IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ADMIRALTY & VICE ADMIRALTY JURISDICTION

ADMIRALTY SUIT NO.14 OF 2014

Meghana Metallurgical & Marine Works Pvt. Ltd.)....Plaintiff
V/s.
Kamal XXIX and Ors.)....Defendants

Mr.Prasad Shenoy a/w Mr.R.P.Shirole i/by Amin Kherada for plaintiff.
Ms.Anjala Parveen i/by Vidhi Partners for defendant no.3.

CORAM : K.R.SHRIRAM,J
DATE : 9.3.2018.

PC :-

1 This suit was filed by plaintiff claiming a sum of Rs.14,05,111/- plus Rs.20,000/- being interest @ 12% p.a. upto the date of suit totaling to Rs.14,25,111/-.

2 Plaintiff carries on business as a metallurgical and marine works company. Defendant no.2 who are the owners of defendant no.1-vessel had engaged the services of plaintiff to carry out repair works i.e., supply and installation of propellers on defendant no.1 as Hughes Dry Docks, Mumbai.

3 Defendant no.2 had ordered for supply of two numbers of

propellers and installation of the same on defendant no.1 along with propeller bedding to the shaft with drilling, tapping etc.. The terms of completion of work included inspection and certification by attending IRS (Indian Register of Shipping) a Surveyor.

4 Plaintiff was also subsequently engaged for supply of spacer ring in MB as per size at site for STBD on defendant no.1. The purchase order dated 16.6.2016 is at Exh.P1/4. Plaintiff carried out the work and the IRS Surveyor has certified the work as per Exh.P1/6 and Exh.1/7. Before commencing the work, plaintiff raised proforma invoice dated 27.8.2011 for Rs.28,99,036/- (Exh.P1/8). Against the invoice, defendant no.2 vide its letter dated 1.1.2013 (Exh.P1/11) requested plaintiff to release the propellers upon receipt of initial payment of Rs.15,00,000/- paid through RTGS and further assured that the balance amount of Rs.13,99,036/- shall be paid by 10.1.2013. Plaintiff acceded to the request of defendant no.2.

5 It is also the case of plaintiff that, plaintiff in addition to the aforementioned work, defendant no.2 placed further purchase order for delivery of spacer ring (1 no.) for Star Board Propeller amounting to Rs.6,075 which was inclusive of taxes and other applicable charges.

6 Plaintiff carried out the work as required. Exh.P1/12 and Exh.P1/13 are the delivery challans. The tax invoice for the propeller and spacer ring are at Exh.P1/14 and Exh.P1/15. Exh.P1/16 is the e-mail by plaintiff to defendant no.2 seeking payment of the balance amount of Rs.14,05,111/-.

7 On 26.8.2013 the plaint was lodged. On 27.8.2013 in another Suit being Admiralty Suit No.22 of 2014 (Admiralty Suit (L) No.578 of 2013) defendant no.1-vessel was sold and the sale proceeds are lying with the Prothonotary & Senior Master/Admiralty Registrar, High Court, Bombay. Defendant nos.1 & 2 though served, did not appear and no written statement has been filed by defendant no.2 for itself and as owners of defendant no.1. Therefore, the suit as against defendant nos.1 & 2 is proceeding ex-parte/un-defended suit. The suit as against defendant nos.1 & 2 was transferred to the list of un-defended suit by an order dated 20.12.2014.

8 Defendant pursuant to an intervention application was joined as defendant no.3. Defendant no.3 filed written statement dated 31.7.2014. Issues were settled on 20.2.2015 as under :-

> (i) Whether plaintiff proves that Defendant No.2 has engaged the service of Plaintiff for supply of Propellers for installation on first Defendant vessel ?
>
> (ii) Whether the Plaintiff proves that Defendant Nos.1 and 2 are liable to pay a sum of Rs.14,25,111/- together with interest at the rate of 12% p.a. to the Plaintiff ?
>
> (iii) Whether the Plaintiff proves that the Plaintiff has a maritime claim against the first Defendant Vessel ?
>
> (iv) What decree/order ?

9 Plaintiff led evidence of one witness Kamlesh Mungilal Jain (PW 1) and the examination-in-chief was taken on record and documents marked on 12.6.2017. A total of 17 documents were received in evidence. Defendant no.3, the only defendant appearing, as noted in the order dated 1.7.2017, declined to cross-examine PW-1. Therefore, the evidence of plaintiff was closed.

10 Defendant no.3 filed an evidence of one Vijay Kumar (DW-1) and the examination in chief was completed on 20.12.2017. Plaintiff declined cross-examination. Defendants closed their evidence on 20.12.2017.

11 Mr.Shenoy learned counsel appearing for plaintiff submits that the claim of plaintiff is for supply of necessaries because what the

plaintiff supplied were 2 propellers and rings required for installation of those propellers. Counsel submits that the propeller was a necessity for a ship to sail. Counsel states that the propeller is a part of the ship and therefore, it is necessary supply to the ship.

Ms.Parveen for defendant no.3 agrees with Mr.Shenoy.

12 The International Convention On Arrest of Ships 1999 defines Maritime claim. It lists 23 heads of claim from Article 1(a) to (v). Article 1(l) provides "goods, materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance." Therefore, maritime claim means a claim arising out of materials or equipments (including containers) supplied to the ship for its operation, management, preservation or maintenance. Propellers are equipment supplied to the ship for its operation. Therefore, in my view, the claim of plaintiff will certainly be a maritime claim. This answers issue no.3.

13 So far as issue nos.1 & 2 are concerned, plaintiff has led the evidence and also produced the documents in support. Defendant nos.1 & 2 have chosen not to remain present. So far as defendant

no.3 is concerned, it chose not to cross-examine PW-1. Therefore, this Court has to accept the evidence of PW-1. Moreover, Ms.Parveen counsel for defendant no.3 at the outset, submitted that defendant no.3 submits to the decree being passed in favour of plaintiff as prayed for in the plaint.

14 Notwithstanding defendant no.3 conceding the case, having considered the pleadings, the evidence led by plaintiff and the documents received in evidence, I am satisfied that plaintiff is entitled to a decree in the sum of Rs.14,05,111/-. Plaintiff has also claimed interest in the suit @ 12% p.a. Mr.Shenoy concedes that the tax invoices raised do not indicate any interest to be paid in case of non payment. Mr.Shenoy also concedes that no demand notice was sent to defendant nos.1 & 2 claiming interest. Therefore, Mr.Shenoy in fairness states that plaintiff will only be entitled for interest from the date of the suit until payment/realization. Mr.Shenoy leaves it to the Court to determine the rate of interest. Ms.Parveen submits that since defendant no.3 has agreed to grant of a decree as prayed for, the Court may fix the rate of interest.

15 It has to be noted that plaintiff has supplied the materials propellers and spacer rings at his cost. Certainly plaintiff would have

blocked his working capital in procuring these materials to supply to defendant no.1-vessel. In my view, it will be in the fitness of things to award interest @ 12% p.a. to plaintiff from the date of the suit until payment/realization. Plaintiff will also entitled to cost in the sum of Rs.50,000/- as against defendants, viz., Rs.25,000/- against defendant nos.1 & 2 and Rs.25,000/- against defendant no.3.

16 Issues are answered accordingly. Suit stands decreed and accordingly disposed.

(K.R.SHRIRAM,J)