

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO. 1189 OF 2015
IN
ARBITRATION PETITION NO. 1201 OF 2015**

Johann M.K. Blumenthal GmbH & Co. .. Petitioner

Vs.

The Shipping Corporation of India Ltd. & Anr. .. Respondents

Mr.Bimal Rajasekhar a/w. Ms.Ritcha Sahay i/b Ashwin Shanker for applicant/petitioner.

Mr.Nimay Dave a/w. Ms.Parvathy Kottol i/b Bose and Mitra & Co. for respondent no.1.

**CORAM : K.R.SHRIRAM, J.
DATE : 25TH OCTOBER, 2016**

P.C.

1 This arbitration petition is filed under Section 42 of the Arbitration and Conciliation Act, 1996 to secure the arbitral award passed in favour of the petitioner in an international commercial arbitration. The Award is for a sum of US\$ 50 Million. The petition has been disposed of by an order dated 3rd July 2015 (Coram : R.D. Dhanuka, J.). While disposing the petition, the Court has referred in paragraph 7(b) as under :

(b) Insofar as the interim reliefs sought in the petition is concerned, the petitioner has already filed Notice of Motion (Lodging) No.829 of 2015 in the present petition for interim reliefs. Respondent no.1 has already made a statement before this Court on 20th March, 2015. Interim reliefs would be considered in the said notice of motion.

2 When the notice of motion was taken up for ad-interim relief on 16th July 2015, the statement of respondent no.1 that it does not have to pay any amount to respondent no.2 under any contract was recorded and it was also recorded that in case any amount is required to be paid by respondent no.1 to respondent no.2 in future, the petitioner would be given 72 hours prior notice. The said statement was continued till the disposal of this notice of motion.

3 On 18th October 2016, the counsel for respondent no.1 again reiterated that they do not owe any money to respondent no.2. The counsel for the petitioner tendered a copy of a letter from the Advocate of respondent no.1 dated 27th April 2015, wherein it stated that after finalization of statement of accounts, a sum of US\$ 2,55,171.40 was payable to respondent no.2. Respondent no.1 was directed to file an affidavit explaining this letter and also confirm that they do not owe any money to respondent no.2. Respondent no.1 has filed an affidavit of one Captain Kelath Devadas, Director (Technical and Off-shore Division) and Authorized Signatory of respondent no.1, affirmed on 21st October 2016. In this affidavit, respondent no.1 has explained that when the vessel m.v. Desh Vibhor was delivered by respondent no.2 to respondent no.1 on 28th March 2015, bunkers of the value of US\$ 255,171.40 were remaining onboard the vessel and

accordingly respondent no.2 demanded/called upon respondent no.1 to make payment of the price of the bunkers remaining onboard as at the time of delivery. It is also stated that as per the Ship-Building Contract, dated 17th November 2010 respondent no.1 had guaranteed for performance, materials and workmanship for a period of one year from the date of delivery and acceptance of the vessel and in view thereof, respondent no.1 withheld the sum of US\$ 255,171.40, by way of security for any damages/defects in relation to performance, material and workmanship of the vessel during the performance guarantee period. It is also stated that the vessel encountered various defects/deficiencies in relation to the performance, material and workmanship of the vessel which has been notified to respondent no.2 and respondent no.1 has carried out the repairs. It is also stated by respondent no.1 that, as on date, they are not holding to any sums payable to respondent no.2 because the amount that they had withheld, i.e., US\$ 255,171.40 has been adjusted against the costs incurred by respondent no.1 in rectifying and repairing the defects in performance, materials and workmanship under the Ship Building Contract. Respondent no.1 has also stated that respondent no.1 has claim against respondent no.2 towards the costs incurred by respondent no.1 rectifying and repairing the defects in performance and material of the vessel and they have not made any payment in any manner to respondent no.2 after the order dated 20th March 2015. In paragraph 7 of the

said affidavit, the respondent has stated as under :

“7 The Respondent No.1 states that no sums are payable by Respondent No.1 to the Respondent No.2 under the Ship-Building Contract, dated 17th November 2010 or under any other Contract.”

4 In view of these statements made in the affidavit, dated 21st October 2016 filed on behalf of respondent no.1, the question of granting any of the prayer sought in this notice of motion does not arise. At the same time, in the interest of justice, if at any point of time, respondent no.1 has to pay any amount to respondent no.2, they shall give notice of atleast 7 working days to the petitioner before releasing any such payment.

5 Shri Rajasekhar, counsel appearing for the petitioner submitted that under Order 21, Rule 46 of the Code of Civil Procedure, 1908 (CPC), respondent no.1 should be directed to furnish more particulars.

6 In my view, question of asking to file any particulars does not arise because a notice to garnishee is covered under Rule 46A of Order 21 and not under Rule 46C of CPC. The question of notice to be issued to garnishee would come up only when a debt of the garnishee has been attached under Rule 46 upon the application of the attaching creditor and there is nothing on record to show a debt of respondent no.1 has been attached by this Court.

I would add that when respondent no.1 states that they do not owe any money to respondent no.2, question of any such debt also does not arise.

7 The notice of motion disposed accordingly.

(K.R. SHRIRAM, J.)