

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : **20.08.2020**

Pronounced on : **21.08.2020**

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

A.No. 1150 of 2020

in

C.S.No. 118 of 2019

A.No. 1150 of 2020:-

Mr.Y.Zahiruddin Ahmed
Proprietor, M/s. Reliance Maritime
Munoth Centre, Suite # 19,
1st Floor, #343,
Triplicane High Road
Chennai – 600 005.

... Applicant/Plaintiff

Vs.

1. M/s. Dredging Corporation of India Limited
Owners of Vessel DCI DREDGER – XIV
Dredge House, Town Kotha Road
Beside Central Excise, Port Area,
Vishakapatnam, A.P. - 530 005.
Rep. by its Chairman and Managing Director.

2. M/s. Nautilus Shipping India Private Limited
2nd Floor, Sai Building,
New No. 79/1, Old No.62/1,
Lloyds Road, Royapettah,
Chennai – 600 014.
Rep. by its Managing Director

... Respondents 1 & 2/
Defendants 1 & 2

Prayer:- This application filed under Order XIV Rule 8 of O.S. Rules read with Order XL Rule 1 of O.S. Rules read with Order XXI Rule 46 of CPC, to pass prohibitory order prohibiting the third respondent/Garnishee from making payment of the sum of Rs.9,60,956.60 (Rupees Nine Lakh Sixty Thousand Nine Hundred and Fifty Six and Paise Sixty only) from the Account bearing No. 6051375308 to the second respondent or its Nominees and consequentially direct the third respondent to deposit the same into Court as security for the applicant's claim in C.S. (Comm. Div.) No. 118 of 2020 on the file of this Hon'ble Court pending disposal of the suit.

For Applicant/plaintiff : Mr. S.Vasudevan

For 1st defendant : No appearance

For 2nd defendant : Mr. Mohit Bharathwaj

For 3rd defendant : No appearance

ORDER

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This Application has been filed under Order XXI, Rule 46 of the Code of Civil Procedure read with Order XL Rule 1 of the Original Side Rules, Madras High Court, seeking a prohibitory order prohibiting the third respondent/Garnishee/Indian Bank, Mylapore Branch, Chennai, from

making payment of a sum of Rs.9,60,956.60 from the account bearing No. 6051375308 to the second respondent/ M/s. Nautilus Shipping India Private Limited, Chennai, represented by its Managing Director or its nominee and direct the said garnishee, to deposit the said amount into Court as security for the claim of the applicant as raised in the plaint in the Civil Suit.

2. In the affidavit filed in support of the said application, the Sole Proprietor of the plaintiff had stated that the first respondent M/s. Dredging Corporation of India Ltd., provides dredging and marine development services to Indian Ports and owns several vessels including DCI DREDGER – XIV, flying an Indian Flag and registered under the Merchant Shipping Act, 1958. It had been stated that the second respondent M/s. Nautilus Shipping India Private Limited is the Manager of the said vessel and is engaged in providing Ship and crew management, technical services, agency and logistics.

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3. It had been further stated that the second respondent had placed a work order on 29.04.2019 for repair and conditioning for a total value of Rs.8,37,800/-. It was stated that the invoice was to be raised by the applicant for the work done in the name of “Master & Owners of Vessel DCI

DREDGER XIV, C/o. Dredging Corporation of India, Nautilus Shipping India Pvt Limited., 2nd Floor, Sai Building, New 79/1, Old 62/1, Lloyds Road, Royapettah, Chennai – 600 014, Mob: +91 9840825536, +91 9890241475, +91 9840635576”. Further, the original invoice along with the DC was requested to be mailed to “M/s. Nautilus Shipping India Private Limited, 2nd Floor, Sai Building, New No. 79/1, Old No.62/1, Lloyds Road, Royapettah, Chennai – 600 014; Tel: +91 44 46849999; Mob: +91 9840825536, +91 9890241475, +91 9840635576”.

4. The applicant further stated that the work order was accepted and work commenced on 30.04.2019 at Haldia Port Anchorage. The work was completed on 06.05.2019. The applicant issued a Work Done Certificate on the same day which was signed by the Master and Chief Engineer of the Vessel DCI DREDGER – XIV of the vessel and the representative of the first respondent and the Workshop. The applicant raised an invoice on 06.05.2019 in the name and address as specified in the work order for a sum of Rs.8,37,800/- payable within 30 days. Thereafter, a fresh issue had arisen with respect to the condition of the Generator and that was also set-right and a report was submitted by E-mail on 30.06.2019 to the second respondent. The second respondent requested a break up of the invoice

value, which was also complied by the applicant by E-mail dated 15.07.2019. Even though several attempts were made to secure payment, the first and second respondents did not respond or come forward to effect payment to the applicant for the work done. A legal notice was issued on 16.10.2019. A reply was received from the first respondent on 11.11.2019 and from the second respondent on 18.11.2019. Both the respondents denied liability. There were further communications through whatsapp message.

