

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 12TH DAY OF DECEMBER 2018

THE HON'BLE MR. JUSTICE M.SUNDAR

A.No.9746 of 2018

in

A.No.9572 of 2018

in

C.S.No.830 of 2018

Sivan P B
aged 56 years
S/o.Bava, Ponath House
Pallipport P.O.,Munambam
Pallippuram, Ernakulam - 683 515.

..Applicant/Plaintiff
(Application in 9572)

-Vs-

OWNERS AND PARTIES INTERESTED IN THE
VESSEL MT DESH SHAKTHI (IMO 9263734)
and her owners and/or managers and/
or master and all other persons concerned
interested in her, a Indian flag vessel,
together with her hull, tackle, engines,
gears, plant, machinery, articles, things,
apparel, equipment, stores and other
paraphernalia on board, at present lying
in the port and harbour of Chennai Port
in Indian territorial waters and represented
by her Master.

..Respondent/Defendant
(Application in 9572)

A.No.9746 of 2018:

OWNERS AND PARTIES INTERESTED IN THE
VESSEL MT DESH SHAKTHI (IMO 9263734)
and all her owners and/or managers and/
or master and all other persons concerned

interested in her, a Indian flag vessel, together with her hull, tackle, engines, gears, plant, machinery, articles, things, apparel, equipment, stores and other paraphernalia on board, at present lying in the port and harbour of Chennai Port in Indian territorial waters and represented by her Master.

...Applicant/Respondent/Defendant

-Vs-

Sivan P B
aged 56 years
S/o.Bava, Ponath House
Pallipport P.O.,Munambam
Pallippuram, Ernakulam - 683 515.

...Respondent/Applicant/Plaintiff

Application praying that this Hon'ble Court be pleased to vacate the interim order of arrest of the vessel MT DESH SHAKTHI (IMO 9263734) dated 07.12.2018 (passed in Application No.9572 of 2018 in C.S.830 of 2018), by accepting the security in the form of Demand Draft of Rs.2,00,00,000.00/- (Rupees Two Crore only) taken in the name of Registrar General of this Hon'ble Court to the account of the above suit and release the vessel.

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

There is a sole plaintiff and a lone defendant in the main suit.

2. Lone defendant in the main suit is the applicant in A.No.9746 of 2018 and sole plaintiff in the main suit is the lone respondent in the application i.e., A.No.9746 of 2018. In A.No.9572 of 2018, sole plaintiff is the

applicant and lone defendant is the sole respondent.

3. In this order, parties shall be referred to by their respective ranks in the main suit for the sake of convenience and clarity.

4. For the purpose of enhanced clarity, it is made clear that 'Mr.Sivan.P.B. S/o.Bava, Ernakulam' shall be referred to as 'Plaintiff' and 'owners and parties interested in the Vessel MT.Desh Shakthi (IMO No.9263734)' shall be referred to as 'Defendant'. The aforesaid Vessel being 'MT.Desh Shakthi (IMO No.9263734)' flying Indian flag shall hereinafter be referred to as 'suit Vessel' for the sake of brevity and clarity.

5. An order of arrest of suit Vessel was made by this Commercial Division on 07.12.2018 in A.No.9572 of 2018 and the said order reads as follows:

'There is a sole plaintiff and a lone defendant in the main suit.'

2. Sole plaintiff in the main suit is the lone applicant herein and the sole defendant in the main suit is the lone respondent herein. In this order, parties to the instant application i.e., A.No.9746 of 2018, shall be referred to by their respective ranks in the main suit for the sake of convenience and clarity.

3. A Vessel which goes by the name 'MT.Desh Shakthi' flying Indian flag and bearing IMO No.9263734 is the central theme/nucleus of this

lis and the same shall hereinafter be referred to as 'suit Vessel' for the sake of convenience and clarity.

4. Ms.Anita Thomas, learned counsel on record for sole plaintiff is before this Commercial Division. Learned counsel for plaintiff submits that plaintiff is the owner of a fishing boat which goes by the name 'Oceanic', registered with the Government of Kerala and this fishing boat shall hereinafter be referred to as 'said boat' for the sake of convenience and clarity. It is submitted by learned counsel for plaintiff that 14 fishermen aboard the said boat owned by the plaintiff, while they were fishing in the Arabian Sea around 27 Nautiacal Miles away from Nattiak of Thrissur District, sometime between 23.00hrs on 06.08.2018 and 3.30 a.m. on 07.08.2018 suit Vessel approached the said boat at a great speed navigated in a rash and negligent manner and hit the said boat, in spite of the said boat sounding horn, putting out signal lights, raising their voice and doing all that was possible/within their capacity to alert suit Vessel and avert a collision.

5. It is submitted that the said boat and the fishing nets submerged into deep sea owing to the aforesaid collision and impact of the same. It is submitted that five fishermen on said boat died and seven others are still missing. Two other fishermen are injured and are still in a stage of severe shock, is learned counsel's say.

