

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 24.01.2017

PRONOUNCED ON: 10.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.642 of 2010

City Tech by its Sole Proprietor
David V.Antony, Mumbai-1

Plaintiff

Vs

The Owner's and Parties interested in the
Vessel MV Asha Prestige, a Motor Vessel
registered under Vessel Flag: Marshall Island
Class, Russian Maritime, Call Sign: V4MQ4, GRT;15266
DWT;25410 WITH IMO NO.8318829
By its Master

Defendant

Prayer:- This Civil Suit is filed under Order VII Rule 1 of CPC read with Order II Rule 1 of the Original Side Rules read with Order 42 Rule 2 of the Admiralty Rules, for the reliefs as stated therein.

For Plaintiff : M/s.Sree Sun Associates

For Defendant : Mr.Nageswaran

JUDGEMENT

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

- (a) for a sum of Rs.2,20,310/- with interest of Rs.69,342/- at the rate of 18% p.a. from the date of invoice till the date of plaint and for subsequent interest till the date of realisation.

- (b) for arrest and sale of the Defendant Vessel MV ASHA PRESTIGE with engines, tackles, cranes, derricks, machinery and other paraphernalia and other articles on board the said Vessel in as is where is condition, presently lying in the Indian waters at the port of Chennai and for adjusting the proceeds of the sale towards the suit claim, interest and costs.
- (c) for direction to adjust the sale proceeds of the Defendant Vessel MV ASHA PRESTIGE against the suit claim as well as for actual cost of repatriation with interest and cost.
- (d) directing the Defendant to pay the costs of the suit to the Plaintiff.

2. The Plaintiff is a proprietary Concern, engaged in the business of Ship repairs and electrical, mechanical and structural engineering works. The Defendant is the cargo Vessel, upon which the Plaintiff had executed specified technical works and repairs on board on the Vessel during October 2008. At that time, the Defendant had called in at Porebander Port, Gujarat. At the request of the Superintendent of the Vessel and the enquiries from the Manager of the Vessel, the Plaintiff had raised a quotation, which was accepted and work was carried out with the help of technicians from the Kandla and Bombay Offices and under the supervision of an Engineer. The work done certificate was signed by the Master of the Ship and an invoice dated 13.10.2008 for Rs.2,20,310/- was raised and addressed to the Defendant. Despite repeated requests, the Defendant defaulted in making the payment. It had been stated that this has caused business loss to the Plaintiff. The Plaintiff had issued a legal notice dated 7.4.2010. However, there was no response and payment was not paid.

The suit had been filed at the time when the suit Vessel MV.ASHA PRESTIGE was planned to berth at Chennai on 16.07.2010 for the reliefs as stated above.

3. In the written statement filed by the Defendant, the averments in the plaint were denied. The claim for interest was also denied. It had been stated that the plaintiff did not execute specified technical works and repairs as instructed by the Defendant. There was no contractual relationship/privity of contract between the Plaintiff and the Defendant and that services were available for repair and maintenance of the Ship MV.ASHA PRESTIGE by M/s.Accord Maritime Services Limited, who acted as the Manager for the Defendant. Consequently, the claim should be launched with the said M/s.Accord Maritime Services Limited. It had been further stated that the Plaintiff had not given the break up of the work executed and the claim for the work executed by them. It had been denied that a quotation was raised and accepted by the Defendant. It had been further stated that the claim is not a maritime claim. It had been stated that the invoice dated 13.10.2008 is excessive. However, it had been stated in paragraph 9 that it was true that the Defendant had engaged the Plaintiff to do certain technical works and repairs and that it was further true that the Plaintiff executed certain works on board the Vessel during 2008, but the amount of Rs.2,20,310/- was denied by the Defendant. The Defendant had stated that they had incurred heavy loss of USD 10,000 per day for 8 days from 17.7.2010 to 24.7.2010, for which they reserved their right to file a counter claim. The Defendant had prayed that the suit should be dismissed.

4. Even though in the written statement, the Defendant had claimed that they would file a counter claim, they did not file any counter claim. Pursuant to the order of this court, the Defendant had also deposited the suit claim of Rs.2,58,545/- into the court and the said amount, according to the Office Note, is available to the credit of the suit, however, without any interest.

