

SHERIFF REPORT NO.44 OF 2019**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION****COMMERCIAL ADMIRALTY SUIT (L) NO.55 OF 2019**

K.P.Marine Services Engineers & Consultants)....Plaintiff

V/s.

Tug Varahi & Anr.)....Defendants

Mr.Bimal Rajasekhar a/w Vikrant D.Shetty and Sarina Electricwala
i/by Taurus Legal for plaintiff.

[Mr.Kumar Shreekant (proprietor) of plaintiff present].

Mr.Manoj R.Khatri for defendants.

[Mr.Sanjay H.Mangi (Proprietor of defendant-vessel present].

[Mr.Satish D.Chitgopekar-Dy.Sheriff of Mumbai present].

CORAM : K.R.SHRIRAM,J

DATE : 8.11.2019

P.C.:-

1. Mr.Rajasekhar and Mr.Khatri state that plaintiff and defendant no.2 are present in court and identify them.

2. Parties have amicably settled the matter and entered into consent terms dated 8.11.2019. The consent terms signed by proprietor of plaintiff, proprietor of defendant no.2 who is the owner of defendant no.1-vessel and their respective advocates is taken on record and marked `X' for identification. All statements accepted as undertakings to this Court and all undertakings accepted.

3. The undertaking of plaintiff through Mr.Rajasekhar to pay

poundage if any is accepted. Mr.Rajasekhar submits in response to the submissions of Deputy Sheriff that poundage as 1% was payable on the amount of Rs.1,75,00,000/- which is the consideration being paid by plaintiff to defendant for purchase of defendant no.1-vessel, that what the Deputy Sheriff is submitting, is incorrect. Mr.Rajasekhar submits that 1% poundage that the Sheriff is entitled, will be only on the amount that plaintiff would have recovered pursuant to the execution of the warrant of arrest by the Sheriff of Mumbai. But in this case it is plaintiff who is paying Rs.1,75,00,000/- to purchase the vessel. Mr.Rajasekhar states that in paragraph-30 of the plaint it is averred that defendant no.2 who is the owner of defendant no.1 vessel had entered into Memorandum of Understanding with plaintiff to sell defendant no.1 vessel for the consideration of Rs.1,85,00,000/- and by this consent terms plaintiff is paying only Rs.1,75,00,000/-. Therefore, at the most plaintiff would have benefited by the arrest is only sum of Rs.10,00,000/- and the Sheriff would be entitled to only 1% of poundage on the amount of Rs.10,00,000/-. I agree with Mr.Rajasekhar. Therefore, undertaking of Mr.Rajasekhar to pay Rs.10,000/- being 1% poundage on Rs.10,00,000/- to Sheriff of Mumbai by 11.11.2019 is accepted.

4 For ease of reference, consent terms is scanned and reproduced below :-

KJ

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY & VICE-ADMIRALTY JURISDICTION
COMMERCIAL ADMIRALTY SUIT (J) NO. 55 OF 2019

A.P. MARINE SERVICES ENGINEERS
& CONSULTANTS

... PLAINTIFF

VERSUS

TUG VARAH & ANR

... DEFENDANTS

CONSENT TERMS/ SETTLEMENT AGREEMENT

1. The Plaintiff has instituted the present Admiralty Suit against the Defendants in respect of its claim of Rs. 1,19,83,547.00 (Rupees One Crore Nineteen Lakhs Eighty Three Thousand Five Hundred and Forty Two Only) along with further interest @ 15% p.a. from the date of institution of the Suit till payment / realization, together with costs and charges.
2. By a Judge's Order No. 65 of 2019 dated 23rd August 2019, the 1st Defendant Vessel has been directed to be arrested at the Port of Mumbai.
3. Hereafter parties have agreed to, without admission of liability on either side, settled their disputes on the below terms:
4. Defendant No.2 has agreed to sell Defendant No.1 vessel, Tug Varahi to the Plaintiff for a principal amount of Rs. 1,75,00,000.00 (Rupees One Crore Seventy Five Lakhs Only) ("Consideration Amount") to be paid in the manner prescribed herein below:
 - a. Rs. 30,30,303.03 (Rupees Thirty Lakhs Only) to be paid by the Plaintiff to Defendant No.2 on or before 8th November, 2019 by RUCS to account bearing no. 26510550064, held with ICICI Bank, Jamnagar branch having IFSC Code ICIC0002651 ("designated account");



