

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 10.11.2016

PRONOUNCED ON: 16.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.857 of 2010

The Board of Trustees of the Chennai Port Trust
represented by its Chairman, Rajaji Salai
Chennai 600 001

Plaintiff

Vs

Samudra Ship Management Services Pvt. Limited
by its Managing Director, Chennai-13

Defendant

Prayer:- This Civil Suit is filed under Order XXXVII Rule 2 and Order IV Rule 1
of Original Side Rules read with Order VII Rule 1 of CPC and Order XXXIV Rule
1 of CPC.

For Plaintiff : Mr.R.Karthikeyan

For Defendant : Set Exparte

JUDGEMENT

This civil suit has been filed to pass a judgement and decree, against
the Defendant:-

- a) directing the Defendant to pay to the Plaintiff a sum of
Rs.34,19,961.50/- (Rupees thirty four lakhs and nineteen
thousand and nine hundred and sixty one and fifty paise
only) with interest at 12% p.a. from the date of the plaint

till the date of realisation.

- b) directing the Defendant to pay the costs of the suit to the Plaintiff.

2. The case of the Plaintiff , in a nutshell, as set out in the plaint, is as follows:-

a. The Plaintiff is the Board of Trustees of the Chennai Port Trust, constituted under the Major Port Trusts Act, 1963. The Plaintiff own a dredger vessel by name Cauvery for the dredging purposes. The Plaintiff had called for tenders from the Ship Management Services to provide a Dredger Master to run the said vessel Cauvery. The Defendant was the highest bidder and an agreement was executed on 30.04.2004 between the Plaintiff and the Defendant for a period of one year. As per the clause 5 of the agreement dated 30.4.2004, if any damage is caused to the property of the Plaintiff or to other vessels berthed in the harbour due to the negligence of the Dredger Master, the Contractor shall be responsible for such damages. The contract was also renewed upto 19.3.2005. One C.A.Vedhamurthy was the Dredger Master, an employee of the Defendant and one Cyril Cruz was the Chief Officer, who was also an employee of the Defendant. On the midnight of 7.3.2005, when the vessel Cauvery was on second shift, the said vessel was manned by the said Dredger Master and the Chief Officer. While the vessel was returning after dumping the dredged material, the dredger came into contact with the North

Break Water knuckle at Ennore Port Limited. Realising the same, both the engines were put to full astern and the vessel moved smoothly and returned to the Chennai Port Trust on 8.3.2005 at 5.30 hours.

b. The said Dredger Master had submitted a report, stating that the vessel had suffered damages viz. (1) there was a dent at starboard side of the ship below water line, (2) air was escaping through the air vent of fore peak void compartment and (3) sounding of fore peak void space confirmed presence of water. Thereafter, the Indian Registrar of Shipping had conducted a preliminary survey of the Dredger Cauvery and found that the port bow indented and breached of 300mm x 300mm and the said damages shall not be carried out. The Chief Engineer of the Plaintiff had sent a letter, dated 16.3.2005 to the Defendant, stating that the cost of the damages would be recovered from the Defendant. The Plaintiff had also sent a letter dated 16.3.2005 to the Defendant, relying on Clauses 4 and 5 of the work order dated 4.1.2005, stating that the Defendant is responsible for the damages caused to the property of the Plaintiff. The Defendant had sent a reply dated 17.3.2005, denying his liability. Again by letter dated 30.3.2005, the Plaintiff called upon the Defendant to bear the cost of the repair and to rectify the damages occurred to the Dredger Cauvery. Again the Defendant by letter dated 3.5.2005, had denied its liability to pay. Hence, the Plaintiff, by letter dated 23.5.2005, had terminated the contract with the Defendant with effect from 23.5.2005, as they did not come forward to execute a fresh agreement.

c. Based on the report of the Indian Registrar of Shipping, fresh tenders were called for carrying out underwater repairs and in the tender process, the same was awarded to the highest bidder, namely, M/s.Penninsular Marine and Marpol Services. The IRS was monitoring the work done by the said Company and had submitted its reports dated 8.3.2005, 25.3.2005, 5.4.2005 and 26.4.2005. The said Company was paid a sum of Rs.5,97,521/- initially. However, the repairs were still incomplete. Thereafter, after estimating the repair cost at Rs.30 lakhs, fresh tenders were called for and the tender was awarded to M/s.Annam Steels for Rs.32,55,650/- and the work was commenced on 16.5.2005. In the mean time, the Defendant had sent a letter dated 8.6.2005, denying its liability. After monitoring the work done by M/s.Annam Steels, the IRS had submitted its reports dated 18.6.2005, 23.6.2005, 15.7.2005 and 25.7.2005. M/s.Annam Steels had completed the work on 25.7.2005. A sum of Rs.28,22,440.50/- was paid to the said Company and a sum of Rs.1,72,900/- is due and pending to be paid. Since the Plaintiff had to pay a sum of Rs.34,19,961.50/- to M/s.Penninsular Marine and Marpol Services and M/s.Annam Steels, the said sum is to be recovered from Defendant in view of the damage caused by the Defendant to the Vessel Cauvery. In spite of repeated demands, the Defendant did not come forward to comply with the same. In such circumstances, for recovery of the said sum, this civil suit has been filed with the reliefs as stated above.

