IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 24.01.2020	Pronounced on: 07.02.2020

Coram::

The Honourable Dr.Justice G.Jayachandran

Application No.2193 of 2013
Application Nos.5702 & 5703 of 2015
in C.S.No.87 of 2013

M/s.Owners and Parties interested in the
Vessel Amet Majesty,
(Imo.7360198; Mmsi: 419000284),
Now lying at the Port of Cochin,
and represented by its Master ... Applicant/Defendant
in A.No.2193 of 2013

/versus/

M/s.Seagull Frontier Management Pvt. Ltd.,
Rep. by its Managing Director Mr.John Pandian,
Having its registered office at
No.3/5, 36th Street, Thillai Ganga Nagar,
Nanganallur, Chennai – 600 061. ... Respondent/Plaintiff
in A.No.2193 of 2013

Prayer in Application No.2193 of 2013:-

Judge's summons filed under Order XIV Rule 8 of Original Side Rules read with Order VII Rule 11 of the Code of Civil Procedure Code, 1908.

(i). To reject the plaint in C.S.No.87 of 2013.

M/s.Seagull Frontier Management Pvt. Ltd.,
Rep. by its Managing Director Mr.John Pandian,
Having its registered office at
No.3/5, 36th Street, Thillai Ganga Nagar,
Nanganallur, Chennai – 600 061. ... Respondent/Plaintiff
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M/s.Owners and Parties interested in the
Vessel Amet Majesty,
(Imo.7360198; Mmsi: 419000284),
Now lying at the Port of Cochin,
and represented by its Master ... Applicant/Defendant
in A.Nos.5702 & 5703 of 2015

Prayer in Application No.5702 of 2015:-

Judge's summons filed under Order XIV Rule 8 of Original Side Rules read with Order 1 Rule 10(2) of the Code of Civil Procedure Code, 1908.

To implead:- (i) AMET Shipping India Pvt. Ltd, Rep. by its Director, having its Registered Office at No.5107, H-2, 2nd Avenue, Anna Nagar, Chennai – 600 040.

(ii). The Academy of Maritime Education and Training (University, functioning at No.135, East Coast Road, Kanathur, Chennai – 603 112 as a party defendants in the plaint in C.S.No.87 of 2013.

Prayer in Application No.5703 of 2015:-

Judge's summons filed under Order XIV Rule 8 of Original Side Rules read with Order 42 Rule 59 of the Code of Civil Procedure Code, 1908.

(i). To permit the applicant/plaintiff to alter the jurisdiction in the plaint in C.S.No.87 of 2013 from Order XLII of Original Side Rules (Admiralty Jurisdiction) the regular suit claim under Order IV of C.P.C., (Civil Jurisdiction).

For Applicant in all cases : Mr.K.Mohanamurali,

For Respondent in all cases : Mr.N.Jothi, for Mr.M.C.Govindan

COMMON ORDER

This application is filed under Order XIV Rule 8 of the Original Side Rules of Madras High Court read with Order VII Rule 11 of C.P.C., to reject the plaint on the ground that, it is a vexatious suit filed against the wrong defendant by invoking wrong admiralty jurisdiction of this Court.

2. Before adverting to the merits of this application, for easy appreciation, the plaint and written statement as stated by the respective parties is extracted below:-

3. Plaintiff case:

The plaintiff company is involved in shipping related activities such as establishing facilities for repairing marine crafts, ships, vessels, structures and maintenance, operation, management and other identical or allied objects. The plaintiff entered into an agreement of lease on 17.06.2011, with the defendant a charted passenger Vessel flying Indian Flag "AMET Majesty" for training and recreational cruising purposes for paying customers in the area of South East Asia and Middle East Asia. Under the said agreement, 4000 sq.ft area of deck 4 of the defendant ship was leased out to the plaintiff for a period of 11 months commencing from 17.06.2011 for the purpose of private entertainment club on board of AMET Majesty. The plaintiff, undertook installation of entertainment equipment, surveillance machinery, supply of trained personnel and Management of an entertainment club on board the ship AMET Majesty. The plaintiff as under the contract has installed equipments and materials worth Rs.1,20,57,598.32 and same duly acknowledged by the defendant. When the plaintiff made claim for the said amount through letter dated 04.07.2012, no steps taken by the defendant to clear the dues. The evasive reply sent by the defendant not binding on the plaintiff.

