by the 6th respondent or the 7th respondent.

10. Further, the learned counsel for the appellants has sought for an interim direction for a period of 7 days to approach the Bombay High Court to seek review of the judgment in Writ Petition (L) No.849 of 2015. Taking into consideration the view taken by us, it may not be appropriate for this Court to grant such time. Under such circumstances, the said relief is also declined.

Accordingly, the writ appeal is dismissed.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE

//TRUE COPY//

P.A. TO JUDGE

Jvt