IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.07.2019

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

C.S.No.972 of 2015

Shadi Ram and Sons Private Limited,
No.19, South Raja Street,
Tuticorin – 628 001.
Rep. by its Manager,
Mr.Desh Raj Sharma
(Amended as per order dated 02.07.2019 in Application No.4446 of 2019)

...Plaintiff

Versus

Owners and parties interested
in the vessel M V HYUNDAI FUTURE,
now lying at the Port of Chennai and
Rep. by its Master.

...Defendant

This suit is filed under Order XLII Rule 1, 2 & 3 of the O.S.Rules r/w. Order VII Rule 1 of C.P.C for the following reliefs:

(a) For a sum of Rs.1,63,03,481/- (Rupees One Crore Sixty Three Lakhs Three Thousand Four Hundred and Eighty One only) together with interest @ 24% p.a. from this date till date of realization in full;

(b) For arrest and sale of the defendant Vessel M V HYUNDAI FUTURE in as is where is condition, presently in Indian waters at the Port of Chennai, India;

(c) For a direction to adjust the sale proceeds of the defendant Vessel M V HYUNDAI FUTURE against the suit claim;

(d) And for costs of this suit.

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For Plaintiff : Mr.S.Vasudevan

For Defendant : Mr.T.Poornam

J U D G M E N T

The present Suit has been filed by the plaintiff for the relief, morefully described in the prayer portion of this Judgment.

2. The learned counsels appearing for both the parties submitted that the parties have now arrived at a settlement and they have also filed a Joint Memorandum of Settlement before this Court. Therefore, the learned counsels prayed that the Suit may be decreed in terms of the Joint Memorandum of Settlement filed by them.

3. The said Joint Memorandum of Settlement reads as follows:

"The aforementioned suit had been preferred by the plaintiff herein, namely, Shadi Ram & Sons Private Limited for a judgment and decree against the defendant herein for a sum of Rs.1,63,03,481/- (Rupees One Crore Sixty Three Lakhs Three Thousand Four Hundred and Eighty One only) together with interest at the rate of 24% per annum from the date of the Plaint till the date of realization on the same, for arrest and sale of the first defendant Vessel,

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M.V.HYUNDAI FUTURE and for a direction to adjust the sale proceeds of the said Vessel, towards the claim of the suit.

2. The plaintiff had also preferred an Application bearing No.8197 of 2015 before this Hon'ble Court, for the arrest of the vessel M.V.HYUNDAI FUTURE. This Hon'ble Court had passed an order of arrest of the said defendant Vessel on 22nd December 2015. In order to secure the release of the said Vessel, M/s.Hyundai Merchant Marine India Pvt. Ltd., on behalf of the said defendant Vessel herein, had preferred an Application bearing No.8265 of 2015 in the above Suit and had deposited the suit claim of a sum of Rs.1,63,03,481/- (Rupees One Crore Sixty Three Lakhs Three Thousand Four Hundred and Eight One only), vide a Demand Draft dated 23rd December 2015, bearing No.012957 drawn on Axis Bank Ltd., Kilpauk Branch, on deposit of which, the order of arrest dated 22nd December 2015 had been vacated on 24th December 2018 and the defendant Vessel had been allowed to sail. A further sum of Rs.4,00,000/- (Rupees Four Lakhs only) had also been deposited by M/s.Hyundai Merchant Marine India Pvt. Ltd., vide a Demand Draft dated 28th December 2015, bearing No.058161 drawn on Axis Bank Ltd., Moore Street Branch, pursuant to an order passed by the Hon'ble Madras High Court, dated 24th December 2015 in Application No.8267 of 2015 towards the cost of the suit including Court fees and legal fees, as per Rules. The said amounts that have been deposited by way of security to the credit of the suit, amounts to a sum of Rs.1,67,03,481/- (Rupees One Crore Sixty Seven Lakhs Three Thousand Four Hundred and Eighty One only) and the same continues to be deposited

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into this Hon'ble Court to the credit of the said suit.

3. Pursuant to the mutual discussions and negotiations had between the parties to the suit, the plaintiff and the defendant have now resolved to amicably settle their disputes and have agreed to arrive at a full and final settlement as per the terms and conditions hereinafter set out:

(i) The suit claim of a sum of Rs.1,63,03,481/- (Rupees One Crore Sixty Three Lakhs Three Thousand Four Hundred and Eighty One only), claimed by the plaintiff, is inclusive of the amount raised by the plaintiff against the defendant vide its invoice dated 17.03.2015, for a sum of USD 2,02,876.90/- (US Dollars Two Lakhs Two Thousand Eight Hundred and Seventy Six and Ninety Paise only).

(ii) The parties herein have therefore agreed to settle the said suit, full and finally, for a sum of USD 1,62,301.52/- (INR 1,13,12,415.94/- at the rate of Rs.69.70 per Dollar) being 80% of the invoice value of USD 2,02,876.90/- with the plaintiff, towards the settlement of the entire claim that the plaintiff has against the defendant herein and the defendant shall be acquitted from making any further payments in relation thereof to the plaintiff.

(iii) The plaintiff further confirms that all the amounts payable to it by the defendant and/or third parties, under the aforementioned proceedings have been fully and finally settled and that it has no other claim(s), whatsoever against the defendant and/or any other party in respect of the suit Cargo and in respect of these proceedings.

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(iv) The parties herein agree that the plaintiff shall be entitled to withdraw a sum of Rs.1,13,12,415.94/- (Rupees One Crore Thirteen Lakhs Twelve Thousand Four Hundred and Fifteen and Ninety Four Paisa only) from and out of the said amount of Rs.1,67,03,481/- (Rupees One Crore Sixty Seven Lakhs Three Thousand Four Hundred and Eighty One only) that has been deposited by the defendant to the credit of this Suit, before the Court, in Application Nos.8265 of 2015 and 8267 of 2015, filed in the above suit and the balance amount that remains after settling the plaintiff, standing to the credit of the said suit shall be entirely paid to M/s.Hyundai Merchant Marine India Pvt. Ltd., along with interest that has accrued thereof.

(v) The parties herein agree that, upon receipt of the settlement amount by the plaintiff, the plaintiff herein shall have no right against the defendant herein or any other party or parties whatsoever, in respect of the suit cargo. This Memo of Settlement shall constitute full and final settlement of the plaintiff's claims arising out of the suit transaction or any other transaction, if any.

(vi) Upon the said Memo of Settlement being filed into Court, the plaintiff undertakes to unconditionally have the suit withdrawn as settled out of Court, so as to enable the plaintiff to receive refund of the Court fees paid by it while instituting the said suit to the full extent permitted by law.

(vii) The parties herein shall bear their respective costs."

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KRISHNAN RAMASAMY, J.,
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4. The said Joint Memorandum of Settlement is recorded and the same shall form part of the decree.

5. Considering the submissions made by the learned counsels on both sides, this Court is inclined to decree the suit in terms of the said Joint Memorandum of Settlement. Accordingly, this Civil Suit is decreed in terms of the Joint Memorandum of Settlement filed by the learned counsels on both sides.

6. It is also made clear that as per the amended Section 69 of Tamil Nadu Court Fees and Suits Valuation Act, 1955 (Tamil Nadu Act XIV of 1955) as amended by Tamil Nadu Act 6 of 2017 with effect from 01.03.2017 Act, refund of full Court fee is ordered. Therefore, the Registry is directed to do the needful to refund the full Court fee to the plaintiff.

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Index : Yes/No
Note : Issue Order Copy on 04.07.2019

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