

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.01.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.108 of 2015

Indo Fisheries,
Rajiv Gandhi Nagar,
Harekala,
Manglore - 574 181.
rep.by its
Power of Attorney Holder Mr.Ravikumar.B .. Plaintiff

Vs.

1.Owners and Parties interested in the Vessel
'M.V.CMA CGM AZURE'
Presently within territorial waters of India, in Chennai Port limits
and rep by her Master.

2.CMA CGM,
Head Office: 4, quai d' Arenc-13002,
Marseille, France.
Rep. By their Agents
CMA CGM Agencies (India) Pvt Ltd.,
Commerce Centre, 1st Floor,
Kulur Kavour Road, Kulur,
Mangalore - 575 013. .. Defendants

This Civil Suit is preferred, under Order XLII Rule 2 of Original Side Rules praying,

A) Let the judgement & decree for Rs.1,09,05,736.00 (Rupees One crore ine lakhs five thousand seven hundred and thirty six only) be passed against the Defendants and further they be ordered/directed to pay the Plaintiff the aforesaid amount with 18% interest from the date of suit till the date of payment and realization.

B) Let the 1st Defendant vessel 'M.V.CMA CGM AZURE' be detained/arrested/restrained from sailing away from the Port limits of Chennai/Indian Territorial waters by an order of arrest/injunction, together with her hull, tackle, engine, machinery, spares, gears, apparel, paraphernalia, furniture, articles, things on board, etc.,

C) That the 1st Defendant vessel 'M.V.CMA CGM AZURE' be ordered and decreed to be sold through court and the amounts realized be directed to be paid to the plaintiff towards the suit claim made in prayer (a) above.

D) Any other relief (s) may kindly be granted in favour of the Plaintiff.

For Plaintiff : Ms.Anitha Thomas

For Defendants : No appearance

JUDGMENT

Read this in conjunction with and in continuation of earlier proceedings of this Commercial Division dated 13.12.2017, which reads as follows:

"Ms.Anitha Thomas, learned counsel on record for the plaintiff is before this Court.

2.It is submitted by the learned counsel for plaintiff that this suit has been lodged on the Original Side of this Court in the admiralty jurisdiction.

3.It is her further submission that the plaintiff exported a large consignment of fish to Miami, USA and the consignment was carried by a vessel viz., 'M.V.CMA CGM AZURE', which is 1st defendant in this suit. To be noted, the owner of the said vessel has been arrayed as 2nd defendant in this suit.

4.It is the specific case of the plaintiff that the consignment was not carried properly, the consignment was not stored at requisite temperature, the consignment went bad, resulting in rejection of the consignment by the purchaser.

5.On the above basis, the instant suit has been filed claiming over Rs.1.09 crore with attendant and ancillary prayers inter-alia for arrest of the aforesaid vessel.

6.It is submitted by the learned counsel for the

plaintiff that though she obtained an interim order for arrest of the aforesaid vessel, the same could not be enforced as the vessel sailed out of Indian territorial waters. To be noted, the plaintiff is in Manglore and the 2nd defendant-firm, which is the owner of the vessel, is also in Manglore.

7. With regard to jurisdiction of this Commercial Division, in the light of the factual matrix as set out supra, it is submitted by the learned counsel for the plaintiff that this suit will qualify as 'commercial dispute' under Sub clauses (iii) & (i) of Section 2(1)(c) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (4 of 2016), (hereinafter referred to as 'Act 4 of 2016' for brevity).

8. As aforesaid, the value of the suit is over Rs.1.09 crore and therefore, the suit qualifies as of 'specified value' under Section 2(1)(i) read with Section 12 of Act 4 of 2016.

9. Therefore, this suit relates to a 'commercial dispute' of 'specified value' and therefore, this Commercial Division has jurisdiction to entertain the suit in the light of Section 7 of Act 4 of 2016.

10. This Commercial Division express its intention to exercise jurisdiction over this suit. To be noted, jurisdiction is inherent and this is an expression of the intention of this Commercial Division to exercise jurisdiction over this suit.

11. Under aforesaid circumstances, in the light of the scenario as aforesaid and in the peculiar circumstances, wherein the plaintiff is in Manglore and the owner of the vessel viz., 2nd defendant is also in Manglore, the learned counsel for the plaintiff seeks a short accommodation, stating that there is a possibility of the 1st defendant-vessel

coming into the Indian Territorial Waters shortly. It is also submitted by the learned counsel for the plaintiff that if the same does not happen in the next one month, she will withdraw the suit.

