

Sayali Upasani

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

COMMERCIAL ADMIRALTY SUIT NO.33 OF 2021

Carnival Plc ...Plaintiff

Versus

Sale Proceeds of the Vessel M.V. Karnika ...Defendants
& Anr

Mr. Prashant S. Pratap, Senior Advocate a/w Nishaan Shetty
i/b Kaushik S Krishnaswamy, for Plaintiff.
None for Defendants.

CORAM: N. J. JAMADAR, J.

DATED : 13th SEPTEMBER, 2022

ORDER:-

1. This Commercial Division Admiralty Suit is instituted for recovery of a sum of US\$12,972,981 along with further interest at the rate of 8% per annum on the principal amount of US\$12 million against the sale proceeds of the Vessel MV Karnika – defendant No.1.

2. The material averments in the plaint can be stated, in brief, as under.-

(a) The plaintiff is a company incorporated under the laws of United Kingdom. The plaintiff is engaged in the business *inter-alia* of providing tourism services.

M.V.Karnika was registered at the port of Nassau, Bahamas. Jalesh Cruises Mauritius Ltd (Jalesh), the defendant No.2 is a company registered under the laws of Republic of Mauritius. Jalesh was the registered owner of the defendant No. 1-Vessel.

(b) The plaintiff was the original owner of the motor Vessel M.V. Pacific Jewel before it was rechristened as M.V. Karnika. On 17th August, 2018, the plaintiff entered into a Memorandum of Agreement for the sale of the said Vessel. Consideration was settled at US\$52.5 Million. After making the initial deposit, the buyer Essel nominated Jalesh, the defendant No. 2, as its nominee to purchase the said Vessel and to perform Essel's obligations under the Memorandum of Agreement. Plaintiff gave consent to Jalesh's nomination, on the terms and conditions incorporated in the Addendum No. 1 executed on 27th February, 2019. The Vessel was delivered to Jalesh.

(c) A Credit Agreement dated 11th March, 2019, came to be executed between the plaintiff and Jalesh setting out the terms on which Jalesh would pay part of the sale price (US\$36 Millions) in installments. M.V. Karnika was mortgaged to the plaintiff under Credit Agreement read

with Side letter dated 20th August, 2019. After making initial payments, Jalesh committed default in payment of the installment which fell due on 30th March, 2020. A notice of event of default and demand dated 31st March, 2020, was addressed to Jalesh. In response, vide communication dated 6th April, 2020, Jalesh acknowledged the liability to pay four installments of US\$3 Million each. Jalesh, on account of the prevailing circumstances brought about by Covid-19 pandemic, requested the plaintiff to grant accommodation. However, despite assurances, Jalesh committed default in payment of the balance four installments which fell due on 30th March, 2020, 30th April, 2020, 1st June, 2020 and 30th June, 2020.

(d) In the meanwhile, at the instance of various claimants against the defendants, M.V. Karnika came to be arrested. By a further order dated 7th October, 2020, passed in COMAS (L) No.3579 of 2020, M.V. Karnika was directed to be sold. Eventually, the sale of M.V. Karnika to an auction purchaser M/s NKD Maritime Ltd in the sum of US\$11,650,000.00 was confirmed by an order dated 28th October, 2020.

(e) The plaintiff has a Maritime claim under Section 4(1)(c) of Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (Admiralty Act). The plaintiff's claim is enforceable in an action in *rem* against the said Vessel M.V. karnika and/or its sale proceeds. Hence, this suit.

3. The writ of summons was served on the defendant No.2. An affidavit of service is filed by Mr. R. J. Tiwari, the Bailiff attached to the office of Sheriff of Bombay.

4. None appeared for the defendant No. 2.

5. Thereupon, the plaintiff has filed an affidavit in support of the claim, compilation of documents and affidavit of documents.

6. I have heard Mr. Prashant Pratap, the learned Senior Advocate, of the plaintiff.

7. Perused the averments in the plaint, affidavit in support of the claim and the compilation of documents tendered on behalf of the plaintiff in support of the claim.

