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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1719 OF 2018
IN
COMMERCIAL ADMIRALTY SUIT NO. 147 OF 2016

M. V. Orissa and Anr ... Applicant

In the matter between

NHL Development Co. Ltd. ... Plaintiff

vs.

M. V. Orissa and Anr. ... Respondents

Mr. Bimal Rajasekhar a/w. Ms. Ridhi Nyati i/b. Ashwin Shankar for the Plaintiff.

Mr. Prakash Shinde a/w. Ms. Niyati Merchant and Ms. Swati Despande i/b. MDP & Partners for the Defendant.

CORAM : A.K. MENON, J.

DATE : 2nd NOVEMBER, 2018

P.C.

1. Learned counsel for the plaintiff states that parties have arrived at a settlement and that neither party has any claim against the other. He seeks withdrawal of the suit unconditionally.

2. On behalf of the defendant no. 2, Mr. Shinde submits that the defendants had provided a bank guarantee in a sum of Rs.35,10,00,000/- pursuant to the order dated 17th October, 2018 and that by virtue of the suit being settled the bank

guarantee is now liable to be returned by the Prothonotary and Senior Master. He therefore seeks return of the bank guarantee in order to enable him to get the same discharged from the bank.

3. The records indicates that on 16th August, 2016, on urgent mentioning, the defendant vessel was arrested. Warrant of arrest was dispensed with. However, thereafter on 18th August, 2016 the order dated 16th August, 2016 came to be modified and a statement was made on behalf of defendant no. 2 that the defendant no. 1 vessel would only sail only within the territorial waters of India and no encumbrance will be created. Subsequently on 17th October, the defendant was also relieved of his statement recorded on 18th August, 2018 in view of the bank guarantee being provided. Today it is not in dispute that the suit having been settled, the bank guarantee is to be returned to the defendant. The formal order vacating the arrest remained to be passed.

4. Accordingly, I pass the following order :

- (i) Suit is allowed to be withdrawn.
- (ii) The Bank Guarantee No.1637618BG0000764 dated 29th August, 2018 for Rs.35,10,00,000/- deposited with the Prothonotary and Senior Maser shall be returned by the Prothonotary and Senior Master to the defendants
- (iii) The order of arrest dated 16th August, 2016 is hereby vacated subject to payment of poundage. Advocate for the plaintiff submitted that the amount of USD 4500 (Rs.3,24,000/-) has been paid as poundage to the Sheriff of Mumbai.

- (iv) In view of the above subject to encashment of the cheque, the suit is allowed to be withdrawn.
- (v) The instrument of release is dispensed with.
- (vi) Sheriff of Mumbai shall issue appropriate letters confirming release of the vessel from arrest to the Port and Customs Authorities.
- (vii) Suit is disposed in the above terms. In view of disposal of the suit, notice of motion is also disposed.
- (viii) Parties to act on an authenticated copy of this order.
- (ix) Refund if any as per rules.
- (x) No costs.

(A.K. MENON, J.)