

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

SUIT NO.836 OF 2013

Adani Enterprises Ltd.

....Plaintiff

V/s.

Delta Navigation WLL

....Defendant

Mr.Ashish Rao a/w Mr.Shailesh Poria i/by Economic Laws Practice
for plaintiff.

None for defendant.

CORAM : K.R.SHRIRAM,J

DATE : 17.11.2016

P.C.:-

1 By an agreement dated 15.4.2011 the plaintiff entered into a contract with one Adani Global Pte. Ltd., Singapore for the sale and purchase of 70000 MT + 10% at Vessel's Option of non coking coal in bulk of Indonesian origin at a price of US\$ 84 per MT CIF FO Dahej port.

2 The shipper, between 7.6.2011 and 14.6.2011, loaded 60,058 MT of non-coking coal in bulk of Indonesian origin on board the vessel mv RAK owned by the defendant at the designated load port and 45 bills of lading were issued. The vessel thereafter sailed to Dahej port. The shipper also raised invoice on the plaintiff for US\$ 5,034,782.26.

3 On 4.8.2011 plaintiff received a message that the said vessel mv RAK sank about 20 nautical miles off the coast of the port and harbour of Mumbai within the territorial waters of India. The plaintiff therefore lodged a claim on the defendant for loss of cargo and claimed, inter alia, compensation for the loss suffered. As the defendant did not pay the claim as made by the plaintiff, the plaintiff lodged the present suit. The amount claimed is US\$ 5,034,782.26 + legal cost and fees of US\$ 25000 + interest on the principal sum @ 17% p.a. from 4.8.2011 to 2.8.2012, totalling to US\$ 5,966,043.07/-.

4 The plaintiff obtained leave under clause-12 of this Court on 29.10.2013. The writ of summons was served upon the defendant on 6.8.2014 and the plaintiff filed an affidavit of service of one Datta Baban Ghonge affirmed on 30.1.2015 confirming service.

5 On 8.9.2016, the defendant was represented by advocates Rajesh B.Jain & B.Tyagrajan i/by Legal Juris and the counsel gives undertaking to file Vakalatnama on behalf of the defendant. This was at the time of hearing of a Notice of Motion bearing no.2092 of 2015 taken out by the plaintiff. Thereafter, on 20.9.2016 this court was informed by Mr.Jain that despite his repeated request, the defendant has not signed the Vakalatnama and prayed that he be discharged from the undertaking given to the court.

Mr.Jain was accordingly discharged.

6 Therefore, it is quite clear that the defendant has been served and is also aware of these proceedings. The defendant, however, has neither entered appearance nor filed the written statement. The defendant not having specifically denied the averments/allegations contained in the plaint, under Order 8 Rule 5 of the Code of Civil Procedure 1908, every allegations of fact in the plaint shall be taken to be admitted by the defendant.

7 In the circumstances, suit stands decreed in terms of prayer clause-(a) which reads as under :-

“For an order and decree in favour of the plaintiffs and against the Defendant in the sum of US\$ 5,966,043.07 (US Dollars Five Million Nine Hundred and Sixty Six Thousand Forty Three and Seven Cents only), as more particularly set out in the Particulars of Claim annexed hereto, together with interest at the rate of 18% per annum from the date of the institution of the suit till payment/realisation”.

8 Decree be drawn up accordingly.

(K.R.SHRIRAM,J)