4. The plaintiff has specifically averred that though the transaction arose from the lease agreement dated 17.06.2011, the suit claim is purely based on the goods sold and supplied, installations made, salary paid towards fixing the equipments and maintenance of the same and etc. The plaintiff obligation under

the agreement was to install entertainment equipment and manage the entertainment club. The defendant obligation was to manage the business and its promotion. The plaintiff strictly adhered to the terms of the agreement fulfilling its obligation, however, the defendant has committed many lapses. There was gross mismanagement of affairs such as time management, Port Management and Vessel Management and hence the promised amenities to the paying customers were not provided this resulted in many unsatisfied customers and the people who did sail once never patronised the cruise again.

5. The defendant assured and agreed that the cruise would be sailing throughout the calendar month however it was idle for about 155 days on a total 210 days, which had resulted in loss and increased overhead expenses. Even on the sailing days, the vessel was not half full which hindered any augmentation of revenue. The defendant failed to honour its assurance to share the operational expenses.

6. Apprehending that the defendant is trying to charter the vessel and the owners of the defendant vessel are facing financial crisis and indebted to various creditors suit is laid invoking the admiralty jurisdiction of the High Court seeking arrest of the vessel and realise the money putting the vessel for sale.

7. Defendant case:

The suit is not maintainable. Each and every averments made in the plaint are denied and repudiated. There is no privity of contract between the plaintiff and the defendant. The suit is laid against wrong person. The ship AMET Majesty was purchased by an Educational Institution called "Academy of Maritime Education and Training" having office at Anna Nagar, Chennai. The ship was purchased to give on board training to its students and other allied purpose. The owner of the ship has chartered it to M/s.AMET Shipping India Private Limited, for pleasure cruising purpose. The charter Agreement is for a period of 12 months between 23.06.2011 to 22.06.2012. The lease agreement dated 17.06.2011 relied by the plaintiff is not with the owner of the ship but with the charterer/hirer M/s.AMET shipping India Ltd. However, the suit is not filed against the charterer/hirer but against the owner of the vessel. Hence, the suit is bad for non-joinder of necessary party and wrong inclusion of the defendant is the suit is further bad.

8. The plaintiff rightly issued pre-suit notice on 04.09.2012 only to the charterer with whom it has entered into agreement. Suppressing the receipt of the reply notice from the charterer claiming Rs.5,47,50,000/- from the plaintiff, conveniently screening the facts this suit is filed against the owner without any privity of contract.

9. The relevant portion of the written statement reads as below:-

> *"The reading of the plaint averments and the foremost document namely the Lease Offer Letter dated 17.06.2011 can disclose that the said lease is made by Amet Shipping Indian Pvt, Ltd., which is a separate legal entity and is not owning any ship but the Charterer of the Passenger Ship.*
>
> *Thus the sole defendant described as "M/s.Owners and Parties interested in the Vessel Amet Majesty" has no privity of contract with the plaintiff. In fact, the seal and signature made in the said Lease Offer Letter itself could illustrate that Amet Shipping India Pvt. Ltd., only chartered the ship and is not owing the Ship. Whereas, the owner of the ship has no contract with the plaintiff. Hence, the suit is an abortive attempt by the plaintiff.*
>
> *In fact, the Letter itself was signed only by Amet Shipping India Pvt. Ltd., and not by the owners of the said ship. Hence, the suit is bad for mis-joinder of party as well as the non-joinder of party. As such the suit is liable to be rejected at the very initial stage itself."*

10. The charterer/hirer M/s.AMET Shipping India Ltd., is a juristic person and plaintiff has lease agreement only with the charterer. The alleged expenses incurred is pursuant to the agreement to run casino in the ship. Under the terms of the agreement, there is no clause to reimburse on the expenditure incurred for running the establishment of the plaintiff. Even if there was any breach of the terms of the agreement in establishing the entertainment facility, remedy has to be sought only against the charterer. There is no cause of action to invoke the admiralty jurisdiction of the High Court and lay suit against the owner of the vessel. Therefore, the suit filed against wrong person without cause of action has to be rejected.

