

A No.3024 of 2016

The Hon`ble Mr Justice M.M.SUNDRESH

Owners and parties interested
in the vessel TINA, presently lying and
being at Kamaraj Port, Ennore T.N.
India through its owners and all
persons claiming to be interested in the

Vs

STX Corpn
STX Namsan Tower, No.98, Huam-ro
(Namdaemunnuo 5-ga) Jung-gu, Seoul,
Korea-100 958, Rep.by Aut.Sign. S.
Senthil

This application has been filed seeking to invoke the provision of
Order VII Rule 11 of CPC. The defendant in the suit has filed this application on
the following grounds:

1. There is no authorization in the eye of law for filing the suit;
2. The suit is not maintainable against the owner of the Ship in the absence of any
document to show that there exists a maritime lien;
3. The plaintiff has suppressed the factum of the proceedings pending before the
Seoul Central District Court at Korea involving the Charterer.

2. Learned counsel appearing for the applicant submits that the Time Charter
would show that the payment for bunkers is an obligation on the part of the
Charterer. Inasmuch as the Charterer has already indicated the said liability in
the Rehabilitation Proceedings at Korea, which also includes the payment for
bunkers supplied by the plaintiff herein, there is no cause of action that is
available. The learned counsel has placed reliance upon the following judgments:

- i. Epoch Enterrepots vs. M.V. Won Fu, (2003) 1 SCC 305
- ii. Order of High Court of Gujarat at Ahmedabad in Admiralty Suit No.20 of 2009
between Link Oil Trading Ltd. vs. M V St Peter (Formerly named ST Luke) decided on
15.01.2010.
- iii. Bombay High Court order in Gulf Petrochem Energy Pvt. Ltd. vs. M.T. Valor and

Ors., Manu/MH/0624/2015, decided on 15.04.2015.

3.The further submission of the learned counsel for the applicant / defendant is that the suit has been laid without due authorization as the authorization letter dated 09.03.2016 does not indicate any resolution backing it.

4.Learned Senior Counsel appearing for the respondent / plaintiff placing reliance upon the sale confirmation dated 28.09.2015 submits that the buyer is presumed to have authority to bind Vessel with a maritime lien. The same document has also been relied upon to show that the buyer includes the Charterer, Master and the Owner as the case may be. Learned Senior Counsel further submits that even the e-mail - bunkering note relied upon by the applicant makes a reference to the Manager of the Ship. The proceedings before the Court at Korea was initiated not by the plaintiff but based upon books of accounts maintained by the Charterer, the liability of the plaintiff was also included. The said proceedings is also concluded and therefore, there is no such proceedings pending as of now. In any case, the scope of the said proceedings is totally different from the one before this Court. Since the said proceedings involves the Charterer alone, which merely makes a note of the liability of the plaintiff, there is no suppression of fact involved. In any case, the question as to whether the fuel was used only for running of the Ship or for any other activities is a matter for trial and so is the case for the further use of the fuel after the period and resignation mentioned in the Time Charter. Hence, it is submitted that no interference is required and thus, the decisions relied upon do not have any relevance to the case on hand.

5.Order VII Rule 11 CPC has application to the original side only with respect to Clauses (a) and (d). Clause (a) deals with the existence of a cause of action and clause (d) deals with the existence of any other law with its implied or express prohibition for maintaining the suit. This Court is of the view that these factors are not available before the case on hand. After all, a cause of action consists material facts to be gathered on a reading of the plaint as a whole.

6.Prima facie, it appears through the plaintiff's sale confirmation dated 28.09.2015 that the suit is maintainable. The point no. 5 of the remarks, which is recorded herein, supports the case of the plaintiff:

``All sales are on credit or vessel. Buyer is presumed to have authority to bind vessel with and do not waive the seller's lien. This sale and delivery of the marine fuels described above is subject to supplier's and/or seller's General terms and conditions of sale for marine fuels. Please inform us if you require a copy.``

7.The question as to whether the fuel was used for what purpose is a matter for trial. The fuel can be used for different purposes. It is not the duty of the seller also to know the purpose for which the fuel is meant. The Captain has got different roles to play as seen from the Time Charter. The rights and duties of the Captain qua the Charter Party is restricted as against the owner. These are all matters for trial. Admittedly, the Rehabilitation Proceedings which were

pending before the Court at Korea are also over, as seen from the document dated 02.09.2016 from the Seoul Central District Court. It also appears that the scope is different more so when it was initiated not by the plaintiff herein. It is not as if in all cases this Court would have to be called upon to decide as to whether the maritime claim involves a maritime lien. Both the parties have relied upon various documents. These documents will have to be put in evidence through the examination of the parties. The applicant has not raised these contentions at the earliest point of time, though available in Application No.1579 of 2016 while getting the Vessel released in making a deposit of Rs.92,24,611/-. The decisions relied upon by the learned counsel for the applicant do not have an application on the case on hand. Therefore, this Court is not inclined to go into the larger issues sought to be raised at this stage, after all, the cause of action is a bundle of facts and the material fact has to be seen from the point of view of the plaintiff.

8.In such view of the matter, this application stands dismissed.

[M M S J]

04/10/2016

SRA