dik

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION
IN ITS COMMERCIAL DIVISION

SUO MOTO SHOW CAUSE NOTICE NO. 1 OF 2020
A/W
SUO MOTO SHOW CAUSE NOTICE NO. 2 OF 2020
IN
COMMERCIAL ADMIRALTY SUIT (L) NO. 63 OF 2019

Slovesnov Vadym & Others ..... Plaintiffs
Vs.
OSV Beas Dolphin (IMO No.9413482) ..... Defendant

....

Mr. Prashant S Pratap, Senior Advocate with Mr. Siddharth Singh, Advocate i/b Anoma Law Group LLP for Contemnor Nos. 1 to 5
Mr. Prathamesh Kamat a/w Mr. Osama Butt i/b Ganesh & Co. for the Plaintiffs
Mr. Satpal Singh and Mr. Navpreet Singh Contemnor are present

.....

CORAM : B. P. COLABAWALLA, J.
10th DECEMBER, 2020.

P.C. :

1. Two Suo Moto Show Cause Notices No. 1 and 2 of 2020 were issued against the Contemnors Dolphin Offshore Shipping Ltd., Mumbai, Dolphin Offshore Enterprises (Mauritius) Pvt. Ltd., owners of the Defendant vessel OSV BEAS DOLPHIN and its Directors Rear Admiral (Retd.) Kripal Singh, Mr. Navpreet Singh and Mr. Satpal Singh and two other Directors based in Mauritius. Mr. Satpal Singh

and Mr. Navpreet Singh are present in Court today. Rear Admiral (Retd.) Kripal Singh was exempted from personal appearance in view of his age and health conditions. The other two Mauritius based Directors have not been served and are not represented.

2. The contempt is of the orders of this Court dated 6 November 2019, 3 December 2019 and 18 December 2019 which record Undertakings by Mr. Navpreet Singh on behalf of himself as well as the Directors of the two companies to make payment of the crew wages as claimed in Commercial Admiralty Suit (L) No.63 of 2019 aggregating to USD 108,810.00. Mr. Navpreet Singh has also not complied with the Undertakings contained in his Affidavit dated 6 January 2020 by which he had undertaken to make payment of the crew wages and also undertaken that the post-dated cheques issued by Dolphin Offshore Shipping Ltd. of which he was a Director, would be honoured on presentation.

3. It is submitted on behalf of the Contemnors that they gave the Undertaking *bona fide* and in good faith and had every intention to comply with the same and the breach of the Undertaking was not willful or intentional. According to the Affidavit filed by Mr. Navpreet Singh dated 12 March 2020 in reply to the two Show Cause Notices,

Dolphin Offshore Enterprises (Mauritius) Pvt. Ltd. owners of the Defendant vessel OSV BEAS DOLPHIN, was in the process of selling their vessel AHT Divine Dolphin and the sale transaction was expected to be completed prior to 30 November 2019. It was on this expectation that the monies would be imminently received from the sale of their vessel that he gave the Undertaking to make payment of the wages claimed by the Plaintiffs. According to Mr. Navpreet Singh the sale was delayed and hence they sought further time to make payment which was granted. Eventually out of the sale proceeds a sum of USD 600,000.00 (approximately Rs.4.2 crores) was remitted on 10 December 2019 to the bank account of Dolphin Offshore Shipping Ltd., Mumbai who were the managers and agents of the Defendant vessel from which the payment as per the Undertaking was to be made to the Plaintiffs. However the bank account was attached by the Joint Commissioner of State Tax on 11 December 2019 and could not be operated and payment could not be made from the said account. Attempts were made by Mr. Navpreet Singh to settle the disputes with the Tax authorities and on the expectation that this settlement would happen by 24 December 2019, 3 post-dated cheques all dated 26 December 2019 were issued to the Advocates for the Plaintiff for the Plaintiff's wages and other Sheriff's expenses incurred by the P & I Club Marine Mutual Insurance

Association (NZ) Ltd. However the issues with the Tax authorities could not be resolved and the bank account remained attached and as a result the cheques could not be honoured on presentation.

4. Mr. Navpreet Singh also states that the parent Company Dolphin Offshore Enterprises (India) Pvt. Ltd. was in discussion with Supreme Ace General Trading LLC through its Indian subsidiary, for raising funds through non-convertible bonds of Rs.200 crores for funding their business activities. He expected the parent company to receive Rs.50 crores by 20 December 2019 and this amount would have been made available to Dolphin Offshore Enterprises (Mauritius) Ltd. to pay the Plaintiffs their wages as well as reimburse the Sheriff's expenses. This bond issue got delayed because of regulatory approvals and the expected funds could not be received.