It is submitted that they are highly traumatized by this incident.

6. Under the aforesaid circumstances, it is submitted by learned counsel for plaintiff that a complaint was lodged vide Crime No.14 of 2018 on the file of the Coastal Police Station, Fort Kochi, inter alia against owners of suit Vessel, an FIR has been registered inter alia under Sections 280, 337, 338, 304(A) and 427 of Indian Penal Code, 1860, besides of Section 57 of Kerala Police Act.

7. It is submitted by learned counsel for plaintiff that with regard to investigation, a writ petition in W.P.(C)No.28361 of 2018 was filed before the Kerala High Court by the plaintiff herein and the same came to be disposed of by the Kerala High Court on 06.09.2018. Order of the Kerala High Court dated 06.09.2018 made in W.P.(C)No.28361 of 2018 filed by the plaintiff has been placed as part of suit file (plaint document No.6). A perusal of the said judgment reveals that the prayer in the writ petition is as follows:

'The petitioner has approached this Court seeking the following reliefs:

- i. to issue Writ of Mandamus or any other appropriate writ, direction or orders to respondents NO.1 to 5 to detain the 6th respondent vessel and to bring her back to Cochin from Mangalore and till completion of proper investigation not to let her sail

away until further orders from this Hon'ble Court.

ii. to issue Writ of Mandamus to the 1st and 2nd respondent for procuring important evidences from the vessel including the Log book, the Voyage Data Recorder (VDR) and other, important document from the 6th respondent vessel.

iii. to issue a Writ of Mandamus directing the 1st and 2nd respondent to disclose the reports of the under water survey conducted by Police/MMD at the Port of Manglore on the 6th respondent vessel and to provide the investigation reports to the petitioner.

iv. to issue Writ of Mandamus or any other appropriate writ, direction or order to Respondent No.2 and 3, to conduct the inquiries into the 'Shipping Casualty' as envisaged under the Merchant Shipping Act after bringing the 6th respondent vessel 'MV Desh Shakti' back to Cochin.'

8. A perusal of the order of Kerala High Court reveals that the Court has taken into account a statement dated 05.09.2018 filed by the Mercantile Marine Department (plaint document No.5) and held that prayer Nos.2, 3 and 4 of the plaintiff in the writ petition in Kerala High Court have been substantially complied with. Thereafter, the Kerala High Court held as follows:

'It is for the petitioner to take recourse to the further provisions of law and to approach the appropriate authorities, in accordance with law. Reserving the right of the petitioner and leaving open the contentions, the writ petition is dismissed.'

9. Referring to the above, learned counsel for plaintiff submits that instant suit has now been filed in this Court, pursuant to the Kerala High Court reserving the right of writ petitioner therein (plaintiff herein) leaving open the contentions. To be noted, instant suit has been filed against owners of suit Vessel primarily claiming a sum of Rs.2 crores. Broadly the breakup is Rs.1.5 crores towards the costs of the said boat and the remaining is towards efforts and expenses qua search and rescue operations.

10. Learned counsel also submits that this is clearly a maritime claim within the meaning of Section 4(1)(d) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017. It is pointed out that after the aforesaid order of the Kerala High Court in the writ petition, a petition under Section 457 of 'The Criminal Procedure Code, 1973' ('Cr.P.C.' for brevity) was filed in Crime No.14 of 2018 on the file of the jurisdictional Court, being the Judicial First Class Magistrate Court I, Kochi and the suit Vessel was released on execution of a bond. This is articulated in paragraph No.7 of the plaint

(page No.4 of the plaint) and the relevant portion reads as follows:

'The Police investigation team had detained the vessel in the course of investigation in Crime No 14/2018 registered with the Fort Kochi Coastal Police Station and the vessel was later released on an application filed by the owners of the vessel under Section 457 of the Code of Criminal Procedure and on executing bond.'

11. Ms.Anita Thomas, learned counsel for plaintiff submits that this bond is only with regard to production of suit Vessel as and when required and that it does not secure the claim of the plaintiff made in the instant suit. This submission of learned counsel is recorded. Saying so, learned counsel also submitted that plaint document No.5 being a true statement of the Mercantile Marine Department, dated 05.09.2018, was obtained by the plaintiff in the course of the proceedings in the writ petition in the Kerala High Court. Besides this, learned counsel submits that suit Vessel is now in voyage towards Chennai Port, it is likely to berth in the Chennai Port this evening i.e., 07.12.2018. Learned counsel submits that there is imminent and emergent need for arrest of the suit Vessel as the suit Vessel according to her is likely to sail away tomorrow i.e., 08.12.2018. It is also submitted that the plaintiff has no other

security for its claim made in the instant main suit and therefore, interim order of arrest is absolutely necessary, is learned counsel's say.

