

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 742 OF 2019

ARYA SHIP CHARTERERS PVT. LTD.,

A company incorporated under the provisions of the Indian Companies Act, 1956 Having office at 123-A, Mittal Court, Nariman Point, Mumbai – 400 021.

Represented herein by its authorised representative, Mr. Amith Kamath, Having office at 123-A, Mittal Court, Nariman Point, Mumbai – 400 021. authorised vide resolution dated Petitioner 12/08/2019.

Versus

- 1 Commissioner of Customs
having address at Office of Commissioner of Customs, Customs House, Marmagao, Goa – 403 803.
- 2 Assistant Commissioner (I & E)
Having address at Office of Commissioner of Customs, Customs House, Marmagao, Goa – 403 803
- 3 Deputy Commissioner of Customs
Having address at office at Commissioner of Customs, Customs House, Marmagao, Goa- 403 803.

4 M/s. Canacona Hydrocarbons Pvt.
Ltd.

Having registered office at Plot No.89,
Canacona Industrial Estate, Respondents.
Canacona, South Goa, Goa- 403 702.

Mr. Shivan Desai, Advocate for the petitioner.

Ms. Asha A. Desai, Senior Standing Counsel for the respondents
No.1,2 and 3.

Mr. P. Kamat, Advocate for the respondent No.4.

Coram:- M. S. SONAK &

NUTAN D. SARDESSAI, JJ.

Date:- 29th August, 2019

ORAL JUDGMENT: (per M.S Sonak, J.)

Heard Mr. Shivan Desai, learned Counsel for the petitioner,
Ms. Asha Desai, learned Senior Standing Counsel for the
respondents No.1,2 and 3 and Mr. P. Kamat, learned Counsel for
the respondent No.4.

2. Rule. Rule is made returnable forthwith with the consent
and at the request of the learned Counsel for the parties.

3. Ms. Asha Desai, learned Senior Standing Counsel waives
service on behalf of the respondents No.1,2 and 3 and Mr. P.

Kamat, learned Counsel waives service on behalf of the respondent No.4.

4. The challenge in this petition is to the communications dated 23/07/2019 and 02/08/2019 at Annexure A1 and A2 to the petition, by which the respondents No.1,2 and 3 have rejected the request of the respondent No.4 for discharge of contaminated Naphtha oil/ Slop oil/Sludge oil.

5. Mr. Desai, learned Counsel points out that subsequent to the making of the aforesaid impugned orders/communications, there are following crucial developments :

(a) This Court, in its admiralty jurisdiction by order dated 05/08/2019 has clarified that the arrest order dated 25/07/2019 will not come in the way of the petitioner seeking discharge of cargo from the vessel;

(b) The petitioner has submitted a revised Bill of Lading which is found at Annexure A8 Page No.36.

6. Mr. Desai, learned Counsel submits that by applications dated 08/08/2019 and 13/08/2019 the aforesaid subsequent

developments alongwith documents in support thereof have already been placed for the consideration of the respondents.

7. According to us, the interest of justice will be served if directions are issued to the respondents No.1,2 and 3 to consider the aforesaid developments and thereafter take a fresh decision in the matter in accordance with law. For this purpose, we grant liberty to the petitioner to file a detailed and comprehensive application to the respondents No.1,2 and 3. Mr. Desai, learned Counsel states that such application will be made within 24 hours from today.

8. The respondent No.4 has also made an application to the respondents No.1, 2 and 3 for reception of cargo from the vessel in their favour. In fact, the impugned orders / communications are addressed to the respondent No.4. Mr. P. Kamat, learned Counsel also states that the respondent No.4 will also make the necessary application within 24 hours from today.

9. Accordingly, we direct the respondents No.1, 2 and 3 to consider the applications of the petitioner as well as the respondents and dispose of the same within 10 days from today.

10. Ms. Desai, learned Senior Standing Counsel submits, on instructions, that the respondents No.1,2 and 3 will require minimum 15 days time to consider and dispose of these applications. According to us, looking to the circumstances of the case, the applications are required to be disposed of expeditiously.

11. Accordingly, we direct the respondents No.1, 2 and 3 to dispose of such applications, if made, within 10 days from the date of their receipt. Such disposal will have to be in accordance with law and on its own merits. However, the respondents need not be influenced by any observations made in the impugned communications dated 23/07/2019 and 02/08/2019 whilst considering or disposing of these applications.

12. We make it clear that we have not adjudicated in the rival contentions and therefore, the rival contentions are left open for the decision of the respondents No.1,2 and 3.

13. Ms. Desai, learned Senior Standing Counsel on the basis of the instructions states that the concerned respondents will also give hearing to the petitioner and respondent No.4 before the applications are finally disposed of.

14. We dispose of the Rule in the aforesaid terms. There should be no order as to costs.

15. All concerned to act on the authenticated copy of this order.

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.

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