IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION

JUDGE'S ORDER NO.3 OF 2018
IN
COMM. ADMIRALTY SUIT (L) NO.3 OF 2018

Shadiram and Sons Pvt. Ltd. ….Plaintiffs

Vs.

m.v. Riva Wind (IMO 9301196) ....Defendants

Mr. Prashant Pratap, senior advocate i/b. Mr. Ashwin Shaker for plaintiffs.
None for defendants.

CORAM : K.R.SHRIRAM, J.
DATE : 12th JANUARY, 2018

P.C.:

1 Not on board. Upon mentioning taken on board.

2 Plaintiff has moved for arrest of defendant vessel which is stated to be at the port and harbour of Tuticorin.

3 It is stated in the plaint that plaintiff is the holder and/or consignee and/or endorsee of eight bills of lading four dated 2nd August, 2017 covering a quantity of 14,486.13 mts. and four dated 29th September, 2017 covering a quantity of 15,366.735 mts. yellow peas in bulk issued on behalf of the Master of defendant vessel. The consignment was loaded at the port of Odessa, Ukraine for discharge at the port of Tuticorin and/or Hazira and/or Mumbai. Plaintiff's claim in the suit is for alleged loss and damage caused to plaintiff as a result of breach of contract of carriage by the owners of defendant vessel and delay in prosecuting the voyage from

Odessa to Tuticorin.

4 The vessel arrived at Tuticorin on 7th November, 2017. The IGM (Import General Manifest) of the vessel was filed on 4th November, 2017 by the vessel agents and bill of entry was filed by plaintiff on 6th November, 2017. Entry inwards and permission to unload was granted on 6th November, 2017.

5 It is the case of plaintiff that the customs duty, which was not in force in September, 2017 when the vessel was expected to otherwise arrive, came to be revised pursuant to a Gazette Notification published on 8th November, 2017 revising the import duty on peas from 0% to 50%. According to plaintiff, the normal time that would have taken for the vessel to make the voyage from Odessa to Tuticorin was about 45 days. It is stated that the vessel suffered an engine breakdown at the port of loading because of which she arrived only on 7th November, 2017 and that resulted in a delay of about 52 days.

6 It is plaintiff's case that because of the increase in customs duty they had to pay or rather they are exposed to customs duty in the sum of Rs.28,83,22,701.78. It is also plaintiff's case that because the vessel arrived about 52 days late, there was a fall in the market price of chickpeas which resulted in loss of market value of Rs.6,86,61,589/-. Plaintiff also stated

that the vessel for reasons not attributable to plaintiff got delayed in discharging its cargo and the owner of the vessel is claiming a sum of approximately Rs.5,35,20,547.50/- towards demurrage at Tuticorin from the seller of the cargo, who in turn is claiming it from plaintiff.

7 Mr. Pratap, counsel for plaintiff, for a query raised by the Court, in fairness stated that there is no document which guaranteed that the vessel would arrive at Tuticorin in 45 days. At the same time, Mr. Pratap submitted that the vessel should have arrived at Tuticorin within a reasonable period and the reasonable period cannot be 100 days which approximately is the number of days that the vessel took to reach to Tuticorin. Mr. Pratap relied upon the judgment of ***KOUFOS v/s. C. Czarnikow Limited***[1]. I am in agreement with the judgment that the vessel has to make a voyage within a reasonable time. What is reasonable is a question of fact. What cause the delay in making the voyage within a reasonable time also has to be looked into. Moreover, *prima facie* the second and third limb of the claim, viz., payment of 50% towards customs duty and loss in market value, I cannot accept as something that could have been foreseen by a party. I must hasten to add that this is only a *prima facie* view. Therefore, I cannot direct arrest of the vessel for these two items of claim, viz., 50% customs duty amounting to Rs.28,83,22,701.78/- and loss in market value of Rs.6,86,61,589/-.

1. 1969 (1) AC 350

8 So far as item one, i.e., demurrage of Rs.5,35,20,547.50/- is concerned, *prima facie* the claim appears to fall under the category of Article 1 Clause 1 (g) and/or (h) of the International Convention of Arrest of Ships, 1999. *Prima facie* case is made out to the extent that if plaintiff has to pay this amount to shipper, defendant vessel can be stated to be responsible and liable.

9 In the circumstances, I am inclined to grant order of arrest to secure the claim for loss due to demmurage payable only in the sum of Rs.5,35,20,547.50/-. If defendant is inclined to make cash deposit, then defendant has to deposit Rs.5,50,00,000/- with the Prothonotary and Senior Master, High Court, Bombay. If defendant is inclined to furnish a bank guarantee, then the bank guarantee should include interest on this amount of Rs.5,35,20,547.50/- at 6% p.a. from the date of the suit until payment/realisation plus 1% towards Sheriff's poundage plus Rs.10 lakhs towards costs.

10 Judge's Order for arrest of defendant vessel is signed separately but should be read down as per the figures mentioned in this order.

11 Mr. Pratap, counsel for plaintiff states that there is no caveat against arrest of defendant vessel. Statement accepted.

12 Plaintiff is at liberty to forward a copy of the communication from the Sheriff of Mumbai forwarding this order by fax/email/hand delivery/RPAD to Port and Customs Authorities.

13 The undertaking of plaintiff's advocates that the warrant of arrest will be served upon the Port and Customs Authorities within one week from today is accepted.

14 All to act on a copy of this order duly authenticated as true copy by the Associate of this Court.

(K.R. SHRIRAM, J.)