12. In this backdrop, I examined the parameters /determinants for grant of interim orders namely prima facie case, balance of convenience and irreparable legal injury incapable of compensation. Prima facie case is made out, as the plaintiff has placed before this Commercial Division as plaint document No.1 a true copy of the certificate of license for said boat issued by the Government of Kerala (License dated 15.09.2017). A true copy of the aforementioned FIR, pleadings in the writ petition and judgment have been filed as plaint document Nos.2, 3, 4 and 6 respectively.

13. Balance of convenience tilts in favour of acceding to the interim order, as it is submitted that plaintiff has no other security, particularly in the light of the fact that five lives have been lost and seven others are missing while two are injured.

14. Irreparable legal injury incapable of compensation parameter also is satisfied, as if the suit Vessel sails away tomorrow as submitted by learned counsel for plaintiff, while the Vessel will be in high seas, plaintiff will be left high and dry.

15. In the light of the narrative supra, after carefully considering the submissions made by learned counsel for plaintiff, plaint averments, averments in the affidavit filed in

support of the instant application and copies of the plaint documents placed before it, this Commercial Division, is of the view that issue of notice to the respondent in the instant application will entail delay which will defeat the ultimate objective of the interim order that has been sought for. This is also recording of reasons by this Commercial Division in accordance with mandate under proviso to Rule 3 of Order XXXIX of 'The Code of Civil Procedure, 1908' ('CPC' for brevity).

16. Owing to all that have been set out supra, there shall be an ad-interim ex-parte order as prayed for.

17. For the purpose of clarity, this Commercial Division makes it clear that there shall be an interim order of arrest of the suit Vessel MT.DESH SHAKTHI bearing IMO No.9263734, pending disposal of the main suit for a week i.e., upto 14.12.2018.

18. Notice to respondent returnable by 14.12.2018. Private notice permitted.

19. Though obvious, notwithstanding the fact that this is not a prayer for interim injunction under Order XXXIX of CPC, plaintiff shall comply with the mandate of Order XXXIX Rule 3 of CPC and file affidavits and supporting documents to this effect.

List this matter on 14.12.2018.'

6. Today Ms.Anita Thomas, counsel on record for sole plaintiff and Mr.Bijish B Tom along with Mr.K.M.Anand,

counsel on record for defendant, are before this Commercial Division

7. It is submitted by both sides that the aforesaid order of arrest of suit Vessel dated 07.12.2018 has since been executed and suit Vessel has been arrested and the same is now anchored in Chennai Port. Under the aforesaid circumstances, aforementioned A.No.9746 of 2018 has been moved by the defendant with a prayer to vacate the aforementioned interim order of arrest of suit Vessel by accepting security in the form of Demand Draft for Rs. 2,00,00,000/- (Rupees Two Crores Only). To be noted, suit claim is Rs.2,00,00,000/- (Rupees Two Crores Only).

8. Saying so, learned counsel for defendant has placed before this Commercial Division a Demand Draft dated 10.12.2018 bearing No.711906, drawn on State Bank of India, CCPC Branch, Chennai favouring 'The Registrar General, Madras High Court, Chennai'.
सत्यमेव जयते

9. Both the aforementioned learned counsel i.e., counsel for plaintiff and counsel for defendant agree that the aforementioned Demand Draft can be deposited with the Registrar General of this Court and will be security for suit claim. Defendant's counsel, on instructions, undertakes to keep the said Demand Draft live (if necessary by replacement or in any other

manner) until further orders from this Commercial Division in this regard.

10. Learned counsel for defendant seeks permission to reserve his rights to move an application with suitable prayer for depositing the aforesaid sum of Rs.2 Crores in an interest yielding deposit, but through the Registry of this Court and to keep the suit claim secured. Learned counsel for defendant is permitted to do so, if so advised and rights of the defendant in this regard are reserved.

11. Learned counsel on both sides agree that the aforesaid deposit of Rs.2 Crores is strictly without prejudice to the rights and contentions of both parties, which shall all be adjudicated and decided in the interlocutory applications and in the main suit. Reference to all rights in the main suit as well as interlocutory applications is clearly a reference to interlocutory applications which may be taken out by either side in the days to come as both these interlocutory applications i.e., A.No.9746 of 2018 and 9572 of 2018 will stand disposed of by this order leaving open all the rights and contentions of both sides.

12. Though obvious, it is made clear that the aforesaid security for suit claim is subject to outcome

of the suit / interlocutory applications, which may be taken out in the days to come.

13. In the light of narrative supra, by consent, there shall be an order of release of suit Vessel 'MT.Desh Shakthi (IMO No.9263734)' flying Indian flag.

14. As already alluded to supra, such release of suit Vessel is without prejudice to all the rights and contentions of both parties at lis.

With this, both these applications i.e., A.No.9746 of 2018 and 9572 of 2018 stand disposed of.

Sd./- M.S.J.
12.12.2018

//Certified to be a true copy//

Dated this the day of 2018.

DL/12.12.2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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