5. Mr. Prashant S. Pratap, Learned Senior Advocate appearing for the Contemnor Nos. 1 to 5, submits that the owners of the Defendant vessel have been facing financial difficulties and did not have the necessary funds to pay the crew wages. They were therefore constrained to sell another vessel AHT Divine Dolphin to arrange for funds. A sum of USD 600,000.00 was remitted by them to the account of the Managers Dolphin Offshore Shipping Ltd. in Mumbai to pay the

crew wages on 10 December 2019 and to comply with the Undertakings given to the Court. However the bank account was attached by the Tax authorities on 11 December 2019 and hence the amounts got blocked and could not be made available for payment to the Plaintiff in compliance with the Undertakings given.

6. According to Mr. Pratap, since the vessel owner Dolphin Offshore Enterprises (Mauritius) Pvt. Ltd. could not make payment from the bank account of Dolphin Offshore Shipping Ltd. to which the funds were remitted since the same was attached by the Tax authorities nor could they raise funds from other sources, they agreed to the sale of their vessel Beas Dolphin (the Defendant vessel) in order to ensure that the wages were paid to the crew members and Sheriff's expenses reimbursed in respect of which the various Undertakings had been given by the Contemnors. This shows the bonafides of the Contemnors and their intention to comply with the Undertaking and orders of the Court. Mr. Pratap submits that there was earlier a genuine inability to pay due to compelling circumstances and the disobedience of the Undertaking was neither willful nor intentional.

7. Mr. Pratap submits that the vessel was sold pursuant to an order dated 24 September 2020. It is recorded in the said order that the bid

which was accepted by the Court was much lower than the valuation given by valuer. In these circumstances this Court had inquired from the owners of the vessel whether they had any objection if the sale was confirmed despite the offer being less than the valuation given by the valuer. The Advocates for the owners of the Defendant vessel confirmed that they were willing to have the vessel sold to the highest bidder at the price offered. Accordingly the sale of the vessel was confirmed in favour of the highest bidder, M/s. Shivansh Offshore and Marine Services Pvt. Ltd. for Rs.9,50,00,000.00.

8. Mr. Prashant Pratap submits that whilst there was a breach of the Undertaking given by the Directors to make the payment of crew wages, since bank accounts of the company were attached, they agreed to sell the asset of the company viz. the Defendant vessel in order to satisfy the crew claim and comply with the Undertaking despite the price realised being lower than its market value. He submits that by sale of the vessel and the availability of the sale proceeds for payment to the Plaintiffs of their wages in priority over all other claims, the Undertakings given by the Contemnors have been complied with though there has been a delay.

9. In view of this, Mr. Pratap submits that since the sale proceeds of

the Defendant vessel are now lying in Court and are sufficient to satisfy the claim of the Plaintiffs for wages in full, this Hon'ble Court make take a lenient view of the breach of the Undertaking provided by the Contemnors for payment of wages as the Plaintiffs would now be entitled to receive payment from the sale proceeds of the Defendant vessel which is also an asset of Contemnor No.2 and has been sold to make payment of the wages of the Plaintiffs.

10. Mr. Pratap on instructions states that the owners of the Defendant vessel have no objection to the payment of the Plaintiff's suit claim from the sale proceeds of the Defendant vessel. The Plaintiff may also be paid reasonable interest to compensate them for the delay in payment and also reasonable costs.

11. Mr. Pratap also on instructions states that the owners of the Defendant vessel have no objection to the payment of the expenses incurred by Maritime Mutual Insurance Association (NZ) Ltd. for repatriation of the crew as well as for supply of food, fresh water, bunkers, lubricating oil and other necessary expenses as quantified by the Sheriff. These were to be treated as Sheriff's expenses pursuant to the order dated 21 September 2019.

