

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 781 OF 2016
IN
SUIT NO. 392 OF 2016
ALONG WITH
NOTICE OF MOTION (L) NO. 1842 OF 2016

Mukesh Kumar ...Plaintiff
Versus
Bernhard Schulte Shipmanagement (India) Pvt
Ltd & Anr ...Defendants

Mr Dhananjay S Mishra, *for the Plaintiff and Applicant in*
NMSL/1842/16.

Mr Prathamesh Kamath, *a/w Ms Sumnani, i/b Bhatt Saldanha for*
Defendants Nos. 1 & 2 and Applicant in NMS/781/16.

CORAM: G.S. PATEL, J
DATED: 14th February 2017

PC:-

1. Notice of Motion No. 1842 of 2016 is filed by the Plaintiff seeking an amendment to the Plaint. The propose amendment seeks to join the owner of the vessel, Vale Shipping Holding Ltd, as a party defendant to the Suit and to make a necessary averment by amendment in the body of the Plaint.

2. Notice of Motion No. 781 of 2016 is by the 1st Defendant for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure 1908.

3. After some arguments from both sides, Mr Mishra for the Plaintiff seeks leave to withdraw the Suit with liberty to file a fresh Suit on the same cause of action. Having considered the cause of action pleaded, I will grant this leave with liberty as prayed.

4. In addition, since the Plaintiff is a seafarer who suffered a disability in the course of his employment (or so he claims), the entire court fee paid on this suit, the maximum *ad-valorem* fee of Rs 3,00,000/-, will be allowed to be adjusted against the court fee payable on the fresh Suit without any deduction. This is an exceptional case.

5. The Suit is allowed to be withdrawn with liberty to file a fresh Suit on the same cause of action. The court fee will be adjusted as directed.

6. In view of this, both Notices of Motion are disposed of in these terms with no order as to costs.

7. Mr Kamat for the Defendants points out that under an order dated 8th February 2016, the Defendants deposited an amount of Rs 22,00,000/- in court and the Plaintiff has subsequently withdrawn this amount. It goes without saying, therefore, that the Plaintiff must file the fresh suit, and which Mr Mishra undertakes will be

done, by 7th April 2017. The present 1st and 2nd Defendant will also be joined as party Defendants so that if there is any question of restitution or an adjustment in regard to the amount deposited and withdrawn this can also be addressed in the fresh Suit.

8. All rights and contentions are expressly kept open for the decision in the fresh Suit.

(G. S. PATEL, J.)