IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 03.09.2018

JUDGMENT PRONOUNCED ON : 24.10.2018

CORAM

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

O.S.A.No.256 of 2016

Owners and Parties interested in the Vessel
TINA, a vessel flying at Liberian flag together with
Her hull, tackle engines, machinery, paraphernalia
and all her appurtenant on board presently lying and
being at Kamarajar Port Ltd., Ennore, Tamil Nadu, India
Through its owner and all persons claiming to be interested
in the Vessel and is represented by its Master
.. Appellant/Defendant

Vs.

STX Corporation
STX Namsan Tower
98, Huam-ro (Namdaemunnuo 5-ga),
Jung-gu
Seoul, Korea – 100 803
Represented by its Authorised Signatory Mr.S.Senthil
.. Respondent/Plaintiff

Prayer : Original Side Appeal filed under Order XXXVI Rule 9 of O.S. Rules read with Clause 15 of the amended Letter Patent 1865, praying to set aside the order dated 04.10.2016 passed by the learned Judge in Appln.No.3024 of 2016 in C.S.No.133 of 2016 and the appeal be allowed.

For Appellant : Mr.P.Giridharan
and Mr.Dominic S.David

For Respondent : Mr.T.Poornam &
Ms.Sharmaya Vaidhiyanathan

JUDGMENT

[Judgment of the Court delivered by N.SESHASAYEE, J.]

The order now under challenge is the one dated 04.10.2016 in A.No.3024 of 2016 in C.S.No.133 of 2016, by which the learned Single Judge had dismissed an application filed by the appellant/defendant for rejecting the plaint.

2. The material facts on which the respondent/plaintiff has rested its cause of action for instituting the suit may now be stated:

- The Vessel M.V.Tina was owned by a certain M/s.Ocean Front Maritime Co. Ltd., Liberia, and is under the care of Athenian Ship Management Inc., Greece. On 23.09.2015, plaintiff had entered into a sales contract with the defendant for the sale of 492.672 MT of residual marine fuel, otherwise known as Bunker Oil. The plaintiff had confirmed its willingness to supply the said quantity of bunker Vide its letter of confirmation dated 23.09.2015, and on 28.09.2015, the contracted quantity of bunker was supplied to the said vessel at Singapore Port through its network of supplier namely M/s.Equatorial Marine Fuel Management Services Pvt. Ltd. The Bunker Delivery Receipt No.36432 was raised, in which the Master/Chief Engineer of the Vessel had signed against the rubber stamp of the Vessel. On the same day (28.9.2015) an invoice for U.S.$115,038.91 too was raised. The time for payment was thirty days, and in case of default, an interest at the rate of 2% p.m is chargeable on the sum on pro-rated basis. The sum was not paid.

- It is in these circumstances, while the Vessel M.V.Tina had arrived at Kamaraj Port, and within the territorial waters of India, the suit was laid for realising a sum of U.S.$137,250.58 (interest included) which is equivalent to Rs.92,24,611/- at the exchange rate of 1 U.S.$ = INR 67.21. It was laid against the owners/Parties interested in the vessel.

3. The defendant, the owners/parties interested in the Vessel has come forward with an application A.No.3024 of 2016 for rejection of the plaint. In the affidavit filed in support of the application, it is averred:

- The Vessel M.V.Tina is owned by M/s.Ocean Front Maritime Limited, Liberia. It is under the care of Athenian Ship Management Inc., Greece. Under a Charter Party dated 23.09.2015, the Vessel was chartered by M/s. S.W.Shipping Company Limited, Korea for a period of 20-25 days. The said Charter Party, in unambiguous terms has provided, that the Charterer (S.W.Shipping Company) was responsible for payment of bunker supplied to the Vessel. Therefore, the owner of the vessel cannot be held liable. Indeed, Vide its email dated 24.09.2015, the Charterers of the Vessel itself had intimated the defendant/owner of the Vessel about the physical supply of the bunker by the bunker supplier (the plaintiff). Therefore, the supply of bunker was contracted by the Charterer and bunker too was supplied only when the vessel was with the Charterer. Therefore, the owner of the ship cannot be fastened with any liability.

