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

COMMERCIAL ADMIRALTY SUIT NO.12 OF 2014

Saraswat Co-operative Bank Limited (Scheduled Bank) having its office at Saraswat Bank Bhawan, 953 Appasaheb Marathe Marg, Prabhadevi, Mumbai – 400 025	))))	….Plaintiff
V/s.		
1. M.T. Pratibha Bheema, IMO 9000558 a motor tanker registered in India, flying the flat of India together with her hull, tackle, engines, machinery, boat, bunkers, equipment, paraphernalia and all her appurtenances presently lying and being at Panaji, within the territorial waters of India and within the Admiralty and Vice Admiralty jurisdiction of this Hon'ble Court and all interested in her	)))))))))	
2. The Official Liquidator, High Court, Bombay, Liquidator of Pratibha Shipping Company Limited, appointed in Company Petition no.128 of 2013 having his office at Bank of India building, 5th Floor, M.G. Road, Fort, Mumbai – 400 023	))))))	
3. A/S Dan Bunkering Limited, a company registered under the foreign laws and having its office at Strandvejen 5.500 Middlefart, Denmark	))))	
4. Arab Shipbuilding and Repair Yard Co. (ASRY) A company incorporated according to the laws of the Kingdom of Bahrain and registered under the Commercial Register (CR) No.1860, with headquarters located in Building No.826, Road No.102, Block No.128-Dry dock Road, HIDD – Kingdom of Bahrain	)))))))	….Defendants

WITH
ADMIRALTY SUIT NO.42 OF 2015

Mr. Rahul Narichania, senior advocate a/w. Ms. Aditi Pawar, Ms. Shyamli Gadre and Ms. Ekta Sawant i/b. Little and Company for plaintiff in COMAS/ 12/2014 and for defendant no.3 in ADMS/42/2015.
Mr. U.J. Makhija a/w. Mr. Keanan Nagporwala i/b. Kochhar and Company

for defendant no.4 in COMAS/12/2014 and for plaintiff in ADMS/42/2015.
Mr. Prathamesh Kamat i/b. Ms. Sapana Rachure for defendant no.2 (in liquidation) in both suits.

CORAM : K.R.SHRIRAM, J.
DATE : 2nd MARCH 2020

ORAL JUDGMENT :

COMMERCIAL ADMIRALTY SUIT NO.12 OF 2014

1 At the outset, Mr. Makhija states that he has not been receiving any instructions but as an officer of the Court, Mr. Makhija states that the claim of plaintiff, subject to the Court being satisfied on the rate of interest, cannot be disputed. Mr. Makhija makes this statement particularly in view of Mr. Kamat stating that barring a dispute on the rate of interest, they do not find any infirmity in the claim of plaintiff.

2 Prayer clauses (a), (b), (c) and (d) in the plaint read as under :

> *(a) for an order and declaration that a sum of Rs.136.15 crores (Rupees one hundred and thirty-six crores fifteen lakhs only) i.e. (Rs.112.66 crores principal plus Rs.23.49 crores interest and enforcement costs of Rs.15 lakhs (Rupees Fifteen lakhs only) together with further interest as per the 14.5% on Rs.112.66 crores from the date of filing of the suit till payment and/or realization as per the particulars of claim at Exhibit-E hereto is due and payable by the 2nd defendant to the plaintiff.*
>
> *(b) for an order and declaration that the repayment of the principal amount and interest mentioned in prayer clause (a) above and the cost of the suit and further cost, charges, expenses and enforcement fees to be incurred are secured and/or charged in favor of the plaintiff by a valid and subsisting first priority mortgage of 1st defendant vessel M.T. Pratibha Bheema.*
>
> *(c) that defendant nos.1 and 2 be jointly and/or severally ordered and directed to pay a sum of Rs.136.15 crores (Rupees One hundred and thirty-six crores fifteen lakhs only) i.e. (Rs.112.66 crores principal plus Rs.23.49 crores interest and enforcement costs of Rs.15 lakhs together with further interest as per the 14.5% on Rs.112.66 crores from the date of filing of the suit till payment and/or realization as per the particulars of claim at Exhibit E hereto is due and payable by the 2nd defendant to the plaintiff.*

