OD-25

ORDER SHEET

AS/5/2013
IA NO:GA/4/2013 (Old No.GA/3274/2013)
GA/5/2016 (Old No.GA/592/2016)
GA/6/2017 (Old No.GA/405/2017)
GA/7/2019

IN THE HIGH COURT COURT AT CALCUTTA
Admiralty Jurisdiction
ORIGINAL SIDE

SREI EQUIPMENTS FINANCE PVT LTD
Versus
THE O & P INT. IN THE VESSELS M.V. KIRAN & M.V. KABIR & ANR.

BEFORE:
The Hon'ble JUSTICE SHEKHAR B. SARAF
Date : 10th June, 2021

(Via Video Conference)

Appearance:
Mr. Ratnanko Banerji, Sr. Adv
Mr. Swatarup Banerjee, Adv,
Mr. Amitava Majumdar, Adv.
Ms. Damayanti Sen, Adv.
Mr. Souvik Kundu, Adv.
Mr. Swapnil Singh, Adv.
...For Plaintiff

Mr. Tilak Kr. Bose, Sr. Adv
Mr. Somnath Bose, Adv.
...For Mumbai Port Trust

Mr. Subhojit Roy, Ld. Receiver

The Court: Heard Mr. Ratnanko Banerji, Senior Advocate appearing on behalf of the plaintiff and Mr. Tilak Bose, Senior Advocate appearing on behalf of the defendant no.2.

The plaintiff had granted loan for purchase of two vessels, namely, M.V. Kiran and M.V. Kabir, which are the subject matter of the suit. There is a Loan-cum-Hypothecation Agreement dated April 15, 2011. As the defendant No. 1 was unable to pay the monthly instalment, the said loan agreement was restructured and a fresh agreement was entered into by the plaintiff on July 3, 2012 under which a sum of Rs. 12,33,24,000.00 was provided to the defendant No. 1 for acquiring the vessels.

It is the case of the plaintiff that as the defendant No. 1 has failed to make payment of the monthly instalment, the plaintiff has terminated the agreement and called upon the defendant No. 1 to make payment of a sum of Rs. 11,59,32,640/-. As the defendant No. 1 failed to make such payment, the plaintiff filed the present admiralty suit in June, 2013.

An order of arrest was passed by this court on June 28, 2013 and was served on the defendant No. 1 along with the copy of the plaint. In spite of service, the defendant No. 1 has failed to enter appearance in the suit or to defend the suit. The plaintiff made a further application in the suit being GA No. 1895 of 2013 for appointment of Special Officer and for sale of the vessels.

Upon hearing the application, this court passed an order on July 29, 2013 appointing Mr. Subhojit Roy, a learned advocate of this court as Special Officer to sell the vessels by public auction. The vessels were sold by public auction for a sum of Rs. 75,00,000.00 each and the sale proceeds are now lying in the hands of the Ld. Special Officer. The Ld. Special Officer has filed a report to this court from where it appears that as on June 8, 2021 a sum of Rs. 2,30,33,940.00 is lying deposited with the Ld. Special Officer on account of the sale proceeds along with interest accrued on the principal sum received as sale proceeds.

The defendant No. 2, being the Board of Trustees for the Port of Mumbai has intervened in the suit by filing an application being GA No. 3274 of 2013, and has made a claim for port charges for the subject vessels. This court by an order dated September 16, 2016 had appointed a Commissioner to examine the bills of Mumbai Port Trust and to file a report. Pursuant to such order, a report has been filed by the Ld. Commissioner along with the bills in support of the claim of Mumbai Port Trust.

The suit proceeded ex-parte against the Defendant No. 1 as no one entered appearance for the defendant vessels. The plaintiff had also made an application for appointment of Commissioner to take evidence in the matter. On such application, a Commissioner was appointed by this court on June 29, 2016 for recording of evidence. The Ld. Commissioner has also filed a report along with the evidence before this court on 13^{th} February, 2017.