3. Though the Defendant was served as early as on 12.11.2010, no written statement had been filed by the Defendant and hence, the matter was ordered to be listed under the caption of "Undefended Board". For non filing of the Written Statement, the Defendant was set exparte and Exparte Evidence was ordered by the order of this court, dated 22.06.2011.

4. One B.K.Baruah, the Dredging Superintendent, Chennai Port Trust had filed the proof affidavit for his chief examination and receipt of 28 documents as documentary evidence to prove the suit claim. In the Evidence, the said B.K.Baruah examined himself as PW.1 and one Capt.Syed Ahamedullah as PW.2 and marked Exs.P1 to P28 as documentary evidence in order to prove the suit claim.

5. Considering the oral and documentary evidence, viz. Ex.P1 to Ex.P28 adduced by PW.1 and PW.2, this Court is of the view that the plaintiff has proved the suit claim and hence, the Plaintiff is entitled for the reliefs, as asked for. Accordingly, this civil suit is decreed as prayed for with costs. Time for payment is three months.

16.11.2016

Index:Yes/No
Web:Yes/No
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1. List of Witnesses Examined on the side of the Plaintiff:-

1. P.W.1 - B.K.Baruah
2. PW.2 - Capt.Syed Ahamedullah

2. List of Exhibits Marked on the side of the Plaintiff:-

S.No	Exhibit	Description	Date
1	Ex.P. 1	Authorisation letter given by the Chairman of the Chennai Port Trust	29072011
2	Ex.P. 2	Authorisation letter given by the Chairman of the Chennai Port Trust	01072015
3	Ex.P. 3	Office copy of the work order issued by the plaintiff to the defendant	18032004
4	Ex.P. 4	Photocopy of the agreement between the plaintiff and the defendant	30042004
5	Ex.P. 5	Office copy of the work order issued by the plaintiff to the defendant	04012005
6	Ex.P. 6	Photocopy of the joining report of Capt.C.A.Vedhamurthy	25032004
7	Ex.P. 7	Photocopy of the report submitted by Capt. C.A.Vedhamurthy	08032005
8	Ex.P. 8	Office copy of the report given by Indian Registrar of Shipping	08032005
9	Ex.P. 9	Office copy of the letter issued by the plaintiff to the defendant	16032005
10	Ex.P. 10	Original letter issued by the defendant to the plaintiff	17032005
11	Ex.P. 11	Photocopy of the work order issued by the plaintiff to M/s.Peninsular Marine and Marple Services	17032005
12	Ex.P. 12	Photocopy of the report by IRS	25032005
13	Ex.P. 13	Photocopy of the letter issued by M/s.Peninsular Marine and Marple Services to the plaintiff	01042005
14	Ex.P. 14	Photocopy of the report by IRS	05042005
15	Ex.P. 15	Photocopy of the report by IRS	15042005
16	Ex.P. 16	Photocopy of the work order issued by the plaintiff to M/s.Annam Steels Private Limited	12052005
17	Ex.P. 17	Office copy of the letter issued by the plaintiff to the defendant	30042005
18	Ex.P. 18	Original letter issued by the defendant to the plaintiff	03052005
19	Ex.P. 19	Office copy of the letter issued by the plaintiff to the defendant	09052005
20	Ex.P. 20	Original letter issued by the defendant to the plaintiff	08062005
21	Ex.P. 21	Photocopy of the report by IRS	18062005
22	Ex.P. 22	Photocopy of the report by IRS	23062005
23	Ex.P. 23	Photocopy of the report by IRS	16072005
24	Ex.P. 24	Photocopy of the report by IRS	25072005
25	Ex.P. 25	Office copy of the reply given by the plaintiff to the defendant	06092005
26	Ex.P. 26	Office copy of the letter issued to the Principal Officer, Mercantile Marine Department	15102005
27	Ex.P. 27	Office copy of the letter intimating the defendant of the Bank in doing business dealings	30102007
28	Ex.P. 28	Photocopy of the circular issued by the Chairman,	15122005

1. List of Witnesses Examined on the side of the defendant:-

Nil

2. List of Exhibits Marked on the side of the defendant:-

Nil

16.11.2016

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C.V.KARTHIKEYAN, J.

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Pre-Delivery Judgement in
CS.No.857 of 2010

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<http://www.judis.nic.in>