Application No.2913 of 2013:

This application is filed to reject the plaint by the sole defendant on 20.05.2013, alleging malafide, suppression of facts, lack of privity and cause of action. The plaintiff has filed counter submitting that, the suit was clearly structured with a clear description of the defendant. The suit is filed based on the Lease Offer Letter coupled with the supplies and services which was duly acknowledged by, the captain of the Vessel. The cause of action for the suit properly pleaded in the plaint and the claim is pertaining to the defendant vessel, therefore the lis falls within the admiralty jurisdiction of this Court.

Application Nos.5702 of 2015 and 5703 of 2015:

Pending rejection of plaint application filed by the sole defendant, on 10.08.2015, the plaintiff filed the above two applications for altering the suit jurisdiction from admiralty jurisdiction to regular jurisdiction and to implead the charterer as party respondent.

Finding :

Order VII Rule 11 of C.P.C:-

"11. Rejection of plaint.- The plaint shall be rejected in the following cases:-

(a) Where it does not disclose a cause of action;

(b) Where the relief claimed is under-valued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) Where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) Where the suit appears from the

statement in the plaint to be barred by any law;

(e) Where it is not filed in duplicate;

(f) Where the plaintiff fails to comply with the provisions of rule 9."

11. It is settled principle of law that while considering the application for rejection of plaint, the statement in the plaint and documents alone to be taken for scrutiny. The averments in the written statement are immaterial. While scrutinising the plaint averments, it is bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove, to enable him to get a decree should be set out in clear terms. ***(The Church of Christ Charitable Trust and Educational Charitable Society -Vs- Ponniamman Education Trust (Supreme Court):reported in 2012 (4) CTC 308)***

12. In ***T.Arivanandam Vs. T.V.Satyapal and another*** reported in ***1977 (4) SCC 467,*** the Hon'ble Supreme Court has reminded the duty of the trial Court in considering Application under Order VII Rule 11 C.P.C as under:-

"The learned Munsif must remember that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, be should exercise his power under Order VII Rule 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial court should insist imperatively on examining the party at the first bearing so that bogus litigation can be shot down at the earliest stage. The Penal Code (Ch. XI) is also resourceful enough to meet such men, and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi "It is dangerous to be too good."

13. The cause of action for the suit is narrated in paragraph No.17 of the plaint as below:-

"The cause of action for this suit arose within the admiralty jurisdiction of this Hon'ble Court where the agreement dated 17.06.2011 between the plaintiff and the defendant at Chennai also accepting jurisdiction of Chennai, where the defendant

vessel is presently at the port of Cochin the plaintiff's principal place of business and the Registered office is also located within the jurisdiction of this Hon'ble court, when the plaintiff supplied the goods and executed works from on various dated from 17.06.2011 to 01.01.2012, when the plaintiff carried out management installation of machinery and other equipment work at Chennai, on the defendant vessel AMET MAJESTY (IMO:7360198; MMSI: 419000284), when the plaintiff issued a letter 04.09.2012 seeking the defendant to settle the entire claim of Rs.2,05,00,000/- when the said notice was received by the defendant on 07.09.2012, when on subsequent dates when the defendant failed to settle the legal dues of the plaintiff, however the suit claim is restricted to a sum of Rs.1,20,57,598/- and subsequently."

14. Reading of the above paragraph in isolation, it appears that, the suit is for supply of goods pursuant to agreement dated 17.06.2011. Whereas, the recital of the agreement dated 17.06.2011 discloses, it is for lease of 4000 sq.ft of space in the vessel for conducting casino and the claim of Rs.1,20,57,598/- as per the list mentioned in paragraph No.6 of the plaint, they are the value for equipments and allied expenses for establishing the entertainment facility. The plaintiff has cleverly couched the relief to give a *prima facie* impression for cause of action to invoke admiralty jurisdiction. In order to invoke the admiralty jurisdiction at paragraph No.8, the plaintiff had disassociate the agreement dated 17.06.2011 and had stated the present suit is purely based on the goods sold and supplied, installation made, salary paid towards fixing the equipments and maintenance of the same.