- b. Rs. 20,00,000.00 (Rupees Twenty Lakhs Only) to be paid by the Plaintiff to Defendant No.2 on/ before 14th November, 2019 by RTGS to the designated account;
- c. Rs. 25,00,000.00 (Rupees Twenty Five Lakhs Only) to be paid by the Plaintiff to Defendant No.2 on/ before 18th November, 2019 by RTGS to the designated account;
- d. Rs. 1,00,00,000.00 (Rupees One Crore Only) to be paid by the Plaintiff to Defendant No.2 on/ before 28th February, 2020. The Plaintiff has also agreed to pay an interest at the rate of 2.5 % per month on the outstanding principal amount payable by the Plaintiff for the period starting from 18th November, 2019 or the date of handover of the possession of Defendant No. 1 vessel, whichever is later, till actual payment receipt of the money by Defendant No.2.
5. The Plaintiff shall clear the entire consideration amount mentioned hereinabove by 28th February, 2020 - with a maximum further extension of forty-five (45) days (hereon). In case the Plaintiff fails to clear the entire consideration amount within the stipulated period of time, the present agreement between the parties for sale of the vessel shall stand cancelled and all amounts paid by the Plaintiff under the present agreement shall stand forfeited to Defendant No.2. The Plaintiff shall have no right to demand the return of any amount from Defendant No.2 on any ground whatsoever and possession of the Defendant, No.1 Vessel shall be returned to the Defendant No.2. Till the title in the Vessel is not passed to the Plaintiff, the Plaintiff shall operate the Vessel as a charter, having full discretion as to the operation and navigation of the Vessel and it's crew and technical management. There shall be no charter hire payable for this period.

6. The Defendant No.2 has signed the Instrument of Sale and Change of Ownership form and the same ~~has been~~ ^{shall be} deposited with the Advocate for the Defendant No. 2, Mr. Manoj Khatri who shall keep the same in escrow and hand over the same to Plaintiff only after proof of payment of the entire consideration amount referred to in clause 4 above is furnished to the Advocate for the Defendant No. 2. Upon receipt of the entire Consideration Amount Defendant No. 2 undertakes to this Hon'ble Court that it shall assist the Plaintiff for change of registry as well as the ownership of Defendant No.1 vessel to the name and style of the Plaintiff and to otherwise perfect the Plaintiff's title to the same and for that purpose sign any other letters/documents that may be required. However, the amount payable towards GST as raised in the bill of sale of the vessel will be solely borne by the Plaintiff.
7. Defendant No.2 has agreed to hand over possession of the vessel to the Plaintiff at the port and harbor of Angra by ^{18th} November 2019. Possession shall be said to be handed over only when the crew of the Plaintiff is allowed to board the Defendant No. 1 Vessel, and the crew of the Defendant No. 2 disembarks the Defendant No. 1 Vessel. Defendant No. 2 agrees for closure of engine and miscellaneous work. At the time of handing over Defendant No. 2 shall hand over RSV type IV plan as amended. Defendant No. 2 also agrees to produce original registry certificate as and when necessary and called upon by the Plaintiff. It is made clear that the ownership as well as the title of the vessel will be transferred only upon receipt of the entire consideration amount from the Plaintiff. Once possession is given to the Plaintiff, Defendant no.2 shall not interfere in any manner with such possession unless payment of the Consideration Amount as mentioned in clause 4 (a), (b) and (c) is not made within the stipulated time.

8. The Plaintiff shall be solely responsible for any additional expense for the works that may be suggested by IRS at the time of survey of the vessel provided the work was not within the scope of the repair work already commenced by Defendant no.2 and referred to above.
9. All expenses/ Liabilities with respect to Defendant No.1 vessel that have incurred prior 18th August, 2019 shall be borne solely by the Plaintiff.
10. The Defendant No. 2 agrees and undertakes that any parts removed from the Defendant No. 1 Vessel for the purpose of repairs or for any other purpose, shall be returned to the Defendant No. 1 Vessel before handing over possession of the Defendant No. 1 Vessel to the Plaintiff.
11. The Defendant No. 2 states that he has cleared all pending dues, charges in respect of any goods or services availed in respect of the Defendant No. 1 Vessel after 18th August 2019 and indemnifies the Plaintiff against all and any claims, disputes or demands that may be raised by any third party in respect of any such dues or charges till 30th November 2019.
12. It has also been agreed that the crew member wages as well as the IRS expenses for the period starting from the date of execution hereof to till the 30th November 2019 will be borne by both the parties equally. Defendant No. 2 shall not be liable for any claim made by the Angre Port Port Ltd. under the Charter Party between the Plaintiff and the Angre Port. However, the Defendant No. 2 will be responsible to clear any additional charges in respect of water supply, fuel, electricity and any other equipment used by the Defendant No. 2.
13. Upon execution of the present agreement, all prior agreements, as well as Memorandum of Understanding entered into between the parties herein with respect to Defendant No.1 vessel shall stand cancelled and neither of the parties shall have any rights/ obligations under the said agreements. Furthermore, neither of the parties shall have any right to claim any sum

under the previous agreements MOU entered into between them with respect to Defendant No.1.

