

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 17th DAY OF SEPTEMBER 2018

THE HON'BLE MR. JUSTICE M.SUNDAR

A.No.6058 of 2018

in

C.S.NO.543 of 2018

Viceroy Exports (India) Pvt Ltd.,
No.55/56, Bakir Abdul Hussain Mansion,
3rd Lane, North Beach Road, Chennai 600 041
represented by its Manager,
Mr.Shijulal ...Applicant/Plaintiff

-vs-

Owners and Parties interest in the Vessel
M.V.MAERSK GANESH,
Presently within territorial waters
of India, in Chennai Port limits
and rep.by her Master

2.Maersk Line,
A/s.
Esplanaden 50
DK 1263 Copenhagen K,
Denmark ...Respondents/Defendants

This Application praying that this Hon'ble Court
be pleased to grant an warrant of arrest and sale of the 1st
Respondent/Defendant Vessel M.V.MAERSK GANGES together with
her hull, tackle, engines, bunkder, machinery,
paraphernalia and all her appurtenants in as is where is
condition, presently lying in the territorial waters of
India at the Chennai Port Waters, Chennai Tamil Nadu or
wherever found within the Territorial waters of India.

This Application coming on this day before this court for hearing in the the court made the following order:

An order of arrest of a Vessel, i.e., M.V.MAERSK GANGES, flying Singaporean flag, was passed by this Commercial Division on 14.09.2018 (Friday) and the said order reads as follows:

"There is a sole plaintiff in the main suit. There are two defendants in the main suit. Sole plaintiff in the main suit is the lone applicant in the instant application. Defendants 1 and 2 in the main suit are respondents 1 and 2 respectively in the instant application. Parties in this application are referred to by their respective ranks in the main suit, for the sake of convenience and clarity.

2. Defendant no.1 is a Vessel, which goes by the name 'M.V.MAERSK GANGES' (hereinafter referred to as 'suit Vessel', for the sake of convenience and clarity). Defendant no.2, according to the plaintiff, is the owner of the suit Vessel.

3. It is the case of the plaintiff that as consignor, plaintiff entrusted to defendants a consignment of frozen sea food for being shipped from Cochin to Spain. According to plaintiff, bills of lading were issued, test certificate was issued and shipping bill for export was also issued. It is the case of the plaintiff that discharge of the aforesaid consignment was on 31.10.2017 and it was one of the conditions that temperature had to be maintained at minus 18 degrees to ensure that the cargo does not perish or go bad. It is also the case of the plaintiff that suit Vessel

and its owner, i.e., defendants 1 and 2, did not maintain the aforesaid temperature which was a standard requirement, i.e., minus 18 degree, resulting in the consignment going bad. It is submitted that Spanish authorities ordered for repair of suit Vessel and the aforesaid consignment was changed to another container despite strong objections from the plaintiff in this regard. It is also submitted by the plaintiff that it made a request that the cargo be disposed of in Spain itself, but that also did not happen is plaintiff counsel's say.

4. Under the aforesaid circumstances, plaintiff incurred loss / charges and ultimately issued a legal notice dated 15.01.2018, which has been placed before me as plaint document no.18. Reply to this from the second defendant through its lawyer dated 01.02.2018 is least convincing and is to the complete detriment of the plaintiff, is plaintiff counsel's further say.

5. Under aforesaid circumstances, the instant suit has been filed claiming a sum of Rs.55,14,924.29 (Rupees fifty five lakhs fourteen thousand nine hundred twenty four and paise twenty nine only) together with interest, inter alia, towards loss suffered and damages. There is also a prayer for arrest and detention of suit Vessel restraining the suit Vessel from sailing away from the Port of Chennai and Indian territorial waters. Ultimately, there is also a prayer for sale of the suit Vessel for realising the aforesaid suit claim. Usual residuary prayer and a prayer for costs also

form part of the plaint prayer.

6.Under such circumstances, Mr.Joy Thattil Ittoop, learned counsel for plaintiff, submitted that the suit Vessel has been sailing in and out of Chennai Port, i.e., territorial waters which are of relevance, in the weekends. In other words, it is his specific submission that the suit Vessel sails into Chennai Port on a Saturday and leaves either on a Sunday or in the early hours of Monday, making it virtually impossible for the plaintiff to move this emergent application.

