Item nos.1 and 2 of the
supplementary list.

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction

APO No. 133 of 2020
in
CS No. 123 of 2020
IA No. GA/1/2020

ANKUSH RAJHANS AND ANR.
VS.
TIRUPATI VESSEL PRIVATE LIMITED

AND

APO No. 134 of 2020
in
CS No. 124 of 2020
IA No. GA/1/2020

PRAKASH CHANDRA YADAV AND ANR.
VS.
TIRUPATI VESSEL PRIVATE LIMITED

BEFORE

THE HON'BLE JUSTICE SANJIB BANERJEE

THE HON'BLE JUSTICE ANIRUDDHA ROY

Date: December 4, 2020.

Appearance:
Mr. Rohit Das, Adv.

Mr. Sarvapriya Mukherjee, Adv.
Ms. Sukla Banerjee, Adv.
Mr. Ratul Das, Adv.
Ms. Runa Palit, Adv.

Mr. Sarosij Dasgupta, Adv.

The Court: These two appeals arise out of nearly identical orders passed in two similar suits. Either suit involves two vessels proposed to ply somewhere in Jharkhand.

The principal ground urged on behalf of the appellants is that the orders impugned dated November 3, 2020 were passed ex parte without any indication as to why such an extraordinary measure was necessary, particularly, since the plaintiff in either case had a pure money claim.

It is not necessary to go into the nature of the actions at this stage, particularly, since the appeals arise out of an ex parte ad interim order passed at the initial stage upon the receipt of the suits.

Broadly speaking, it appears that the plaintiff in either case has agreed to let out two river vessels to the appellants herein for such vessels to be plied somewhere in Jharkhand. The plaintiff in either case is to provide the crew. The defendants are to participate in the tender and, if successful, the vessels would ply on the relevant routes. The similar agreements in the two suits entered into on or about March 16, 2020 contemplated the tender process to be completed on March 20, 2020. However, the lockdown induced by the pandemic intervened and the tender process was scuttled. The appellants say that the tender process is due to be concluded on December 8, 2020.

On a casual reading of the relevant agreements, it appears that the appellants are liable to pay Rs.21 lakh (Rs.13 lakh in one case and Rs. 8 lakh in the other) as idle charges in addition to the agreed charges upon being successful in the tender process and being awarded the contracts. There is also a total amount of Rs.84 lakh which is to be paid on account of security deposit (both suits combined).

The plaintiff in either case claims that no payment has been made other than some other charges in terms of clause 3 of either agreement. It is also the submission of the plaintiffs in either case that although the tender process may have been stalled, the vessels have been plying on the routes since or about June, 2020 and the formal process is now proposed to be concluded. The appellants dispute such submission.

The agreements provide for Rs.21 lakh to be paid (both suits combined) per month on account of idle charges. The question as to whether the appellants herein were liable to pay actual charges after March 20, 2020 irrespective of whether the tender process was completed, may be gone into at a later stage in the suits. For the moment, it is evident that at least Rs.21 lakh had to be paid per month by the appellants herein to the plaintiff in respect of the four vessels, whether or not the vessels were put to use.

It is plain to see that notwithstanding the tender process not having been completed till now, the plaintiff was entitled to, at least, the idle charges till the end of November, 2020 and no payment has been made on such account. Also, the security deposit should have been paid, but that has not been done. The plaintiff asserts that the appellants herein have sought to disregard the orders impugned and denied the receiver appointed to take possession of the vessels. The plaintiff says contempt proceedings have been instituted.

The appellants refer to the present situation brought about by the lockdown and the complete closure of business to say that no payment can be made before the vessels commence plying and it is imperative that the appellants have control of the vessels to be able to offer the same and participate in the tender process. Prima facie, it may not enure to the benefit of either side if the vessels are seized or taken possession of by the receiver and the appellants denied the opportunity to put up the vessels at the tender process.

As a purely interim measure and without prejudice to the rights and contentions of the parties herein, the orders impugned dated November 3, 2020 are modified. The receiver will now be in symbolic possession of the four vessels and the appellants herein will make it convenient for the receiver to see the four vessels and take symbolic possession thereof. The appellants will be entitled to put up the four vessels and participate at the tender process. However, before December 8, 2020, the appellants must pay the security deposit of Rs.84 lakh by an unimpeachable instrument as a banker's cheque or a pay order or a demand draft or like instrument, not being a personal cheque. The relevant instrument has to be handed over to advocate-on-record for the plaintiff by December 7, 2020.

Subject to the tender as aforesaid, the appellants will be entitled to participate in the tender process. The appellants will also be obliged to pay the monthly idle charges of the combined amount of Rs.21 lakh per month for the months of April to November, 2020 by January 15, 2021. In the event such payment is not made, the receiver will immediately take physical possession of the four vessels and the appellants herein will have no right to ply the same, whether or not they have been successful in the tender process.

Since it is the obligation of the plaintiff to provide the crew, the plaintiff has submitted that the crew will be ready to board the vessels by

December 10, 2020. The appellants should facilitate the process of the plaintiffs' crew taking charge of the vessels with effect from December 10, 2020.

It is made clear that the views expressed here are tentative and it will be open to the trial court to deal with all the matters appropriately without being unduly influenced by the present order.

APO No.133 of 2020 and APO No.134 of 2020 along with the interim applications therein stand disposed of.

There will be no order as to costs.

(SANJIB BANERJEE, J.)

(ANIRUDDHA ROY, J.)

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