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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1755 OF 2016

IN

SUIT NO. 3009 OF 1990

WITH

NOTICE OF MOTION NO. 1749 OF 2016

IN

SUIT NO. 3009 OF 1990

WITH

COMM CHAMBER SUMMONS NO. 221 OF 2017

IN

COMMERCIAL SUIT NO. 1 OF 1990

The Official Receiver, Singapore of Maritime Pte Ltd …Plaintiff

Versus

Micoperi Ocean Transport Inc & Anr …Defendants

Mr Shrinivas Deshmukh, *with Ms Smriti Jha, i/b M/s Mulla and Mulla and CBC, for Plaintiff.*

Mr BM Chatterji, Senior Advocate, *with Vishesh Srivastav, & Prtish Chatterjee, i/b Ranjit Basu, for Defendant No. 2.*

Mr DV Deokar, *with Jayalakshmi Gaud, i/b Parimal K Shroff & Co., for the Plaintiff in Commercial Suit No. 1 of 1990.*

CORAM: G.S. PATEL, J

DATED: 19th March 2019

PC:-

1. Both Motions are by the original Plaintiff. It filed this suit in this Court seeking a decree against the 1st Defendant Micoperi Ocean Transport Inc. in the sum of USD 594,253.00 and interest at 21% per annum.

2. Notice of Motion No. 1749 of 2016 seeks a pro-rata distribution of amounts deposited by a garnishee, Burn Standard Co (originally arrayed as 2nd Defendant) following an order of 6th March 1991 and later Consent Terms filed in this Court on 2nd May 1991.

3. Notice of Motion No. 1755 of 2016 is for a decree on admission in view of these Consent Terms.

4. The reference to the Consent Terms is perhaps inaccurate. These were Consent *Minutes* of the order. There were altogether five suits against Micoperi. The present Applicant, Maritime (Private) Limited, was one of the five Plaintiffs. The four others were Semco Salvage & Marine Pte. Ltd , PAE Singapore Pte. Ltd, Kapasi Builders Pvt Ltd and International Marine Services.

5. Burn Standard was brought into the Maritime Pte Ltd's suit as a garnishee. It was the 1st Defendant in the suits by PAE Singapore's, Kapasi Builders Pvt Ltd and International Marine Services.

6. The 6th March 1991 order required Burn Standard to deposit in Court a sum equivalent to USD 1.8 million tentatively at the exchange rate prevalent on 19th September 1990. The Consent Minutes record that Burn Standard did so on 29th April 1991. It stood discharged to Micoperi to the extent of the amount deposited. There was another amount of USD 1 million due from Burn Standard to Micoperi on 21st May 1991. Burn Standard undertook to deposit that amount by 31st May 1991 in the same manner. Clause 4 of the Consent Minutes noted that the five Plaintiffs had claims in different amounts and that Burn Standard's deposits were insufficient to cover these claims in full. Therefore the parties agreed on a pro-rata distribution of Burn Standard's deposits between the five Plaintiffs. Maritime Pte. Ltd was entitled to a withdrawal of a rupee amount stated to be Rs.1,01,11,784.78. It is not disputed that Maritime Pte. Ltd has in fact withdrawn this amount.

7. It seems that Burn Standard made two further deposits: one on 15th June 1992 of Rs.34,87,608.00 and a second on 13th July 1992 of Rs.1,45,070.00.

8. Clearly, these amounts should also now be ordered to be distributed between the five Plaintiffs in their respective suits in the same proportions and ratios as agreed in the Consent Minutes of the order of 2nd May 1991. There will be an order in these terms in Notice of Motion No. 1749 of 2016. The Prothonotary and Senior Master will compute the principal deposits made on 15th June 1992 and 13th July 1992 and the pro-rata shares of the five Plaintiffs and permit the withdrawals accordingly.

9. These deposits made by Burn Standard will have earned interest. Mr Chatterji appears for Burn Standard and makes what I can only describe as an over-optimistic submission that the interest ought to be returned to his client. That is quite out of the question. Had the principal amounts claimed been paid to the plaintiffs, they would have earned interest on the money received. It is the five plaintiffs who are are entitled to all interest earned, pro-rata. The Prothonotary and Senior Master will, accordingly, compute the interest earned on the total deposits made by Burn Standard i.e. the first deposit of Rs. 3,36,94,717.71 (roughly equivalent to USD 1.8 million), followed by the second and third deposits of Rs.34,87,608.00 and 1,45,070.00 and will distribute this interest income earned in the same proportions and pro-rata between the five Plaintiffs.

10. Coming now to Notice of Motion No. 1977 of 2016, this is essentially a Notice of Motion for a judgment for want of a Written Statement within the meaning of the Bombay High Court (Original Side) Rules. The Defendant has been served. It has never entered appearance. The suit against the 1st Defendant is undefended. The only question that arises is whether the Plaintiff is entitled to interest at 21% per annum. In my view the correct order to be made on such a suit would be to decree the suit for USD 594,253, this claim not being disputed, but permit interest only at the rate of 18% per annum from the date of the suit till payment or realisation. This decree will be immediately marked partly satisfied to the extent of the amount withdrawn by the Plaintiff. It is clarified that the Plaintiff is not entitled to execute this decree against the remaining amount in the hands of the Prothonotary and Senior Master or the amount that that comes to the share of other four Plaintiffs.

11. Notice of Motion No.1755 of 2016 and Notice of Motion No. 1749 of 2016 are both disposed of in these terms. Liberty to the Plaintiff, Maritime (Private) Limited or its Receiver to apply to the City Civil Court for withdrawal of any suit pending in that Court.

12. Burn Standard Company stands discharged.

13. In view of this order, Commercial Chamber Summons No. 221 of 2017 filed by Kapasi Builders Pvt Ltd is unnecessary and is disposed of as such.

(G. S. PATEL, J)