On the basis of the above submissions of the learned counsel for the plaintiff, Registry is directed to list this matter on 17.01.2018.”

2. It will be evident from the aforesaid extract that I have set out the factual matrix of the case in a nutshell.

3. What is of utmost relevance is paragraph 11 of my earlier proceedings dated 13.12.2017. Today, Ms.Anitha Thomas, learned counsel on record for the plaintiff states that the aforesaid vessel has not come into the Indian Territorial Waters.

4. Under such circumstances, it is the further submission of learned counsel for the plaintiff that she will be left with no option other than moving the jurisdictional Court , i.e., Mangalore or a Court having territorial jurisdiction irrespective of where the vessel is.

5. On the basis of this aforesaid fair submission, learned counsel has also made an endorsement in the suit file, which reads as follows:

“The suit may be dismissed as withdrawn with permission to file the same before the Court of proper Jurisdiction”

6. The learned counsel for the plaintiff is permitted to withdraw this suit with leave to move the Jurisdictional Court, i.e., Mangalore or any other Court having territorial jurisdiction irrespective of the location of the vessel, if so advised. Though obvious, it is made clear that it is open to the plaintiff to seek benefit available to the plaintiff under Section 14 of the Limitation Act, 1963 and also move an application under Section 14 of the Limitation Act, 1963, if so advised and if it becomes necessary in the jurisdictional Court.

7. With regard to the Court fee paid herein, Registry is directed to refund the Court fee as per applicable rules by way of an instrument in the name of the plaintiff.

8. With leave as aforesaid, the suit stands dismissed as withdrawn.

24.01.2018

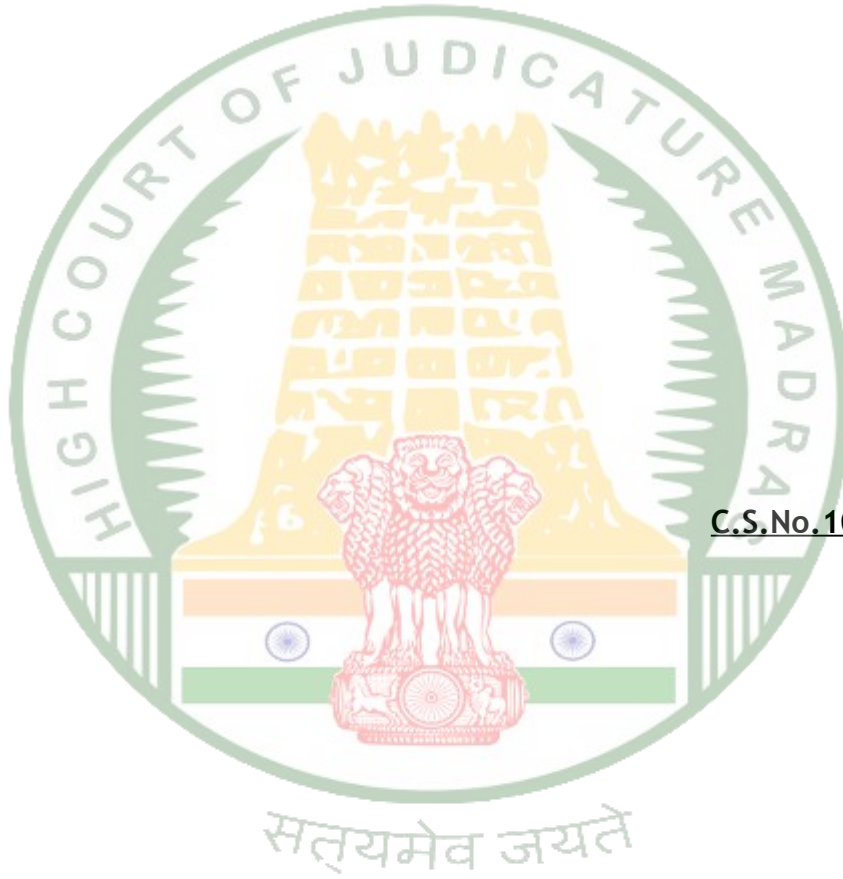
Speaking/Non-Speaking order

Index : Yes/No

klt/vsm

M.SUNDAR, J.

klt/vsm



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