- Secondly, the nature of the claim is only a maritime claim and not a maritime lien. Therefore, the charterer of the vessel cannot bind the owner of the Vessel for the payment towards bunker supplied. Further, the mere signature of the captain of the ship in the bunker delivery receipt will not amount to an acknowledgment of liability but a mere acknowledgment of the fact that bunker has been supplied. Indeed, the plaintiff had issued a notice dated 30.11.2015 to the owner of the vessel and its Managers claiming the value of the bunker supply with interest, and Vide its reply dated 01.12.2015, the same was denied. This fact has been deliberately suppressed in the plaint.

4. In its counter, the plaintiff had contended that on the institution of the suit, the ship was arrested, following which, the defendant/owner of the ship had deposited a sum of Rs.92,24,611/-(equivalent to U.S.$ 137,250.58) as security, and had obtained the release of the vessel. The thrust in the counter pertains to some bankruptcy proceedings pending before the Competent Court in Korea for rehabilitation of S.W.Shipping Co. (who the defendant has termed as its Charterer). On 23.09.2015, the plaintiff had agreed to supply bunker only to the defendant vessel and this has been specifically mentioned in the sale confirmation dated 23.09.2015, the defendant therefore accepted the terms of contract for supply of bunker, and hence cannot resile from it. So far as signing the delivery receipt by the captain of the ship is concerned, he has signed it with intention to bind the ship and has acknowledged to the liability for payment of value of the bunker as well. The application for rejection does not conform to the requirements of Order 7 Rule 11 CPC and hence shall be dismissed.

5. The appellant had filed a rejoinder reiterating substantially the facts but given the scope of petition, they are not reproduced.

6. The learned Single Judge in his order had indicated that most of the issues raised by the defendant are triable in nature, and on that ground has rejected the plaint.

7. The learned counsel for the appellant's argument chiefly revolved around few documents and their effect. He argued:

- First, the Charter Party/Time charter dated 23-09-2015, between the Oceanfront Maritime Co Ltd., the owner of the ship and SW Chipping Co., Ltd.,, the Charterer . The condition (a) stipulates that "the Charterer shall provide and pay for all the fuel except as otherwise agreed, Port Charges, ….. including those at Spore for bunkering." The obligation to pay for the bunker therefore is on the charterer and not on the owner of the vessel.

- Next is a mail from the respondent to the charter dated 23-09-2015. It is a letter of confirmation for supply of bunker at the Singapore Port, and that it would be supplied physically through M/s Equitorial Marine. And in Column 7 thereof, buyer of the bunker is denoted as indicating the charterer of the appellant herein.

- Third, the Commercial invoice dated 28-09-2015 is raised by the respondent only on the charterer of the ship at the relevant time.

These documents categorically indicate that the bunker was supplied by the respondent, when the vessel was under a charter party with the charterer, and in terms of the Charter party only the charterer is liable for the supply of fuel, and hence the claim is misaddressed and it ought to be made only to the charterer of the vessel. Necessarily, there is no cause of action against the appellant and the next logical step is to reject the plaint for non disclosure of cause of action against the appellant. For fortifying his argument, the learned counsel placed reliance on Sunil B.Naik Vs. Geowave Commander, (in Civil Appeal Nos.2617 & 2618 of 2018 arising out of SLP (Civil) Nos.18845 & 18899 of 2013 before the Hon'ble Supreme Court of India) [MANU/SC/0230/2018] ; Gulf Petrochem Energy Pvt. Ltd., and Ors. Vs. M.T.Valor and Ors.(Notice of Motion (L) Nos.581 & 805 of 2015 in Admiralty Suit (L) No.94 and 240 of 2015 before the High Court of Bombay) [MANU/MH/0624/2015]; M.V.Flag Mersinidi A foreign flag vessel and Southport Spirit SA and Georim Oil Corporation Vs. M.V.Flag Mersinidi, J.H.Shipping Company Limited and South Spirit SA (Notice of Motion No.763 of 2013 in Admiralty Suit No.8 of 2013 before the High Court of Bombay) [MANU/MH/0440/2014], the judgment of the High Court of Gujarat at Ahmedabad in Admirality Suit No.20 of 2009 in Link Oil Trading Ltd. Vs. M.V.ST Peter (Formerly Named ST Luke) and Raj Shipping Agencies Vs. M.V."Bunga Mas Tiga" and Anr. (Notice of Motion No.81 of 2001 in Admirality Suit No.17 of 2000 before the High Court of Bombay) [MANU/MH/0332/2001], and the one delivered by the Federal Court of Appeal, Delivered at Ottawa, Ontario on Feb.25, 2011 in World Fuel Services Corporation and The Ship "NORDEMS" and The Owners and All Others Interested in the Ship "NORDEMS" and REEDEREI "NORD" KLAUS E.OLDENDORFF GMBH and PARTENREEDEREI ms "NORDEMS" and PARKROAD CORPORATION [2011 FCA 73];

8. The learned counsel for the respondent picked the very documents on which the appellant placed his reliance to counter the latter's argument. His contentions are:

- The Charter party is a bilateral agreement between the owner of the vessel and the charterer, and the respondent, the supplier of bunker, is not a party to it. Therefore, that which can bind the charterer will not bind the respondent.

