

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

WP(C).No. 19014 of 2015 (B)

PETITIONER(S):

1. CAPT. ROBIN CHAKALAKAL GEORGE,
S/O.CHAKALAKAL GEORGE, AGED 42 YEARS,
CHACKALACKAL HOUSE,KUMARAKOM P.O,
KOTTAYAM, KERALA.
2. THITTATHARA MADAHAVAN BHASI,
S/O. THITTATHARA KOCHOL MADHAVAN, AGED 59 YEARS,
THITTATHARA HOUSE,EDAVANAKAD P.O,
ERNAKULAM, KERALA- 682 502
3. SAYOOJ JOSEPH P.J.,S/O. P.P JOHN JOSEPH, AGED 38 YEARS,
PARAMBALOTH HOUSE, NAYARAMBALAM,
ERNAKULAM, KERALA -682 509
4. CAPT. K.K PEETHAMBARAN, S/O.KANDA,AGED 51 YEARS,
SAHYADRI, UDAYAGIRI NAGAR,UDAYAMPEROOR P.O,
ERNAKULAM , KERALA- 682 307
5. SHAJAN THOMAS,
S/O. MANJAKUNNEL MATHAI THOMAS, AGED 46 YEARS,
MANJAKUNNEL HOUSE,MUNDANKAL POST,
PALA, KOTTAYAM DIST, PIN -686 574

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

RESPONDENT(S):

1. THE DIRECTOR GENERAL OF SHIPPING,
DIRECTORATE GENERAL OF SHIPPING,
9TH FLOOR BETA BUILDING, KANJURMARG (EAST),
MUMBAI -00 042
2. THE REGISTRAR OF INDIAN SHIPS,
C/O. TE PRINCIPAL OFFICER, MMD, ANCHORGATE BUILDING,
RAJAJI SALAI, CHENNAI -600 001

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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, WILLINGDON 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.
- R1 TO R3 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
BY ADV. SRI.S.VAIDYANATHAN, CGC
R4 BY ADV. SRI.M.JITHESH MENON
R7 BY ADVS. SRI.K.N.SIVASANKARAN
SRI.SUNIL SHANKER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 28-07-2015, THE COURT ON 31-07-2015 DELIVERED THE
FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 THE TRUE COPY OF THE ORDER DATED 26/02/2013 PASSED BY THE HON'BLE HIGH COURT OF KERALA IN I.A NO 442 OF 2013 IN ADMIRALTY SUIT NO.3 OF 2013
- EXHIBIT P2 THE TRUE COPY OF THE ORDER DATED 08/04/2013 PASSED BY THE HON'BLE HIGH COURT OF TEMA IN THE SUIT BEARING NOS. E2/174/13
- EXHIBIT P3 THE TRUE COPY OF THE ORDER DTD 19/02/2015 PASSED BY THE HON'BLE HIGH COURT OF MADRAS IN W.P NO. 29557 OF 2014

RESPONDENT(S)' EXHIBITS

- EXHIBIT R7(A) COPY OF THE ORDER OF THE SUPERIOR COURT OF JUDICATURE, TEMA DATED 15/08/2013
- EXHIBIT R7(B) COPY OF THE AFFIDAVIT FILED ON BEHALF OF DIRECTOR GENERAL OF SHIPPING AND OTHERS IN WP(L) NO.849 OF 2015 IN HIGH COURT OF BOMBAY DATED NIL, APRIL, 2015.
- EXHIBIT R7(C) COPY OF THE RELEVANT PORTION OF AFFIDAVIT AND PETITION FILED BY M/S. TRADEX SHIPPING CO.PVT LTD., IN WP(C).NO.29557 OF 2014 IN HIGH COURT OF JUDICATURE AT MADRAS DATED 14/10/2014
- EXHIBIT R7(D) COPY OF THE COUNTER AFFIDAVIT FILED BY RESPONDENTS 1 TO 3 HEREIN IN WP(C).NO.29557 OF 2014 IN HIGH COURT OF JUDICATURE AT MADRAS DATED 3/2/2015
- EXHIBIT R7(E) COPY OF THE PLAINT IN ADMIRALTY SUIT NO.3 OF 2013, HIGH COURT OF KERALA DATED 18/2/2013
- EXHIBIT R7(F) COPY OF THE TEXT OF JUDGMENT OF HIGH COURT OF JUDICATURE OF BOMBAY (DOWNLOADED FROM BOMBAY HIGH COURT WEBSITE) IN WP(C).NO.849 OF 2015 DATED 10/6/2015
- EXHIBIT R7(G) COPY OF THE AFFIDAVIT OF CAPT.R. VANKATARAMAN FOR M/S. TRADEX SHIPPING CO. PVT. LTD. IN WP(C).NO.849 OF 2015, HIGH COURT OF JUDICATURE AT BOMBAY DATED 18/4/2015
- EXHIBIT R7(H) COPY OF THE ORDER IN WP(C).NO.849 OF 2015, HIGH COURT OF JUDICATURE AT BOMBAY DATED 30/4/2015.

