

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

O.S.A.No.207 of 2021

Banque Cantonale De Geneve,
having its office at
Case Postale 2251, 1211 Geneve 2,
rep. herein by its Power of Attorney
Agent V.Padmanabhan

... Appellant/Plaintiff

Vs.

Owners and Parties interested in the
Vessel M V POLARIS GALAXY,
having IMO: 9339648,
now lying at the outer anchorage of
the Port of Tuticorin (V.O.Chidambaranar Port),
Tuticorin-628 004,
rep. herein by its Master. ... Respondent/Defendant

PRAYER: Appeal filed under Section 14 of the Admiralty
(Jurisdiction and Settlement of Maritime Claims Act, 2017
against the order dated 26.04.2021 passed in A.No.1855 of 2021
in C.S. (Comm. Divn) No.96 of 2021.

A.No.1855/2021 in C.S.(Comm.Divn) No.96/2021 : Filed to permit
the applicant/Defendant to deposit the entire Suit amount of USD
6,705,357.38/- from the Defendant to the Credit of the above
Suit in the manner stated.

C.S. (Comm.Divn) No.96/21 :

a) Why this Application should not be treat as urgent?

b) Why this Hon'ble Court should not be pleased to order
for a decree and judgment in favor of the Plaintiff and against
the Defendant Vessal and the parties interested in her by
Summary Proceedings for the sum of ISD 6,705,357.38 (approx.INR

48,94,91,089/- (Forty Eight Crores, Ninety Four lakh, Ninety One thousand and eighty Nine only) (CALCULATED AT 1 USD = 73 INR) and further interest at 12% (or whatever other rate this Hon'ble Court may deem fit) from the date of filing of the sit until payment/realization with costs and pass such further or other orders as this Hon'ble Court may deem fit and render justice.

c) Why this Hon'ble Court should not be pleased to pass such further or other orders as this Hon'ble Court may deem fit?

For Appellant : Mr.Z.Bharucha
for S.Raghunathan

For Respondent : Mr.Amitava Majumdar

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

The appeal is of limited import. The appellant says that contrary to the practice in admiralty matters, the entire claim of the appellant as plaintiff in the admiralty suit has not been covered by the quantum of security directed to be furnished for the arrest order to stand discharged and the vessel to sail.

2. Vessel M V POLARIS GALAXY remains arrested at the port of Tuticorin since March 9, 2021. The owners have applied for furnishing a bank guarantee through Doha Bank for the principal quantum of the claim. The twin grievances of the appellant are that the offer has been accepted by the Court despite the appellant's protest that the entire claim was required to be secured and the guarantee ought to be furnished through some other bank.

3. Ordinarily, upon a prima facie assessment of the best arguable case, the quantum of security is directed to be furnished. Invariably, the quantum of security takes into account the claim on account of interest, the costs that may have been incurred by the claimant and the period for which the claim may remain pending. In the present case, the quantum of the bank guarantee has been fixed at USD 6,705,357.38 without taking into account the claim on account of interest and costs that the plaintiff will invariably be entitled to if the suit succeeds.

4. The order impugned dated April 26, 2021 is modified by requiring the defendants to put in a bank guarantee in the sum of USD 7.30 million which, approximately, would cover any reasonable interest that may be awarded together with the costs on account of court-fees and the like. On the other aspect, since Doha Bank is a scheduled bank and recognised by the Reserve Bank of India, the appellant's reservations in such regard cannot be countenanced.

5. O.S.A.No.207 of 2021 is disposed of by modifying the judgment and order impugned dated April 26, 2021 and requiring the defendant to furnish bank guarantee for a sum of USD 7.30 million as indicated. It is made clear that it is only upon the bank guarantee being furnished, will the vessel be allowed to sail. The bank guarantee will be kept renewed till the disposal of the suit.

6. This order is made without prejudice to the rights and contentions of the parties and does not reflect any pronouncement on the merits of the claim or defence.

Consequently, C.M.P.No.8473 of 2021 is closed. There will be no order as to costs.

Sd/-

Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

bbr

To:

The Sub Assistant Registrar
Original Side
High Court, Madras.

+2cc to Mrs.Amitava Majumdar, Advocate SR.No.26991

+2cc to Mr.S.Raghunathan, Advocate SR.No.26835

O.S.A.No.207 of 2021

(CO)
GMY(03/05/2021)