5. On the basis of the pleadings of the parties and other materials on record, by order dated 19.07.2011, the following issues were framed for determination:-

1. Whether there is no privity of contract between the Plaintiff and the Defendant as contended by the Defendant?
2. Whether the suit is bad for non joinder of necessary party in so far as M/s.Accord Maritime Services has not been made a party to the suit?
3. Whether the Plaintiff is entitled to claim a sum of Rs.2,20,310/- (Rupees two lakhs twenty thousand three hundred and ten only) towards repair charges for effecting repairs on board Vessel MV ASHA PRESTIGE?
4. Whether the suit claim is not a maritime claim?
5. Whether the invocation of Admiralty jurisdiction for the arrest of the Ship for recovery of the suit claim is proper?
6. Whether the Plaintiff is entitled to interest?
7. Whether the Plaintiff is entitled to recover cost of the suit from the Defendant?
8. To what other reliefs the parties are entitled to?

6. To substantiate the issues, the Plaintiff had examined the Sole Proprietor of the Plaintiff Company, David V.Antony as PW.1. In his proof

affidavit, he reiterated the averments made in the plaint and claimed that he had executed specified technical works and repairs on board during October 2008 when the Ship had called in at Porebander at Gujarat. He further claimed that this work was done at the request of the Superintendent of the Vessel and enquiries from the Manager of the Vessel. He had raised a quotation before commencement of the work and the same was accepted by the Defendant. The work was carried out by him with his team with the assistance of technicians from Kandla and Bombay Offices. The work done certificate had been signed by the Master. He had raised an invoice dated 13.10.2008 for Rs.2,20,310/-. He had stated that he had not been paid the said amount in spite of the legal notice being issued.

7. The Plaintiff had filed Ex.P1 to P10. Ex.P1 is the original invoice dated 13.10.2008. Ex.P2 is the copy of the legal notice to the owner of the Defendant Ship dated 7.4.2010. Ex.P3 is the copy of the email sent by the Plaintiff dated 3.10.2008 with respect to the work and the details of the technicians allotted to do the work. Ex.P4 is the copy of another email dated 16.10.2008 with respect to the work enclosing the certificate for work done and having seal of the Chief Engineer of the Defendant Vessel. Ex.P5 is another email dated 12.6.2009 claiming that the amount is due and a similar email message dated 16.6.2009 had been filed as Ex.P6 and another email dated 21.8.2009 as Ex.P7. Ex.P8 is the copy of the letter signed on behalf the Manager and owner of Vessel MV.ASHA PRESTIGE that the outstanding dues

would be settled between them. Ex.P9 is the copy of the email dated 12.2.2010. Ex.P10 is another email dated 15.6.2010. All the emails refer to the outstanding amount and their settlement of the bills. PW.1 was cross examined by the Defendant. However, the Defendant did not examine any witness or mark any document.

8. This court heard the learned counsel on either side and considered their submissions and also perused the materials placed on record.

9. Issue (1):- This issue relates to whether there is any privity of contract between the Plaintiff and the Defendant. In this connection, it is the case of the Plaintiff that they had, on the request of the Superintendent of the Vessel and enquiries from the Manager of the Vessel, had raised a quotation for the works to be carried out on board the Vessel MV.ASHA PRESTIGE when it was birthed at Porebander Port, Gujarat in October 2008. In this connection, the Defendant, in their written statement, at paragraph 9 had stated as follows:-

“It is true that this Defendant had engaged the Plaintiff to do certain technical works and repairs. .. While it is true that the Plaintiff executed certain works on board on the Vessel during 2008, it is denied that the Plaintiff is entitled to claim the sum of Rs.2,20,310/- as raised by them in their invoice. It is specifically denied that the Defendant defaulted in making the payment and that the non payment has caused severe financial and business to the Plaintiff.”