I have considered the reports of the Ld. Commissioner as well as the evidence led by the plaintiff before the Ld. Commissioner. From the evidence, it appears that the plaintiff has proved the loan agreement (Exhibit-G), the hypothecation agreement (Exhibit-M) and the statement of account (Exhibit-R) for a sum of Rs. 11,59,32,640/-.

None have appeared on behalf of the defendant No. 1 to oppose the claim of the plaintiff. There is no reason why this court should not accept the evidence of the plaintiff and the proof of claim for the said sum of Rs. 11,59,32,640/- and for interest.

The plaintiff does not seriously contest the claim of the Board of Trustees for the Port of Mumbai in so far as the principal claim as determined by the Ld. Commissioner is concerned.

Considering the submissions made by the learned counsel appearing for the parties, the plaintiff's claim is accepted and there will be a decree in favour of the plaintiff for a sum of Rs. 11,59,32,640/-. The plaintiff is also entitled to and is granted interest on the decretal sum at the rate of 9% per annum on and from March 15, 2013 upto the date of decree. Thereafter, the decretal sum will carry interest at the rate of 7% per annum until realization.

The claim of the Board of Trustees for the Port of Mumbai, being the defendant No. 2 in the suit, is for a sum of Rs. 22,10,852.00. The defendant No. 2 has called its witness before this Hon'ble Court for the purpose of proving its claim for the sum of Rs. 22,10,852.00 along with interest. Accordingly, a witness on behalf of the defendant No. 2 was examined in chief by Mr. Tilak Bose, Learned Senior Counsel appearing for the Board of Trustees for the Port of Mumbai and the bills relied upon by him, was proved to the satisfaction of this Hon'ble Court. Mr. Ratnanko Banerji, Learned Senior Counsel appearing for the plaintiff did not wish to cross-examine the witness of the defendant No. 2 and accordingly, the witness's action of the defendant No. 2 was concluded before this Hon'ble Court on 30th July, 2019.

The claim of the defendant No. 2 being a sum of Rs. 22,10,852.00 has been proved before this Hon'ble Court by the witness's action held on 23rd July, 2019 and the defendant No. 2 is therefore entitled to its sum of Rs. 22,10,852.00.

Since the sale proceeds of the vessels is lying with the Ld. Special Officer, the Ld. Special Officer is hereby directed to release a sum of Rs. 22,10,852.00 to the defendant No.2 on the basis of this decree.

Learned counsel for the plaintiff has submitted that the plaintiff has incurred a sum of Rs. 6,18,990.00 towards the costs for sale of the two vessels which includes remuneration to the Ld. Special Officer and the Court fees for filing the admiralty suit. This claim is accepted by this court for a sum of Rs. 6,18,990.00 and is to be paid in priority to the plaintiff.

After making payment of the sum of the dues of the defendant No. 2 as mentioned above, the Ld. Special Officer will deduct his further remuneration from the sale proceeds for a further sum of Rs.1,00,000/- as this court has been informed that the earlier remuneration has all been paid. The Ld. Special Officer thereafter shall make over the entire balance sum to the plaintiff by way of demand draft. The Special Officer will also submit the final accounts in the suit to the department of this court and close the bank account.

Out of the balance sum, which will be paid by the Ld. Special Officer to the plaintiff, the plaintiff will deduct the costs, which has been accepted at Rs. 6,18,990.00. This will not form part of the decretal dues and will be treated as costs incurred for the purpose of sale. After deducting this sum, the balance sum will be adjusted by the plaintiff against the decretal dues and interest. The decretal dues will stand reduced to that extent only.

The Ld. Special Officer shall carry out the entire exercise within a period of two weeks from communication of this order.

After completion of the above exercise, the Ld. Special Officer will stand discharged.

The plaintiff will be at liberty to execute the decree for the balance dues. In view of the aforesaid decree, all pending applications being IA

NO:GA/4/2013 (Old No.GA/3274/2013), GA/5/2016 (Old No.GA/592/2016), GA/6/2017 (Old No.GA/405/2017) and GA/7/2019 stand disposed of without any further orders.

There will be no order as to costs.

The decree be drawn up expeditiously.

(SHEKHAR B. SARAF, J.)

R.Bhar /B.Pal