

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

CHAMBER SUMMONS NO. 734 OF 2017

IN

SUIT NO. 3118 OF 1993

Zahid Shafiq Vohra ... Applicant

In the matter between

Alpine Solvex Ltd. ... Plaintiff

Versus

Ege Denizcilik Ticaret Ve Sanayi A.S. and Ors. ... Defendants

Mr. Rahul Narichania, Sr. Advocate, a/w Mr. Nitin R. Gandhi for the Applicant.

Ms. Sneha Pandey i/b Motiwala & Co. for Defendant No.3.

CORAM : R.I. CHAGLA, J.

DATED : 2nd AUGUST, 2019.

P.C. :

1 The learned Counsel for the Applicant has spoken to the minutes of the order dated 01.07.2019. In lines 4 to 6 of paragraph 3 of the said order the where words “It had been expressly directed in the said order that the Prothonotary & Senior Master would pay the Defendant No.3 on behalf of the Applicant ...” should be substituted by the following words **“It has been prayed that the Prothonotary & Senior Master pay**

to the Defendant No.3 on behalf of the Applicant ...”. The change shall be carried out in the order dated 01.07.2019 as well as in the uploaded order.

2 This Chamber Summons has been filed in the Suit which is an inter-pleader Suit for direction to the Prothonotary & Senior Master to pay the third Defendant on behalf of the Applicant sum of Rs.26,58,474.12 being the amount deposited by the Plaintiffs in this Court. The Suit had been filed by the Plaintiff. Prayers (g) and (h) in the plaint reads thus :

(g) that the defendants be required to interplead together in respect of their claims to the freight;

(h) that upon the payment as ordered or upon deposit herein to the Prothonotary and Senior Master, High Court, Bombay, of the sum of Rs.26,58,474.12 (Rupees Twenty six lacs fifty eight thousand four hundred and seventy four and paise twelve only) the plaintiff be discharged from all liability to either of the defendants in relation thereto and further that no monies be paid over to the defendants until due and proper delivery of the consignments according to the tenor of each bill of lading is made to the consignees;

3 In paragraph 6 of the Plaint it was stated that there was

dispute regarding the claim for freight and that the first Defendant claims to be entitled to freight by virtue of an alleged lien on the sub-freights of the 2nd Defendant. Whereas the 2nd Defendant claim the same by way of contract of carriage.

4 It is stated in the said paragraph that there is no collusion between the Plaintiff and any of the Defendants.

5 The learned Senior Counsel appearing for the Applicant states that the Applicant is the only shareholder of the 2nd Defendant. He refers to a letter/certificate dated 07.02.2017 from Audi Consult SA which is a full service accounting and audit Company, Licensed by Federal Audit Oversight Authority (FAOA) wherein the said Audi Consult SA declared that during the period from 01.10.1997 to 13.12.2004, the sole shareholder of LPG Shipping SA, whose name later changed to ZOOMSHIP SA, was the Applicant.

6 He has further referred to an affidavit affirmed by Zahid Shafiq Vohra, the brother of the Applicant, who has relinquished all rights and interest to his brother, the Applicant and that he has no claim whatsoever in LPG Shipping Limited. Further, he has referred to a letter addressed by one Andrew Noakes who was the other shareholder of LPG Shipping Limited, U.K., which letter is dated 24.05.2017 and addressed to the

Applicant wherein the said Andrew Noakes has relinquished his interest and rights in the shares of LPG Shipping Limited U.K. in favour of the Applicant. He has thus, submitted that the Applicant is the only shareholder of LPG Shipping Limited, U.K., the Defendant No.2.

7 He has also referred to the order dated 01.07.2019 passed by this Court wherein the Applicant is directed to ascertain as to whether Defendant No.1 has gone into liquidation. It was stated by the learned Advocate appearing for Defendant No.1 therein that he had no instructions which had been received from Defendant No.1 for over a period of 5 years and was unable to ascertain as to whether Defendant No.1 had gone into liquidation.

