

VPH

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY & VICE ADMIRALTY JURISDICTION

COMMERCIAL APPEAL (L) No. 4 OF 2016
IN
NOTICE OF MOTION (L) No. 843 OF 2016
IN
ADMIRALTY SUIT No. 17 OF 2016
WITH
NOTICE OF MOTION (L) No. 4 OF 2016

Siva Bulk Ltd.	...	Appellant (Orig. Plaintiff)
Vs.		
m. v. AODABAO & Anr.	...	Respondents (Orig. Defendants)

Mr. Ashwin Shankar a/w Bimal Rajasekhar & Ritcha Sahay, for the Appellant.

Mr. Prashant Pratap, Sr. Counsel a/w Hari Wadhwana i/b Ashwini Sinha, for the Respondent No. 1.

CORAM : V. M. KANADE, &
M. S. SONAK, JJ.

DATE : JUNE 13, 2016

PC.

1. The Appellant / Original Plaintiff has filed this appeal against an order dated 6th June, 2016 passed by the learned Single Judge in a motion, viz. Notice of Motion (L) No. 843 of 2016. By the

said order, the learned Single Judge was pleased to dismiss the motion and set aside the order of arrest of the vessel. No stay was granted by the learned Single Judge.

2. We have heard the learned counsel appearing for the Appellant and the learned senior counsel appearing for Respondent No. 1. We have perused the impugned order passed by the learned Single Judge.

3. The brief facts, which are relevant for the purpose of decision of this appeal, are as under.

. The Plaintiff – Siva Bulk Limited is a company registered in Singapore and engaged in the business of shipping. The details of the case have already been mentioned by the learned Single Judge in para 2.1 to 2.13 of the impugned order. Therefore, we do not propose to state these detailed facts and the said facts, therefore, stand incorporated in this order. According to the Plaintiffs, COSCO is the beneficial owner of Defendant No. 1 vessel. In support of the said contention, a reliance was placed on several documents, including the the certificates and the emails, etc. Ad-interim was granted by the learned Single Judge directing arrest of the vessel. The Defendants

filed notice of motion for vacating the ad-interim relief. It was denied that COSCO was the the beneficial owner of Defendant No. 1 vessel. In support of the said contention, reliance was placed on the subsequent reports given by Lloyds List Intelligence and Equasis.

4. The learned Single Judge had passed a detailed order after considering the submissions made by the Plaintiff and Defendants, and observed that the Plaintiff has failed to make out even a prima-facie case, and to discharge the initial burden of proof to show that the beneficial owner of Defendant Nos. 1 and 2 is COSCO. The learned Single Judge has observed that no equity minded court would countenance continuation of the order of arrest for a single day or more, in the facts and circumstances.

5. The learned counsel appearing on behalf of the Appellant has invited our attention to the various documents on which reliance is placed by the Plaintiff. He submitted that the plaint was amended and para 2A was incorporated. He submitted that it is case of the Plaintiff that Defendants were in habit of making such claims for the purpose of defeating claim of the creditors.

6. The learned counsel appearing on behalf of the Appellant submitted that COSCO is beneficial owner of m. v. HONG MA is Ao Hong Ma Shipping Co. Ltd. He submitted that in fact they are owner of the said vessel. It is not possible to accept the said submission. Firstly, there is no material on record to show that in fact Defendant No. 2 was owner of the said vessel. The certificates on which reliance is placed by the Plaintiff is of no assistance to the Plaintiff, because subsequently, the very same agencies retracted from the earlier report.

7. The learned counsel appearing on behalf of the Appellants submitted that if the order of arrest of vessel is vacated, irreparable loss would be caused to the Plaintiff, since there is no security available with the Plaintiff to recover the amount which is due and payable to them. He submitted that this Court may direct Defendant No. 2 to furnish adequate security and upon such security is furnished, order of arrest of vessel may be vacated.

8. On other hand, the learned senior counsel appearing for Respondent No. 1 submitted that Plaintiff had not even made out a prima face case, which show that Defendant No. 1 is owner of the vessel. He submitted that the learned Single Judge has, after going

through the material on record, had passed the strictures against conduct of the Plaintiff. He submitted that the Plaintiff had come to the Court with false case and filed false affidavit.

9. We have considered the submissions made by the learned counsel for the parties, perused the record, as also the impugned order. We are satisfied that the impugned judgment and order does not call for any substantial interference, considering the material on record.

10. The perusal of the plaint clearly indicates that except in the amended para 2A, it has been the case of the Plaintiff that vessel is beneficially owned by COSCO – China Ocean Shipping (Group) Company, Beijing. Thereafter the plaint was amended and for the first time in the said paragraph, a totally new case was made out that registered owner of Defendant No. 1, one AODABAO Shipping (H. K.) Ltd., Hong Kong a shipping company incorporated with a sole intention of defrauding the creditors of second Defendant. There is no material to show that COSCO is the beneficial owner of the vessel.

11. Moreover, two certificates which have been given by Lloyds List Intelligence and Equasis are even retracted lateron after they were confronted by Defendant No. 2 and in the subsequent

certificate, it was stated in terms that ownership of the vessel is unknown.

12. After going through the said judgment, we are of the view that the learned Single Judge has given cogent reasons before vacating the interim arrest, which was granted. It is well settled that if this Court comes to a conclusion that the findings recorded by the learned Single Judge are not perverse, and it is borne out from the record, then the Court should not interfere with such findings. In our view, there is overwhelming evidence to show that Plaintiff has not made out even a prima facie case. Even contention of the learned counsel appearing on behalf of the Plaintiff that the Court should lift the corporate veil to find out whether Defendant No. 2 is owner or not, also is of no assistance to the Plaintiff. The submissions which are now made across the bar are not borne out from the pleading. However, there is no material to support the said contention. We are not inclined to entertain this appeal.

13. However, we note that merely because the Respondents have made out a case warranting the vacation of arrest order, that by itself does not mean and imply that the Appellant had obtained

wrongful arrest of the vessel. The issue, as to whether arrest of the vessel was wrongful or not would, in the facts and circumstances of the case, require further adjudication. The observations on this aspect in the impugned order, are prima-facie in nature and therefore, there is no necessity for interfering with the impugned judgment and order or for expunging the said remarks. We have no doubt that the issue as to whether the arrest was wrongful or not will be considered by the learned Single Judge, at the stage of deciding the notice of motion, which the Respondents may take out in pursuance of the liberty granted in the impugned judgment and order. Accordingly, all contentions of all parties on this issue are kept open.

14. Accordingly, save and except as observed above, we dismiss the appeal. In view of dismissal of the appeal, the motion taken out therein viz. Notice of Motion (L) No. 4 of 2016 does not survive and the same is accordingly disposed of.

15. Learned counsel for the Appellant, upon dismissal of the appeal seeks continuation of arrest of vessel for a period of 7 days, which request is vehemently opposed by the learned counsel appearing for Respondent No. 1. However, in order to enable the

Appellant to challenge this order in the Apex Court, we consider it appropriate to continue ad-interim order of arrest of vessel for a period of 7 days only. It is made clear that no further extension will be granted.

16. Parties to act on an authenticated copy of this order.

[M. S. SONAK, J.]

[V. M. KANADE, J.]

Vinayak Halemath