10. Ex.P1 is the copy of the invoice dated 13.10.2008. It had been issued by the Plaintiff. In the same, the name of the Vessel is given as MV.ASHA PRESTIGE. The owners were given as C/o.Accord Maritime Services Limited. The nature of the work had been given very clearly. This had

also been signed by the Master/Owner of the Vessel, namely M/s.Accord Ship Management Private Limited. The amount raised in the invoice was Rs.2,20,310/-. In this connection, a further reference to the paragraph 3 of the written statement of the Defendant shows as follows:-

“The Plaintiff's services were availed for repair and maintenance of the Vessel MV.ASHA PRESTIGE by M/s.Accord Maritime Services Limited, who acted as Managers for the Defendant. Therefore, any claim for the services rendered has to be lodged with the said M/s.Accord Maritime Services Limited. ”

11. It has to be stated that the Managers of M/s.Accord Maritime Services Limited had acted under the Defendant. They required the services for the Defendant Vessel. The Plaintiff had carried out the repairs. The Defendant is engaging in shifting the responsibility from its own right hand to its own left hand. This is unacceptable. As a matter of fact, the Plaintiff had issued a legal notice marked as Ex.P2, calling upon the Defendant to pay the entire charges of Rs.2,20,310/-. The Defendant had not paid the amount. It is also seen that the Plaintiff had directly and consistently sent emails to the owners and the parties interested in the Vessel MV.ASHA PRESTIGE. Even in Ex.P4, it had been specifically mentioned that invoices to be addressed to Master/Owners of the Vessel MV.ASHA PRESTIGE, C/o.Accord Maritime Services Limited. It is therefore seen that right through, the Plaintiff had been raising demands only to the Defendant, who are the owners and parties interested in the Vessel MV.ASHA PRESTIGE. In Ex.P5, email dated 12.6.2009, the Defendant had stated that the owners will be visiting and will discuss the issue with respect to the invoice which is pending. It is therefore seen that there is a direct privity of

contract between the Plaintiff and the Defendant and it is a fact that the Plaintiff had carried out repairs in the Ship MV.ASHA PRESTIGE for which the Defendant is liable to pay to the Plaintiff. This issue is answered in favour of the Plaintiff.

12. **Issue (2):-** This issue relates to non joinder of necessary parties in so far as M/s.Accord Maritime Services Private Limited is concerned. It is seen that M/s.Accord Maritime Services Private Limited is not the owner or the party interested in the Vessel MV.ASHA PRESTIGE. They were only the Managers and for any claim made against the Vessel, it is the owner, who has to make the payment. The Manager or the Master of the Ship would know the nature of the work to be done, but actually the payment has to be made by the owner of the Vessel. The owner of the Vessel has been impleaded as a party to the suit. Consequently, I hold that the suit is not bad for non joinder of M/s.Accord Maritime Services Limited. In fact, the Defendant is the proper and necessary party towards the suit claim. This issue is answered accordingly.

13. **Issue (3):-** It is the claim of the Plaintiff that they had done work under the directions of the Superintendent of the Ship and enquiries of the Managers of the Ship. During the cross examination of PW.1, dated 9.11.2012, PW.1 had stated, "Accord Ship Management Company, who are the Managers of the Ship requested by the Plaintiff to carry out the repairs". He had categorically stated that Ex.P1 invoice was raised in the name of the Master/Owners of the Vessel C/o.Accord Maritime Services Limited. PW.1 had

further stated that the work was done during the period 4.10.2008 to 10.10.2008. He had stated that Service Engineers were engaged by PW.1. With respect to Bills and Vouchers, he had stated that they were furnished along with Ex.P4. Even though during the cross examination, he had stated that supporting documents mentioned in Ex.P1 had not been filed, the nature of the work was that before commencement of the work, an assessment was given and the work was thereafter commenced and completed and executed on the Ship. Ex.P4 stated that between 4.10.2008 and 10.10.2008 for three shifts per day per persons who worked day and night for 105 shifts at the rate of Rs.1200, a sum of Rs.1,26,000/- was claimed and towards the charges for the Engineer for 4 days at the rate of Rs.5000 per day, a sum of Rs.20,000/- was claimed. Similarly towards travelling expenses, boarding and lodging expenses, plug 50 Metropolitan Magistrate dia 15 nos. at the rate of Rs.250 each, sums of Rs.8500/-, Rs.5500/- and Rs.3750/- were claimed and also flight charges for the Engineer from Mumbai and return back was claimed. The particulars were also enclosed in Ex.P4. It must be noted that Ex.P4 contains several technical details, which the court will be able to point out. For example, in one of the invoices attached along with Ex.P4, the following had been given:-

“CARGO HOLD NO.3 FWD HATCH COVER NOT OPENING:-

In formed by Capt. As per companies advise to carry out and rectify fault in the hydraulic system on no.3 FWD hatchover which was found not to be opening. Accompanied and started work on the same, with Ch.Engr. & E/R Fitter. Purged both the RAMS whilst in operating made of open and shut. No results and the RAMS not retracting completely when in down position.

