

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (L) NO.59 OF 2018
WITH
NOTICE OF MOTION (L) NO.83 OF 2018
WITH
NOTICE OF MOTION (L) NO.86 OF 2018
IN
NOTICE OF MOTION (L) NO.73 OF 2018

Cethar Vessels Ltd.	..Appellant.
V/s.	
m.v. Le Tonga & Ors.	..Respondents.

Mr.R.Subramaniam for the appellant.

Mr.Manoj Khatri with Mr.Arnob Ghosh and Mr.Kumar Kothari for respondent No.1.

Ms.Priyanka Patel for respondent No.3.

***CORAM: NARESH H.PATIL AND
NITIN W.SAMBRE, JJ.***

DATE : FEBRUARY 13, 2018

PC.:-

This appeal challenges the orders dated December 13, 2017 and January 24, 2018 passed by the learned Single Judge (K.R.Shriram, J.) in Admiralty Suit No.13 of 2011 and Notice of Motion (L) Nos.73 of 2018 and 75 of 2018.

2. The counsel appearing for the appellant submits that till the IRP appointed a lawyer, the earlier lawyer continued to appear. The counsel submits that on January 12, 2018 the appellant moved the learned Single Judge by Notice of Motion (L) No.73 of 2018 and 75 of 2018 for restoration. Both these Notices of Motion came to be dismissed by order dated January 24, 2018. The counsel submits that if the order of dismissal is not restored, the appellant would suffer irreparable loss and damage. The suit is pending since last six to seven years and the interim order of furnishing bank guarantee is in operation from 2011. The counsel also submits that the suit be restored and as a consequence the order of furnishing the bank guarantee be also restored.

3. The counsel appearing for the respondent opposed the relief prayed for by the appellant. It is submitted that the appellant was not diligent to prosecute the suit before the learned Single Judge. As regards the bank guarantee, the counsel submits that the bank guarantee expired on January 29, 2018. By an order dated January 29, 2018 the learned Single Judge directed the Prothonotary and Senior Master not to return the bank guarantee

for one week which period also expired on February 5, 2018. An ad-interim order directing not to encash the bank guarantee was also passed. The counsel further submits that the order of furnishing the bank guarantee need not be restored.

4. We have perused the record and the submissions advanced. We find that the appellant ought to have been diligent enough to represent before the Court with correct facts and appropriate instructions in the matter. The learned Single Judge noticed that the counsel appearing for the plaintiff was not instructed properly and hence the suit was dismissed. The counsel appearing for the appellant submits that the earlier lawyer for the plaintiff in the suit continued till IRP instructed them accordingly. After the dismissal of the suit, it is submitted by the counsel that IRP appointed another lawyer i.e. Mr.R.Subramaniam.

5. In the facts of the case, we find that the proceedings of the suit was pending before the learned Single Judge since last six to seven years. The suit was at the stage of recording of evidence. We are of the opinion that the dismissal of the suit would cause

irreparable loss to the appellant and, therefore, we are inclined to accept the request made by the learned counsel for the appellant for restoration of the suit. As regards interim order regarding furnishing of the bank guarantee is concerned, the said order gets restored as the substantive suit would be restored by this Court.

6. In case either of the parties need any clarification, etc. on the interim relief, they are at liberty to approach the learned Single Judge in this regard.

7. The learned counsel for the respondent submits that renewing the bank guarantee itself would impose substantial costs on the respondent.

8. In the facts of the case, we pass following order :-

- (i) The suit is restored along with the orders passed directing furnishing the bank guarantee by the learned Single Judge subject to payment of costs of Rs.25,000/- by the plaintiff which will be deposited with the Prothonotary and Senior master within a period of two weeks from today;

- (ii) In case of deposit of the costs by the appellant, the respondent is permitted to withdraw the same;
- (iii) In case the appellant-plaintiff fails to deposit the costs within the stipulated period, the appeal shall stand dismissed without further reference to the Court.

9. Upon request made by the learned counsel appearing for the respondents, four weeks time is granted to renew the bank guarantee.

10. The appeal stands allowed in the above terms.

11. In view of disposal of the appeal, all Notices of Motion also stand disposed of.

(NITIN W.SAMBRE, J.)

(NARESH H.PATIL, J.)