5. It had been further stated that together with interest, as on the date of institution of the suit, the applicant was payable a sum of Rs.9,60,956.60. It was stated that the second respondent with whom the communications were sent by the applicant is the Manager of the vessel and therefore was liable to pay the amount. It was further stated that the second respondent had a bank account with the third respondent/Garnishee and it was under these circumstances, the application has been filed seeking a prohibitory order against the Garnishee from making any payment to the second respondent and on the other hand, deposit the amount into Court.

6. An affidavit in reply had been filed by the second respondent. It

had been stated that the application filed under Order 21 Rule 46 of CPC cannot maintained at the Interlocutory stage. It was also stated that the second respondent is an unnecessary party to the litigation and this Court under Order 1 Rule 10 (2) CPC may strike off the name of the second respondent from the plaint. It was stated that the first respondent was the owner of the vessel and was responsible to effect payments for any repairs for the vessel. It was also stated that as on the date of filing of the affidavit, the second respondent was also no longer the Manager. It was further stated that there was no privity between the second respondent and the applicant and the claim can be raised only against the owner of the vehicle and maintained in accordance with Section 5 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017. It had been stated that the applicant should not have invoked the Admiralty jurisdiction of the High Court.

7. It was also stated that in the Work Done Certificate, a sentence, that the “work was carried out satisfactorily” had been struck off which indicates that the applicant had not properly discharged the work entrusted. It was stated the application is not maintainable either on facts or on law. It was therefore stated that the application should be dismissed. It was also

stated that this Court, on its own motion should strike out the second respondent as a defendant in the suit.

8. Heard arguments advanced by Mr.S.Vasudevan, learned counsel for the applicant and by Mr.Mohit Bharathwaj, learned counsel for the second respondent.

9. There was no representation on behalf of the first respondent or on behalf of the Garnishee.

10. For sake of convenience, the parties shall be referred as plaintiff and defendants and the second respondent as second defendant.

11. It is the claim of the plaintiff that they had carried out repair works in the vessel DCI DREDGER – XIV which was owned by the first defendant, Dredging Corporation of India Limited pursuant to a work order issued by the second defendant on 29.04.2019. It had been therefore stated that any claim towards the work done pursuant to the work order can be raised against both the owner of the vessel, namely, the first defendant and also the Manager of the Vessel, namely, the second defendant. However, the

contention of the learned counsel for the second defendant that they are not the owners and therefore since the suit had been filed under the Admiralty jurisdiction, a claim can be laid only against the owners of the vessel will also have to be considered.

12. The fact that the second defendant had issued the work order is also not disputed. However, the stand of the second defendant is that they were only the Managers at that point of time and they were not the owners of the vessels. They only provided Management and technical support services to the owners for the maintenance of the vessel.

13. It is thus seen that triable issues persist and demand attention in so far as the claim raised by the plaintiff is concerned. Mulcting of liability will have to be decided. Further, it has to be examined whether the work order dated 29.04.2019 was placed by the second respondent in their independent capacity or by acting on behalf of the first defendant. It will also have to be decided whether the plaintiff had been granted permission to enter the vessel and carry out the works by the second defendant either independently on behalf or on behalf of the first defendant, who are admittedly the owners of the vessel. All these aspects require evidence to be

adduced.

14. The very basis of the claim is the completion of the work. There are been rival claims on this issue also. The plaintiff claims that the work had been completed to the satisfaction of all concerned. The second defendant disputes this statement and stated that the specific statement that work had been completed satisfactorily had been struck off in the Work Done Certificate dated 06.05.2019. Naturally examination of this aspect also requires evidence to be recorded.

15. I hold that when the claim itself is disputed, it will not be proper to pass any order in the nature of a Garnishee order prohibiting the third respondent/Garnishee, namely, Indian Bank from making any payment to the second respondent and to deposit the suit amount to Court. The plaintiff will have to establish several facts, namely, whether the work order was issued by the second defendant in their individual capacity or on behalf of the first defendant, whether the work was carried out as stipulated under the work order, whether the first defendant is liable or the second defendant is liable for the claim or whether they are both jointly liable. These are all triable issues.

16. Therefore, I hold that the present Application at this nebulous stage cannot be maintained by the plaintiff and accordingly, the same is dismissed.

17. The contention that the second defendant should be struck off as a party to the suit are not addressed by me. Documents have been filed showing that there has been correspondences between the plaintiff and the second defendant.

18. The other issue relating to the provisions of law is also not addressed by me since, even on facts, I have held that the application cannot be maintained at this stage.

19. In view of the above reasons, this Application is dismissed. No costs.

Sd/.C.V.K.J.
21.08.2020

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Dated this the day of 2020.
JJ 26.08.2020

COURT OFFICER

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