7.Saying so, learned counsel has placed before me, a hard copy of a schedule of Vessels to be berthed, down loaded from the official website of the Port of Chennai. That schedule of Vessels to be berthed shows that suit Vessel is expected to arrive in Chennai Port on 15.09.2018, tomorrow, at 13.00 hours, i.e., 1.00 p.m. It is submitted that the suit Vessel is scheduled to sail out of the Madras terminal on 17.09.2018, Monday, at 08.00 hours, i.e., 8.00 a.m. In support of that, hard copy of a download from the website of the Vessel, i.e., maersk.com, has been placed before me.

8.This takes us to the question as to whether this Commercial Division will have jurisdiction to order arrest of the suit Vessel even before it enters the territorial waters of India. Learned counsel emphatically submitted that this Court is empowered to do so and that it has done so in the past. In support of this submission, in other words, to buttress and bolster this submission, learned counsel placed before me a reported judgment of this Court

reported in **AIR 2003 Mad 422 in Mayar (HK) Limited vs. Owners and Parties Interested in..**, which shall hereinafter be referred to as '**Mayar**'s case. In **Mayar**'s case, a learned Judge of this Court addressed herself to this very question and the same is articulated in paragraph 4 of the said judgment which reads as follows:

"4. The main point of contention between the two parties is regarding the Jurisdiction of this Court to order arrest, whether the vessel can be, ordered to be arrested even before it entered the, territorial waters of India, who committed the breach of contract, who is liable to pay the other and if so what amount? "

9. Hon'ble Mrs. Justice Prabha Sridevan, as a Single Judge of this Court (as her Ladyship then was), relying on another judgment, i.e., **Johnny Two**'s case, reported in **1992 II LLR 257** decided by the Queen's Bench Division, came to the conclusion that if a Vessel is expected to arrive at a known port, a warrant of arrest should be issued. This aspect of the matter is articulated in paragraph 8 of the aforesaid **Mayar**'s case and I deem it appropriate to extract paragraph 8, which reads as follows:

"8. Reference was made to **Johnny Two**'s case, reported in **1992 II LLR 257** decided by the Queen's Bench Division, to show that an order of arrest can be obtained

before the vessel sails in. In the Johnny Two's case a writ in rem was issued on 3 7th May, 1990 against the vessel Johnny Two. This order was valid after a period of one year though the vessel visited the relevant port Felixstowe on five occasions the arrest was not effected. Then on the last date of validity of the writ the applicant applied for renewal and the Admiralty Registrar renewed it. This extension of the validity of the writ was attacked. The learned Judge on facts held that there was nothing to prevent or nothing that rendered impossible the arrest of the vessel on each of the five visits and there were no time constraints which rendered it impossible. The applicant in that case employed a tracker service to track the vessel. The learned Judge therefore, observed that if after one year the tracker service could be employed there is nothing to show why this tracker service could not have been employed earlier. On this ground, the order extending the validity was discharged. What is relevant in this judgment is the short-note that the learned Judge gives upon the procedures for the arrest of the ship, which runs thus:

"If a ship is expected to arrive at a known port a warrant of arrest should be issued. . . .The ship will then be arrested on arrival by the "Note of Action". In this way a ship may be

arrested on a date when the Court Offices are closed. These procedures enable the solicitors to arrest the ship with very short notice, particularly when they have taken the precaution of issuing a warrant of arrest in advance."

So it was held that it was perfectly acceptable to obtain a warrant of arrest before the ship arrives at the known port."

10. In the light of the narrative supra, learned counsel Mr. Joy submitted that there is a prima facie case, as the exchange of the pre-suit notices and the reply to the same, dated 15.01.2018 and 01.02.2018 (plaint document nos. 18 and 19) would reveal entrustment of the consignment and the narration regarding the shipment. With regard to balance of convenience, learned counsel submitted that if the suit Vessel is permitted to sail away in the weekend, the plaintiff who is wet with losses will be left high and dry. Learned counsel submitted that balance of convenience factor also is therefore in favour of granting of an ex parte interim order as sought for.