> *(d) that this Hon'ble Court be pleased to order and decree the 1st defendant vessel M.T. Pratibha Bheema together with her hull, tackle, engines, machinery, boats and all appurtenants thereto be arrested, detained, condemned and sold for the amounts and interest mentioned in prayers (a) and (c) and the cots of the suit, and for further costs, charges, sheriffs poundage and expenses and that out of the net sale proceeds thereof, the plaintiff claims herein together with further cots; charges and expenses and enforcement fees and expenses to be incurred, be directed to be paid over to the plaintiff and for the aforesaid purpose this Hon'ble Court be pleased to pass such orders and directions as may be necessary.*

3 Mr. Kamat submits that though in the body of the plaint and the documents relied upon by plaintiff it says interest payable will be PLR equal to 13% p.a. with monthly rest or at such rates as may be prescribed in future by the bank from time to time, no such increase in PLR rates have been intimated to plaintiff and no evidence has also been led to prove that when the PLR went up from 13% to 14.5%. Mr. Narichania submitted that the rate varied between 13% to 14.5% but at the same time, Mr. Narichania states on instructions that the Court may fix it at 13% p.a. but on monthly rests.

4 As regards interest from the date of suit, Mr. Kamat submits that the prayer clause does not contain claim for interest from the date of filing of the suit at monthly rest nor is there any evidence to that effect. Mr. Kamat states that the interest claimed in the prayer is only 14.5% p.a. on principal amount of Rs.112.66 crores from the date of filing of the suit till payment and/or realization as per particulars of claim at Exhibit "E" to the plaint. Exhibit"E" also does not indicate interest at monthly rest. In Exhibit "E" it is stated "with interest at the rate of 14.5% p.a. thereon from the date of filing of the suit till payment/realization". There is no mention of monthly rest.

5 Mr. Narichania, after making his submissions, left it to the Court on the interest from the date of filing of the suit, whether it should be monthly rest or simple interest, but submitted that the contractual rate of interest is 13% p.a. and therefore, the Court should grant interest at 13% p.a. on monthly rest upto the date of the suit and from the date of the suit, simple interest at 13% p.a. In the same breathe, Mr. Narichania in fairness also submitted that the Arbitral Tribunal, under the Multi-state Co-operative Societies Act, plaintiff being a co-operative bank, has awarded interest at 12% p.a. against the guarantor instead of 13% p.a. from the date of the filing of the claim and it is not specified that it will be at monthly rest.

6 The indisputable fact is plaintiff bank has lent money to the company (in liquidation). Defendant no.1 vessel was also mortgaged to plaintiff. Liquidator also does not dispute the calculations given by plaintiff except that if the rate of interest is reduced, it will proportionately go down.

7 Therefore, in my view, the bank will be entitled to interest at 12% p.a. at monthly rest upto the date of filing of the suit and from the date of the suit, it will be 8% p.a. simple interest upto the date of winding up of the company, which is 28th July 2014. From the date of winding up, what rate of interest will be payable, will be decided by the Official Liquidator in accordance with law.

8 Certainly, the amount that plaintiff has recovered from the guarantor would be given credit to in the claim payable to plaintiff. Mr. Narichania states that plaintiff has not recovered any money from the

guarantors.

9 Plaintiff has also claimed costs of Rs.15 lakhs. Mr. Kamat states that the costs have not been proved. Mr. Narichania states that in the plaint itself it is mentioned that Rs.3 lakhs has been paid as court fees. In my view, costs of Rs.5 lakhs, which would included Rs.3 lakhs court fees paid, will be reasonable costs. Therefore, plaintiff will be entitled to costs of Rs.5 lakhs.

10 It is clarified that plaintiff's claim as mortgagees will be only to the extent of sale proceeds of defendant no.1 vessel sold. If the sale proceeds are not sufficient to pay all creditors including plaintiff's claim, then for the balance amount, plaintiff will lodge their claim with the Liquidator as unsecured creditors. Mr. Narichania confirms that this is the correct position in law.

11 All counsels stated that the Court need not give reasons for this decree and hence, reasons are not given.

12 Drawn up decree dispensed with.

13 Suit accordingly stands disposed. All interim applications also stand disposed.

14 All to act on authenticated copy of this order.

<u>ADMIRALTY SUIT NO.42 OF 2015</u>

15 Stand over to 16th March 2020.

(K.R. SHRIRAM, J.)