/TRUE COPY/

P.A.TO JUDGE

K. VINOD CHANDRAN, J.

W.P(C). No.19014 of 2015

Dated this the 31st day of July, 2015.

JUDGMENT

The petitioners, seafarers, who had been engaged as the crew in the 5th respondent Vessel, seek exercise of lien as provided under sub-section (2A) of Section 42 of the Merchant Shipping Act, 1958 [for brevity, the Act of 1958]. The petitioners are said to have been recruited by the 4th respondent, who has a valid Recruitment Placing Service License (RPSL) issued by the 1st respondent.

2. The 5th respondent Vessel has an Indian registration, hence flying the Indian Flag and is owned and represented by the 6th respondent. The 6th respondent has now sold the Vessel to the 7th respondent. The claim raised in the writ petition, to exercise the lien as indicated herein above, is the payment of wages to the petitioners and other crew, on whose behalf also the above

writ petition is filed.

3. The petitioners admit that the wages of the crew has been released by the 4th respondent in time. As per the agreement between the 4th respondent and the 6th respondent, the latter ought to have reimbursed such amounts to the former, is the contention. The petitioners allege that, there was an agreement between the 4th respondent and the 6th respondent, regarding the disbursement of the wages of the crew, which the 6th respondent was obliged to pay to the 4th respondent, which in turn was to be paid to the crew members by the 4th respondent. The 6th respondent having neglected prompt payment of the wages, the 4th respondent is said to have paid the crew members considering their welfare and it is contended that there was an agreement between the 4th respondent and the crew members, that if the wages were not reimbursed, then necessarily the crew members would have to repay such amounts to the 4th respondent. To further buttress their contention, it is stated that the 4th respondent had filed an Admiralty Suit No.3 of 2013 before this Court for arrest and detention of the 5th respondent

Vessel. Though the 5th respondent Vessel was arrested as per Ext.P1 order, the same was not executed, since the Vessel was anchored in the Port of Tema, Ghana. An order was obtained from the competent Court of Tema, which later was vacated for non-prosecution.

4. Again, the 4th respondent is said to have filed writ petition before the High Court of Madras, seeking a direction to the official respondents 1 to 3 from issuing a Non-Objection, Non-Encumbrance Certificate and/or Deletion Certificate with regard to the 2nd respondent Vessel. The writ petition was disposed of by Ext.P3, since the official respondents had stated before that Court that the owners of the Vessel had not submitted the requested documents of Closure of Registry of Vessel, as required under the Act of 1958. There was also a direction issued by the 1st respondent to the respondents 2 and 3 not to issue the Non-Encumbrance Certificate or Deletion of Registry Certificate, till all encumbrances, mortgages, liens and the case pending before the High Court of Tema, Ghana, West Africa are settled. Hence, it is evident that the 4th respondent had been before various forums

seeking realisation of the dues as per the Technical and Crew Management Agreement, which they claim, were entitled to be paid for the management services carried out for the 5th respondent Vessel.

5. The 7th respondent has filed an application to vacate the stay order and also filed a detailed Counter Affidavit to the writ petition, upon which on consent of both parties, the matter itself was heard finally. The 4th respondent alleges that the instant writ petition is a collusive affair to somehow coerce the 7th respondent into satisfying the dues, if any, of the 6th respondent to the 4th respondent, by delaying the transfer of registry of the Vessel.