12. The Defendant vessel was sold for a sum of Rs.9,50,00,000.00. The net sale proceeds after deduction of sale expenses aggregate to Rs.9,44,86,141.00. Out of this, the Plaintiff's claim is approximately Rs.80,51,940.00. The payment to the P & I Club for expenses incurred by them and which are directed to be considered as Sheriff's expenses and paid on priority aggregate to Rs.33,55,352.00 as determined by the Sheriff in his Report No.65 of 2020 dated 5 December 2020. Thus the total amount to be paid comes to Rs.1,14,07,292.00. The sale proceeds of the Defendant vessel available are Rs. 9,44,86,141.00. Thus according to Mr. Pratap the sale proceeds are far in excess of the amount payable to the Plaintiff and for reimbursement of the Sheriff's expenses to the P & I Club in compliance with the Undertakings provided by the Contemnors and there would be a substantial balance available even after these payments are made.

13. The two Directors, Mr. Satpal Singh and Mr. Navpreet Singh who are present in Court tender an unconditional apology not only on their behalf but also on behalf of Rear Admiral (Retd) Kripal Singh who is their 95 year old father, and express sincere and genuine regret for non-compliance of the Undertakings given and recorded in the various orders of this Court to make payment of crew wages. Both

Mr. Satpal Singh, Mr. Navpreet Singh and Rear Admiral (Retd) Kripal Singh say that they have the highest regard for this Court and non-compliance was not willful or intentional but due to compelling circumstances beyond their control in view of the bank account of the company being attached by the State Tax authorities. They also say that they agreed to the sale of their vessel at a much lower value than the market price as obtained from the valuers so that the crew wages could be paid to ensure the Undertaking given by them is honoured and complied with.

14. Having considered the submissions made and particularly in light of the fact that the Contemnors could not make payment of the wages pursuant to the Undertakings given by them, from the funds in their bank account as the same were attached by the Joint Commissioner of State Tax and that they agreed to the sale of their asset viz. the Defendant vessel for the purpose of making payment to the Plaintiffs' crew and also for the purpose of meeting the Sheriff's expenses and that the sale proceeds are sufficient to make the aforesaid payments, I am inclined to take a lenient view in the matter and discharge the two Suo Moto Show Cause Notices being Suo Moto Show Cause Notice No.1 of 2020 and Suo Moto Show Cause Notice No.2 of 2020 in Commercial Admiralty Suit (L) No.63 of 2019. I do

this also in the light of the unconditional apology tendered by Mr. Satpal Singh and Mr. Navpreet Singh, Directors of the owners of the Defendant vessel who are present in Court and also the regret expressed by them in not being able to comply with the Undertakings given to this Court as recorded in the various orders from time to time that they would make payment of the crew wages and also the expenses incurred by the Maritime Mutual Insurances Association (NZ) Ltd. for supply of food, fresh water, bunkers, lubricating oil and other necessaries as well as repatriation expenses.

15. It is settled legal position that a breach of an Undertaking given to the Court amounts to contempt of Court. However the contempt has to be willful and intentional and this depends on the facts and circumstances of each case. There may be compelling circumstances as a result of which the Undertaking may not be complied with. In the present case, the compelling circumstances relied upon by Mr. Pratap is the attachment of the bank accounts by the State Tax authorities from which the crew wages were to be paid and this according to Mr. Pratap indicates the breach of the Undertaking was not willful or intentional. Mr. Pratap supports this by submitting that the owners of the Defendant vessel agreed for the sale of their vessel OSV Beas Dolphin (the Defendant vessel) even at a lower market price so as to

ensure that the Undertakings given by them for payment of the crew wages are complied with and the crew can be paid from the sale proceeds of the vessel. Thus effectively according to Mr. Pratap, the owners of the Defendant vessel are making payment of the crew wages and Sheriff's expenses by the sale of their asset viz. the Defendant vessel since they could not arrange for funds from their bank account or other sources. Thus he submits there is compliance with the Undertakings provided by the Directors of the owners and the delay in payment can be compensated by granting reasonable interest to the Plaintiff.

16. Taking an overall view of the matter and since the crew can be now paid in full from the sale proceeds of the vessel and also the fact that the sale proceeds are sufficient for payment of the Sheriff's expenses including the crew wages from the date of the arrest of the Defendant vessel till the date of their repatriation, I pass the following order:

ORDER

1 Suo Moto Show Cause Notice No.1 of 2020 and Suo Moto Show Cause Notice No.2 of 2020 in Commercial Admiralty (L) No.63 of 2019 are discharged. The unconditional apology tendered by Rear

Admiral (Retd) Kripal Singh, Mr. Satpal Singh and Mr. Navpreet Singh is accepted.

2 This order shall be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned shall act on production by fax or e-mail of a digitally signed copy of this order.

(B. P. COLABAWALLA ,J.)