11. With regard to irreparable legal injury incapable of compensation, learned counsel submitted that the claim itself is against suit Vessel and its owner and if the suit Vessel is allowed to sail away casually in the weekend, there may be a situation where the plaintiff may never be able to have any security for the suit claim resulting in the plaintiff ultimately being left with a paper decree. Thus, according to the learned

counsel, it is an irreversible situation and therefore, the third determinant for grant of ex parte injunction, i.e., irreparable legal injury, incapable of compensation is also present in full force, is his say.

12. Having heard the learned counsel, I have perused the plaint averments, plaint documents, particularly the pre-suit notices and the reply and I have also perused the Chennai Port's Vessels to be berthed schedule as well as the download said to have been made from the website of the Vessel. I am convinced that issue of notice will cause delay, which will defeat the very objective of grant of this interim order and therefore, this is a fit case for granting ad interim ex parte order as prayed for.

13. Therefore, there shall be an ad interim ex parte order as prayed for.

14. For the purpose of clarity, I am to say that there shall be an order of arrest of the Vessel, i.e., M.V. MAERSK GANGES, as prayed for, pending disposal of the main suit.

List this matter on 19.09.2018."

2. Today, Mr. P. Giridharan, learned counsel mentioned the matter and submitted that he has instructions on behalf of both the defendants to appear before this Commercial Division. Learned counsel submitted that he would be furnishing adequate security for the suit claim without prejudice to the rights and contentions of the defendants in the main suit including territorial jurisdiction of Madras High Court and sought permission to file an affidavit and tender a Demand Draft under such affidavit. Learned counsel was permitted to do so. Post lunch, an

affidavit being affidavit dated 17.09.2018, sworn to by one Mr. Michael Dinakaran, who, according to learned counsel for defendants, is Authorised Signatory of Maersk Line India Pvt. Ltd., was placed before this Commercial Division. Most importantly, a Demand Draft dated 17.09.2018 for a sum of Rs.55,14,924.29 (Rupees fifty five lakhs fourteen thousand nine hundred twenty four and paise twenty nine only), favouring Registrar General, High Court, Madras was tendered under this affidavit. To be noted, this Demand Draft bears number 599950 and has been drawn on The Hongkong and Shanghai Banking Corporation Limited (HSBC), 52/60, Mahatma Gandhi Road, Mumbai 400 001. A perusal of the instrument reveals that it is payable at par at all HSBC branches in India.

3. It is not in dispute that advance copies of the aforesaid instrument and the aforesaid affidavit have been furnished to the learned counsel for plaintiff, Mr. K.M. Anand.

4. To be noted, this Commercial Division is informed that the aforesaid Mr. Michael Dinakaran, is present in Court and is instructing learned counsel Mr. P. Giridharan.

5. Mr. K.M. Anand, learned counsel on record for the plaintiff, submits that the aforesaid Demand Draft will secure the suit claim. On this basis, he submits that the aforesaid Vessel can be released. In other words, the order of arrest of the aforesaid Vessel can be lifted by accepting the aforementioned security, in his say.

6. To be noted, the aforesaid security for suit claim is subject to the outcome of the main suit. Be that as it may, learned counsel for defendants, on instructions, undertakes to keep the aforesaid Demand Draft alive and renewed (if it becomes necessary) until further orders from

this Court.

7. In the light of the narrative supra, by consent of both sides, there shall be an order for release of the aforesaid Vessel, i.e., M.V. MAERSK GANGES, flying Singaporean flag. Though obvious, it is made clear that release of said Vessel is without prejudice to all the rights and contentions of both the parties at *lis*.

8. Registry to incorporate the preceding paragraph in the order of warrant of release of the aforesaid Vessel.

9. Mr. P. Giridharan, learned counsel for defendants, undertakes to complete the process in the Registry for depositing the aforesaid Demand Draft with the Registrar General. With this undertaking, the Demand Draft is returned to the learned counsel.

10. Registry shall furnish certified copy of warrant for release of Vessel after deposit of aforesaid Demand Draft with the Registrar General by complying with procedural requirements in this regard.

List this matter on 01.10.2018.

WEB COPY

Sd./- M.S.J.

17.09.2018

//Certified to be true copy//

Dated at Madras this the day of 2018.

COURT OFFICER (O.S.)

KY/18.09.2018

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.