15. The above averment is entirely alien to the terms of the agreement dated 17.06.2011. As per the said agreement, it is not supply of goods or material to the ship but a joint venture between the plaintiff and the charterer of the ship to make use of the space in the ship by installing a entertainment club and auger revenue to be shared between the plaintiff and the charterer of the ship. In the lease agreement there is no clause pertaining to recovery of money for the equipment installed in the vessel.

16. In the Lease Offer Letter dated 17.06.2011 relied by the plaintiff the obligation of the plaintiff and the obligation of the charterer are specifically spelt out as below:-

Obligations of the plaintiff:-

> *Plaintiff Company shall be solely responsible for the following:*
>
> *a) To provide, at your cost, the entertainment equipment, CCTV equipment, including all importation, installation and transportation charges up to the operation site.*

b). To manage the operations in a professional and competitive manner at all times.

c). To be fully responsible for the daily upkeep, maintain, service and repair of the equipment to ensure they are in good working condition at all times.

d). To adhere to the rules and regulations of the governing laws pertaining to the operation of the Entertainment Club to ensure the smooth running of the operation throughout the whole duration of the Operation Term.

e). Not to carry on any activity forbidden by law.

f) To undertake to remove the equipment and operational currency from the operating site at its own cost, upon expiry of the Operation Terms.

g). To indemnify the AMET Shipping India P. Ltd., against all losses it may suffer on account of your omission or commission in running the Entertainment Club.

<u>Obligation of the charterer:</u>

Will be solely responsible for the following:-

a) To fully maintain and upkeep the operating site to be in proper working condition at all times.

b). To obtain and maintain all shipboard and nautical licenses and renewal(s) thereof to ensure the validity of the operations of the club at the operating site throughout the whole duration of the operation term at its own cost.

c) To warrant that club employees shall be covered under the P&I club insurance cover of the vessel (subject to confirmation from Amerucan club).

d). To maintain a reasonable cruising schedule during the term of this agreement.

e). We warrant and undertake that for the duration of this contract, your Company will have full access to the operating site premises at all time for the purposes of giving effect of this Contract.

f). Accommodation for casino staff shall be provided free of cost.

g). Standard Food and Non alcoholic Beverage charges for casino staff shall be provided at Rs.300/- per person.

i). Accommodation, food, Beverages (alcoholic/non-alcoholic) to casino customers *will be at standard tariff.*

17. The first obligation for the plaintiff is to provide, at his cost, the entertainment equipment, CCTV equipment, including all importation, installation and transportation charges up to the operation site. Therefore, contrary to the terms of the written contract, the plaintiff has laid the suit with a different set of facts and cause of action by giving up his right to sue based on the terms of the contract but to proceed for recovery of investment loss as if it was for goods sold and supplied. This can be seen from the content of the following notice dated 04.09.2012 issued by the plaintiff to the Chairman of M/s.AMET Shipping India Pvt Ltd.,

> *"In this connection, we wish to add that you are fully aware of the investments we have made with the intention of benefiting for both of us, but unfortunately due to various reasons best known to you, the cruise did not take place to the expectations resulting a loss of Rs.1.25 crores in our investment in setting up and buying of equipment's for big daddy club.*
>
> *Further, the operational expenses, overheads etc. Works out to approximately Rs.0.80 crores, thereby making it, in all a loss, of Rs.2.05 crores to us.*

As you have now decided and concluded with Singapore charter we would be much obliged if you could arrange to settle the amount as aforesaid to enable to us to peacefully come out of the business.

We hope you would appreciate our position and extend your full co-operation and support in the settlement."

18. Thus, it is clear that the plaintiff had entered into lease agreement with M/s.AMET Shipping India Pvt Ltd., for running a entertainment club with specific understanding that, he will invest in equipment and establishment and M/s.AMET Shipping India Ltd., will provide and maintain the operating site to be in working condition at all times and ensure the validity of nautical licenses renewed during the whole duration of the operation term at its own cost. The profit was to be shared between the plaintiff and the charterer of the ship namely M/s.AMET Shipping India Ltd. Precisely, when the venture between the plaintiff and the charterer did not take place as expected, the plaintiff has alleged to have incurred investment loss. Through his letter dated 04.09.2012, the plaintiff has expressed his intention to terminate the contract and sought for peaceful settlement with the charterer. However, while filing the suit ignoring the terms of the agreement and the party with whom he has entered into contract has laid the suit against a third party.