- The confirmation-mail of the respondent, the buyer of the bunker is mentioned as 'M.V.Tina/and/or master and/or Owners and the charterer of the ship was included to them lastly. In other words, the respondent's intentions are clear that it intended to bind the vessel and its owner and not just the charterer. And, in the 'Remarks Column' therein, it is again indicated in positive terms that "all sales are on credit of vessel. Buyer is presumed to have authority to bind vessel with a maritime lien..."

- The bunker delivery note is signed by the Master/Chief Engineer of the ship. This apart the respondent in its mail dated 30-011-2015, addressed to appellant, has indicated that it entered into a contract for sale of bunker with the owner of the ship and its charterer.

Therefore, from the stand point of the respondent, it has continuously and consistently believed that its contract for the supply of bunker was intend to bind the vessel and necessarily its owner, and at no time did it indicate that it had any intentions to exempt the owner of the vessel either before the contract or after the said contract. When the cause of action is thus proved to exist to maintain a suit against the owner of the vessel, the same cannot be short circuited by seeking rejection of plaint. Reliance was placed on the judgments in M.V.Sea Renown and Another Vs. Energy Net Limited [(2003) JX Gujarat 278]; Mayar (H.K.) Ltd., and Others Vs. Owners and Parties, Vessel M.V.Fortune Express and Others [(2006) 3 SCC 100)]; Liverpool & London S.P. & I Association Ltd., Vs. M.V.Sea Success I and Another [(2004) 9 SCC 512]; Videsh Sanchar Nigam

Limited Vs. M.V.Kapitan Kud and Others [1996 7 SCC 127 = CDJ 1995 SC 1221]; G.M.Shipping Co. Ltd. Vs. Glander International Bunkering Pte. Ltd., [2015 JX (GUJ) 1476 = 2015 (0) AIJ-GJ 234605]; Chemoil Adani Private Limited Vs. M.V.Hansa Sonderburg and Others [2010 (112) BLR 2056 = CDJ 2010 BHC 694]; Alexandros Dryron S.A.

Vs. Owners and Parties interested in the Vessel M.V.PRAPIT [AIR 1998 CALCUTTA 142].

9.1 Considerable arguments were heard on what the law is and how the court have declared it in several authorities that both the sides have relied on generously. However, the need to delve into the authorities and to test their application to the controversy before this court is restricted by the scope of this appeal, its nature and quality put on display. The core issue is, should the plaint be rejected.

9.2 Uncountable are the number of authorities that declare in unequivocal terms that the basic and perhaps the only test for holding if the plaint is to be rejected on grounds of non disclosure of a cause for instituting the action is to read the plaint in plain terms, and to gather its meaning without resorting to any exercise in interpretation or strained construction. If the plaint passes this test, then the suit cannot be rejected. On the contrary, the moment a plaint is required to be appreciated for the alleged non disclosure of cause of action on the basis of perceived intention of the parties to be gathered by construction of any documents then the suit ought to go for trial. More so in this case where documents relied on by the both sides are though substantially the same, yet the arguments on them differed on the point as to what they convey. This is essentially a material for trial and the issues involved cannot be quick-fixed on random inferences. This is the very conclusion that the learned Single Judge has arrived at.

10. In the course of the submissions made, this court was informed that the appellant's charterer has gone into liquidation and that some insolvency proceedings are pending before the Courts in Korea and that the respondent/plaintiff is a party there. However, this court was not informed in definite terms if the claim of the respondent has been addressed by the Korean court. The respondent is cautioned that it is not entitled to double claim, and that it will be so doing only at the peril of it exposing itself to a possible abuse of judicial process of Indian courts.

To conclude, this Court does not find any merit in the appeal and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+1cc to Mr.P.Gridharan, Advocate Sr.72727
+1cc to Mr.S.Raghunathan, Advocate Sr.72974

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