8 The learned Senior Counsel has tendered an affidavit of the father of the Applicant dated 12.07.2019 wherein upon efforts being made, the deponent has been able to establish that Defendant No.1 had been struck off from the Istanbul Trade Registrar on 15.04.2014 pursuant to an Application of the 1st Defendant for striking off on 01.01.1999. There is also a copy of an e-mail which has been addressed by law firm at Pekin & Pekin at Istanbul to the deponent son Shahhid Vohra on 03.07.2019 wherein it is stated that on enquiry the law firm had come to know that the 1st Defendant firm is ex-efficio deregistered and deleted from membership

of Istanbul Chambers of Commerce on 15.04.2014 due to dissolution of the Company on 01.01.1999. He has referred to other correspondence from the solicitors of the deponent which have also received letter from Istanbul Chamber of Commerce through the Indian Consulate in Istanbul establishing the same. The affidavit dated 12.07.2019 is accordingly taken on record.

9 The learned Senior Counsel for the Applicant has stated that the Plaintiff is no longer interested in the Suit filed in 1993 and that upon deposit of the said sum of Rs.26,58,474.12/- as appropriately prayed for in prayer clause (h) of the plaint, the Plaintiff stands discharged from all liabilities to either of the Defendants in relation thereto and upon such deposit, the Plaintiff has obtained delivery of the cargo. He has also submitted that the 1st Defendant who has been struck off from the Istanbul Trade Registrar as referred to above, had not filed a written statement in the Suit and it is only being 2nd Defendant who has filed the written statement claiming the said money which has been deposited in this Court in the above Suit. Further he brings to this Court's attention that 1st Defendant had taken out the Notice of Motion in the above Suit for withdrawal of the sums deposited which had been dismissed by this Court. Accordingly, he submits that the sums which have been deposited should be allowed to be withdrawn by the 3rd Defendant, who is the agent of the

Defendant No.2 as stated in the Affidavit in support of the Chamber Summons. It has been further stated in paragraph 12 of the affidavit in support of the Chamber Summons that the Applicant owes a substantial money to his lawyers and to his father and sister and hence, this Court release the said amount to the Applicant through the 3rd Defendant in order for the Applicant to pay these debts which have been due for a considerable long time as well as considering the Applicant's father's advance age.

10 Having considered the submissions, this Suit has been filed as an inter-pleader Suit under Order 35 of the Code of Civil Procedure. This is apparent from prayer clauses (g) and (h) of the plaint where the Plaintiff has expressly prayed for the Defendants to interplead together in respect of their claims to freight and that upon the Plaintiff depositing the said sum of Rs.26,58,474.12 with the Prothonotary and Senior Master, the Plaintiff be discharged from all liability to either of the Defendants. Accordingly, the provisions of Order 35 Rule 5 and in particular sub-Rules 1, 2 and 4 of the Code of Civil Procedure, 1908 have been expressly complied with in the filing of the above Suit.

11 It is observed from the affidavit which is now filed dated 12.07.2019 that Defendant No.2 has been struck off from the Istanbul

Trade Registrar on 15.04.2014 due to dissolution of the company on 01.01.1999. This has been confirmed by the deponent of the said affidavit based on relevant information received as mentioned above including from the entity which keeps data for all the ship owners. Accordingly, the Defendant No.1 is no longer in existence.

12 Insofar as Defendant No.2 is concerned, it appears from the correspondence which has been referred to by the Applicant that the Applicant is the only shareholder of Defendant No.2. The other two persons who were shareholders of Defendant No.2 Company amongst whom one is the brother of the Applicant, have relinquished their interest and rights in the shares which they held in Defendant No.2 Company in favour of the Applicant. Accordingly, the Applicant who is the only surviving shareholder of the Defendant No.2 Company is entitled to bring this Application for payment of the sums deposited by the Plaintiff i.e. the sum of Rs.26,58,474.12 to be paid over to the 3rd Defendant who is the agent of the 2nd Defendant, a Company in the U.K. on behalf of the Applicant. There is no opposition to the Chamber Summons. Accordingly, the Prothonotary and Senior Master is directed to pay to the 3rd Defendant on behalf of the Applicant the sum of Rs.26,58,474.12 being the amount deposited by the Plaintiff in this Court plus accrued interest from the date of deposit till payment.

13 The Chamber Summons is accordingly disposed of in terms of prayer Clauses (a) and (c).

14 The Prothonotary and Senior Master shall in the event of the sums deposited by the Plaintiffs being invested in a fixed Deposit, break the Fixed Deposit and handover the said sum together with accrued interest thereon to the Defendant No.3.

(R.I. CHAGLA, J.)