19. On scrutiny of the plaint and the plaint document, this Court concludes that, the plaint has been cleverly drafted to create an illusion of cause of action, so as to bring the subject matter within the admiralty jurisdiction against the owner of the ship, who in fact, have no privity of contract with the plaintiff and has no issue connected with maritime cause.

20. The sole defendant had been repeatly pointing out in all his pleadings that, he is not a necessary party and the suit is laid against wrong person. Since the suit has been laid against the owner and parties interested in the vessel AMET Majesty and the sole defendant being the owner, he had participated in the suit proceedings and cautioning the plaintiff that without impleading the charterer with whom the plaintiff has entered into the contract, the suit is bad for non-joinder of necessary party. The plaintiff had belatedly filed Application Nos.5702 and 5703 of 2015 on 10.08.2015 to implead the charterer as a party defendant and transfer the suit to regular jurisdiction. These Applications are opposed by the sole defendant on the ground of limitation. It is also brought to the notice of this Court that, pending suit, the ship has sailed to port at Gujarat and dismantled several years ago. Therefore, the prayer to arrest and sell the vessel is not available for the plaintiff.

21. As far as the recovery of money, the present sole defendant is a mis-joinder party and no cause of action against him is made out. The plaintiff wants to implead 1). AMET Shipping India Pvt Ltd., Rep. by its Director and 2). The Academy of Maritime Education and Training (University) at East Coast Road, Kanathur, Chennai. Any suit for recovery of money has to be filed within three years from the date of cause of action.

22. Order 1 Rule 10(5) of C.P.C., says, *subject to the provisions of the Indian Limitation Act, 1877, Section 22, (now Section 21 of the Limitation Act, 1963) the proceedings as against any person added as defendant shall be deemed to have begun only on service of the summon.*

Section 21 (1) of the Limitation Act 1963 reads as under:-

> ***"21.** Effect of substituting or adding new plaintiff or defendant.*
> ***(1)** Where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party: Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date."*

23. This is not a case where the plaintiff has omitted to implead the charterer as party defendant by mistake or in good faith. Contrarily, he has omitted to implead the charterer with whom he had the contractual obligation, with malafide intention and to circumvent the law and bring the *lis* within the admiralty jurisdiction so that, he can get an order *in rem* by arrest of the vessel owned by the sole defendant. Having failed in that attempt, the present application is filed to implead as well to convert the jurisdiction from admiralty to regular.

24. If the Application to implead is allowed, then, for the contract entered on 22.06.2011 for a period of 11 months, the suit for recovery of money against the impleading defendant will be after 8 years. Further, the plaintiff has already given up his right to proceed based on the terms of the contract and restricted his claim based on the alleged goods sold and supplied, installations made, salary paid towards fixing the equipments and maintenance of the same and etc. Now, if he wants to convert the suit as regular suit and proceed based on the terms of the contract necessarily he has to amend the pleadings also, mere deleting the words admiralty jurisdiction in paragraph No.17 of the plaint, will lead the plaintiff nowhere.

25. Thus viewed from any angle, the suit as laid is not maintainable against the sole defendant, for the reasons stated

above. Therefore, the conversion of the suit as regular suit is of no consequence. The petition for impleading new parties is hopelessly barred by limitation.

26. As the result, the Application No.2193 of 2013, to reject the plaint is ***Allowed.*** The Application No.5702 of 2015 filed to implead the proposed parties as defendants in C.S.No.87 of 2013 and Application No.5703 of 2015 filed to permit the applicant/plaintiff to alter the suit from admiralty jurisdiction to regular jurisdiction by deleting the relevant para are ***dismissed.***

27. The plaint has been filed without impleading the necessary party but against a third party without any *iota* of privity. Therefore, this Court holds that plaintiff is liable to pay exemplary costs for filing suit suppressing the fact and not in good faith. Accordingly, exemplary costs of Rs.30,000/- is imposed on the plaintiff.

Sd./-G.J.J
07.02.2020

//Certified to be true copy//

Dated at Madras this the day of 2020.

JJ 17/02/2020 COURT OFFICER(O.S.)

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