(1) Opened Port and STBD throttle/regulating v/v dismantled the spindle of valve and made free for smooth functioning also freed the locking nuts on the spindle changed the "O" rings of the valve cleared of accumulation dust mixed with oil from system - blown through with air and boxed up and refitted."

It is thus seen from the detailed report Ex.P4 with respect to the nature of work carried that the work was actually done . The Plaintiff claims the amount in the suit for the work which was actually done. Ex.P4 had also been signed by the Chief Engineer of M/s.Accord Ship Management (P) Limited for M.V.ASHA PRESTIGE. The seal is also found. Consequently, I hold that the genuineness of the document cannot be questioned. Subsequently, the Plaintiff had been sending emails continuously seeking payment of the money. In this connection, they have filed Ex.P5 to Ex.P10. There had been absolutely no reply from the Defendant. I hold that the Plaintiff had substantiated the claim made. As a matter of fact, the Defendant had also deposited as stated above a sum of Rs.2,58,545/- towards the suit claim. I hold that the Plaintiff had by balance of probabilities and also through documentary evidence, proved the suit claim. Accordingly, this issue is answered.

14. Issues (4) and (5):- These issues have become redundant since on the deposit of the amount of Rs.2,58,545/- the Vessel MV.ASHA PRESTIGE had been permitted by this court to set sail from Chennai Port. It was placed under arrest by orders of this court. Consequently, at that point of time, when arrest was ordered and amount was deposited and thereafter, release order was passed by this court, the claim fell under the maritime claim.

Consequently, I hold that invocation of Admiralty jurisdiction for the arrest of the Ship was proper. These issues are answered accordingly.

15. Issue (6):- It is seen that the Plaintiff had actually executed the work in the Ship. They had raised an invoice in Ex.P1 as early as on 13.10.2008. The Defendant could have immediately paid the amount. In spite of legal notice and several emails, the Defendant had simply refused to pay the amount. The Defendant had not denied liability prior to the institution of the suit. They had not challenged or disputed the amount claimed. On the other hand, only because the Plaintiff had approached this court and filed this suit, the Defendant had come forward to deposit the amount into the court. Moreover, it is to be seen that the Defendant had actually deposited a sum of Rs.2,58,545/- towards the suit claim. It is the fault of the Plaintiff in not seeking the permission of the court to transfer the money into a fixed deposit. The amount does not carry any interest and it would be very unfair if the Defendant is now called upon to pay the interest on the said sum. I therefore hold that the Plaintiff is not entitled for any interest. However, the Plaintiff is entitled to interest from the date of the judgement till the date of realisation at the rate of 6% per annum.

16. Issue (7):- I hold that the Plaintiff had come to court based on the execution of work on the Ship MV.ASHA PRESTIGE. However, it is also true that they had not produced specific vouchers and bills. At any rate, this court had held that the Plaintiff is entitled for relief on the basis of the fact that the work was actually carried out. However, the Defendant has also shown

bona fide by immediately depositing the suit claim amount into the court.

Consequently, I hold that the Plaintiff is not entitled for any costs.

17. Issue (8):- Except the decree for a sum of Rs.2,58,545/- with interest as stated above, the Plaintiff is not entitled for any other relief.

18. In the result, this civil suit is decreed for a sum of Rs.2,58,545/- (Rupees two lakhs fifty eight thousand five hundred and forty five only) with interest 6% per annum from the date of decree till the date of realisation. No costs.

10.02.2017

Index:Yes/No

Web:Yes/No

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To:

The Record Keeper, VR Section, High Court of Madras

C.V.KARTHIKEYAN, J.

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Pre-Delivery Judgement in
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