14. Upon execution of the present agreement, Plaintiff shall forthwith withdraw the present Admiralty Suit filed against the Defendants and apply for release of Defendant No. 1 vessel, before the Hon'ble High Court, Bombay. It has also been agreed that all costs for release of Defendant No.1 vessel including poundage amount, if any, shall be borne solely by the Plaintiff. The Plaintiff will apply for Instrument of Release to be dispensed with. The Defendant No. 2, undertakes that till possession of the Defendant No. 1 Vessel is handed over to the Plaintiff, they shall not take the Vessel out of the port and harbor of Angre.

15. Upon execution of the present agreement, Defendant no.3 shall address a communication to Angre Port Pvt. Ltd. renouncing any claim it has on the charter hire under the charterparty agreement entered into between the Plaintiff and Angre Port Pvt. Ltd. or in respect of Defendant no.1 vessel and clearly stating that it has no objection to the said sums being paid to the Plaintiff. The Defendant No. 2 shall provide any assistance to the Plaintiff in this regard.

16. The Plaintiff shall seek liberty to convey, by fax, email or any other electronic means, the Order directing release of the 1st Defendant Vessel to Port, Customs and other statutory Authorities.

17. The Plaintiff shall seek an order that the Prothonotary & Senior Master, High Court, Bombay / Admiralty Registrar / Secy. of Mumbai, Customs, Port and all concerned statutory authorities be directed to act on an authenticated copy of the order passed by this Hon'ble Court.

18. Settlement Agreement is entered into by each of the parties without reliance upon any statement, representation, promise, inducement, or agreement not expressly contained herein. This Settlement Agreement

constitutes the entire agreement between the parties concerning the aforesaid settlement and release of claims.

19. If any portions of this Settlement Agreement are held invalid and unenforceable, all remaining portions shall nevertheless remain valid and enforceable, to the extent they can be given effect without the invalid portions.

20. Each of the parties has participated in the drafting and negotiation of this Settlement Agreement. Accordingly, for all purposes, this Settlement Agreement shall be deemed to have been drafted jointly by the parties.

21. A party's rights under this Settlement Agreement may not be assigned without the express written consent of the other party, which consent may be given only in accordance with applicable law and regulation.

22. This Settlement Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, successors, assigns and personal representatives.

23. This Settlement Agreement may be executed in any number of copies, each of which shall be deemed to be a counterpart original.

24. Each person signing this Settlement Agreement hereby represents and warrants that he or she has the authority to bind the entity on behalf of which he or she has signed.

Dated this 8th day of November, 2019.

For K.P. MARINE SERVICES
ENGINEERS & CONSULTANT

[Signature]

Kumar Shrookant
(Proprietor)
Plaintiff

For M/s Taurus Legal

[Signature]

(Partner)
Advocate for the Plaintiff

For BINDIYA MARINE
SERVICES

[Signature]

M/s. Sanjay
(Proprietor)
Def. No. 2

[Signature]

M. Manoj Khatri
Advocate for the Defendants

INTERPRETED BY M/s. Taurus Legal
to comply with court order only
Signed by M/s. Taurus Legal
Date: 08/11/19

FILED 12
NOV 15 2019
8/11/19

5. Mr.Rajasekhar for plaintiff states that there is no caveat against released entered in the caveat warrant book at 14.05 hrs. on 8.11.2019. Mr.Rajasekhar also produces endorsement made to that effect by the Section officer of the department.

5. In the circumstances following order is passed :-

- (a) Suit stands disposed with no order as to costs ;
- (b) Refund of court fees if any, in accordance with Rules ;
- (c) Defendant no.1-vessel to be released forthwith ;
- (d) The communication from the Sheriff of Mumbai addressed to the concerned port and customs regarding release of defendant no.1-vessel is permitted to be sent by plaintiff by fax/email/hand delivery;
- (e) Instrument of release dispensed with.

6. In view of the above, Sheriff Report No.44 of 2019 dated 17.10.2019 stands disposed.

7. All interim applications stand disposed.

8. All to act on authenticated copy of this order.

(K.R.SHRIRAM,J)