6. The 7th respondent places on record the following facts; which are supported by the order of High Court of Judicature at Bombay in WP(L) No.849 of 2015. The 7th respondent, by the above proceeding, was before the High Court of Judicature at Bombay, seeking issuance of Non-Encumbrance Certificate and Deletion of Registry Certificate, as also the closed CSR and other appropriate certificates. Therein, the 4th respondent herein as also the 6th respondent were impleaded as respondents. The

above writ petition obviously was filed after the writ petition filed by the 4th respondent before the High Court of Madras, was disposed of by Ext.P3 judgment on 19.02.2015.

7. The 4th respondent herein had raised a claim before the High Court of Bombay on the basis of the Technical and Crew Management Agreement and alleged that the amounts due under the said agreement were not paid by the 6th respondent owner to the 4th respondent. The official respondents had before the High Court contended that they refrained from the issuance of Deletion of Registry Certificate, only on the request made by the 4th respondent agent. The High Court of Bombay considered the various provisions of the Act of 1958 and the manner in which endorsement on certificate on change of ownership is made. Section 42 of the Act of 1958 was also specifically noticed. On a conjoint reading of the aforesaid provisions, the issue falling for consideration was indicated as, whether there was a statutory bar for transfer of ownership, on account of the prohibition under sub-section (2A) of Section 42.

8. It was found that on the basis of the Technical and Crew

Management Agreement, entered into between the owner and the agent, the agent had an obligation to provide management services, *inter alia* an obligation to select and recruit the crew and master, and provide their services to the owner. The agent, even before the High Court of Bombay, admitted the position that it had paid all the dues to the crew members. The High Court of Bombay specifically found that, in such circumstance, the payment due under the agreement from the owner to the agent would not strictly fall under the category of wages to seafarers and hence there cannot be any refusal to grant registration of ownership, to the purchaser and there was no justification to refuse the Certificate of Deletion. The writ petition was allowed, however leaving the agent to pursue its remedies in accordance with law.

9. Hence, there can be no dispute that the petitioners and the crew members they represent were paid the entire wages by the 4th respondent itself. The amounts now due to the 4th respondent are the payments as per the agreement. Even if they constitute amounts, which are to be reimbursed as wages, it

cannot now be termed to be wages due to the crew members. There is a specific intention in introducing sub-section (2A) of Section 42 in the Act of 1958, which has as its object, the protection of the seafarers and the wages payable to them on a sale of the Vessel, they manned, without leaving them to the normal course of litigation, especially they being seafarers.

10. On the admitted fact of the 4th respondent having paid the seafarers' wages to them, there can be no lien exercised by the crew members on the Vessel resorting to sub-section (2A) of Section 42 of the Act of 1958. This Court respectfully follows the declaration of the Division Bench of the High Court in Annexure R7(f).

11. The petitioners have filed a reply, in which it has been specifically averred that the petitioners have approached this Court to ensure that justice is served. That would almost amount to permitting the petitioners to take up the legal cudgels, on behalf of the 4th respondent, when the 4th respondent has consistently failed to prevent the sale of the Vessel or the official affirmation of such sale by issuance of necessary certificates; on

the ground of amounts due. None could seek to ensure justice when there is absolute lack of *locus standi* and in this case, lack of bonafides too.

12. The statement made in the reply is to the effect that the petitioners are not obliged to provide any statement of outstanding wages or the dates on which it fell due. The mere assertion of the petitioners that they are not concerned with the claim preferred by the 4th respondent cannot be taken at face value. Having admitted that the wages due to them were paid, the obligation under Clause (a) of sub-section (4) of Section 42 of the Act of 1958 stands discharged. There can be no lien exercised on the mere assertion that the petitioners and the crew members would be obliged to repay the amounts to the 4th respondent agent, if the owner does not reimburse it. The said contention also is a mere bland assertion, without substantiation by providing details of a legal claim having been raised by the 4th respondent agent or disclosing any material on which such claim could have been raised by the 4th respondent.

The writ petition is found to be totally devoid of merit and a

clear abuse of process of Court and the same is dismissed with costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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