8. The claim of the plaintiff that it had entered into a Memorandum of Agreement with Essel Media and Entertainment Ltd for sale of the defendant No.1-Vessel for the price of US\$52.5 Millions finds support in the Memorandum of Agreement dated 17th August, 2018. The

Addendum No. 1 to the Memorandum of Agreement evidences the fact that the Jalesh would be the buyer's nominee. A credit agreement came to be executed between Jalesh, as buyer, and plaintiff, as seller, to evidence seller's credit to the tune of US\$36 millions. On 12th March, 2019, Jalesh, executed first priority Deed of Covenant creating security over the defendant No.1-Vessel. The mortgage is registered with commonwealth of Bahamas as is evident from the Transcript of Register placed on record by the plaintiff. Thus, the plaintiff's claim finds unflinching support in the aforesaid documents.

9. Mr. Pratap, the learned senior Counsel for the plaintiff would urge that the liability to pay the balance price of US\$12 Millions is admitted in clear and unequivocal terms. Attention of the Court was invited to a communication dated 20th August, 2019, recording the schedule of payment of the consideration for sale of the defendant No.1-Vessel. The said letter dated 20th August, 2019, seems to have been duly acknowledged on behalf of Jalesh. Under the terms thereof, the last five installments were to be paid on 28th February, 2020, 30th March, 2020, 30th April, 2020, 1st June, 2020 and 30th June, 2020.

10. In the communication dated 24th February, 2020, on behalf of the Jalesh, it was acknowledged that, as of that date, an amount US\$15 Million was due for repayment over the next five months, as was acknowledged in the letter dated 20th August, 2019. Adverting to the situation which was brought about by Covid-19 Pandemic, Jalesh requested for a moratorium for three months on the repayment of the balance installments. In a further communication dated 19th March, 2020, Jalesh informed the plaintiff that they were not in a position to honour their commitments under the said letter dated 20th August, 2019, especially towards the installments due on 30th March, 2020, 30th April, 2020, 1st June, 2020 and 30th June, 2020 in the wake of global turmoil due to Covid-19 pandemic.

11. In a further communication dated 25th March, 2020, Jalesh asserted that they had already paid 70% of the sellers credit arrangement and only the last four installments were pending. However, as a result of complete uncertainty with respect to future sales Jalesh would be laying-up their cruiz ships. Thus they were not in a position to honour their commitments under the Side

letter dated 20th August, 2019. In response to notice of default and demand dated 30th March, 2020, addressed on behalf of the plaintiff, Jalesh, vide communication dated 6th April, 2020, appealed to the plaintiff to defer the outstanding payment US\$12 Million and proposed a repayment plan, starting from 31st December, 2020, with an increase in the rate of interest.

12. Moreover, the aforesaid communications contain clear and unequivocal acknowledgment of the liability to pay the balance price of US\$12 Million. In the face of the aforesaid admissions in no uncertain terms, coupled with indisputable jural relationship between the parties, evidenced by the credit agreement and mortgage, it does not appear that the defendant Nos.1 and 2 have a reasonable prospect of successfully defending claim of the plaintiff.

13. Moreover, the averments in the plaint and affidavit of evidence have gone uncontroverted. In any event, the plaintiff has a maritime claim. Plaintiff is entitled to proceed in rem against the sale proceeds of M.V. Karnika. Thus I do not find any impediment in passing the decree.

14. Hence, the following order.

:ORDER:

The suit stands decreed in the following terms.-

- (i) The defendant Nos.1 and 2 do jointly and severally pay a sum of US\$12,972,981 along with further interest at the rate of 8 % per annum on the principal amount of US\$12 Million from the date of the suit till payment and/or realisation.
- (ii) The defendant Nos. 1 and 2 do pay costs of Rs.4,00,000/- to the plaintiff.
- (iii) The plaintiff is entitled to refund of Court fees, if any, in accordance with rules.
- (iv) Decree be drawn up and sealed expeditiously.

[N. J. JAMADAR, J.]