Santosh

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

INTERIM APPLICATION NO. 2181 OF 2022
IN
COMM ADMIRALTY SUIT NO. 85 OF 2021

IDBI Bank Ltd. ...Applicant
In the matter between
IDBI Bank Ltd. ...Plaintiff
Versus
MV TAG NAVYA (IMO No.8819081) & ors. ...Defendants

Mr. Zarir Bharuch, a/w Rishi Thakur, Dhwani Gala, i/b ZBA, for the Applicant.

CORAM: N. J. JAMADAR, J.
DATED : 2nd AUGUST, 2022

ORDER:-

1. The plaintiff has taken out this application for a summary judgment under Order XIII-A of the Code of Criminal Procedure, 1908 ("the Code") as amended by the Commercial Courts Act, 2015 and/or a decree on admission under Order XII Rule 6 of the Code in an admiralty action instituted in *rem* against the sale proceeds of vessel – MV TAG NAVYA, defendant no.1.

2. The plaintiff is a banking company within the meaning of Banking Regulation Act, 1949. The plaintiff had sanctioned a Foreign Currency Loan of US$ 5.40 million to defendant no.2, the registered owner of defendant no.1 – vessel, on the terms

and conditions incorporated in the sanction letter dated 26th October, 2016. Pursuant to the Loan Agreement executed on 27th October, 2016, defendant no.2, in consideration of the said facility, had furnished security in the nature of a first and exclusive charge on the vessel – MV TAG NAVYA, defendant no.1. A Deed of Statutory Mortgage of vessle thus came to be executed on 27th October, 2016, whereby and whereunder the first and exclusive charge of MV TAG NAVYA was created in favour of the plaintiff. Simultaneously, an unattested Memorandum of Hypothecation was created in favour of the plaintiff under which defendant no.1 – vessel was hypothecated.

3. Defendant no.2 committed default in repayment of the loan account in accordance with the terms of the contract. Consequently, the account of the defendant was declared a Non-Performing Assets (MPA).

4. Eventually, under Judge's Order (L) No.6 of 2020, dated 20th January, 2020, defendant no.1 – vessel came to be arrested. By a subsequent order dated 22nd May, 2020, defendant no.1 – vessel was sold and the sale proceeds have since been realized. The plaintiff has instituted this suit in *rem* against the sale proceeds of defendant no.1 for the sum of US$ 33,19,734 comprising the principal loan amount and the interest accrued thereon as of 5th January, 2020, along with further interest.

The plaintiff has taken out this application with the assertions that the claim of the plaintiff constitutes an admitted liability and there is no real prospect of successfully defending the suit claim.

5. I have perused the averments in the plaint and the interim application and the documents annexed with it. I have heard Mr. Bharucha, the learned Counsel for the plaintiff – applicant. The claim of the plaintiff that it had advanced a Foreign Currency Loan finds requisite support in the sanction letter dated 26th October, 2016 incorporating the terms and conditions, which were acceded to by defendant no.2 and the consequent loan agreement dated 27th October, 2016. The plaintiff had agreed to advance a Foreign Currency Loan of US$ 5.40 Million equivalent to Rs.36 Crores, in the maximum (Exhibits A and C). Defendant no.2 had agreed to pay interest at the rate of 5.25% p.a. The stated purpose of the loan was part finance of the acquisition of the defendant – vessel. It was, *inter alia,* agreed that defendant no.2 would secure the said loan by (I) exclusive charge on the vessel – MV TAG NAVYA and; (II) exclusive charge on the USD Bank account/escrow account, in which all cash flows related to the vessel – MV TAG NAVYA would be deposited. The Deed of Mortgage executed on 27th October, 2016 evidences the creation of the mortgage in respect

of defendant no.1 – vessel MV TAG NAVYA. Further claim of the plaintiff that the said charge has been duly registered with Mercantile Marine Department and the Registrar of Companies find support in the letter dated 19th July, 2016 (Exhibit-E) and a copy of Form No.CHG–1 (Exhibit-F).

6. In order to lend support to the claim that defendant no.2 had acknowledged the liability and the suit claim constitutes an admitted liability, the plaintiff has relied upon the balance confirmation dated 6th April, 2018 executed by defendant no.2, wherein the latter had acknowledged, *inter alia,* the outstanding liability to the tune of US$ 42,44,101, as of 31st March, 2018.

7. The situation which thus obtains is that there is adequate material to show that defendant no.2, the owner of defendant no.1 – vessel MV TAG NAVYA, had availed a credit facility from the plaintiff and in order to create security, had executed documents including a Deed of Mortgage thereby creating a first charge on defendant no.1 – vessel. Under Clause (c) of Sub-section (1) of Section 4 of the Admiralty (Jurisdiction and Settlement of Maritime Claim) Act, 2017 ("the Admiralty Act, 2017"), mortgage or a charge of the same nature on vessel constitutes a maritime claim. Such a maritime claim furnishes a sustainable ground for an action in *rem* under Section 5 of the Admiralty Act, 2017.

8. In the case at hand, the plaintiff's claim is supported by documents of unimpeachable character. Moreover, there is a clear and unequivocal acknowledgment of the liability in the balance confirmation letter. In the totality of the circumstances, the sale proceeds of defendant no.1 – vessle MV TAG NAVYA does not seem to have real prospect of successfully defending the plaintiff's claim. I am, therefore, impelled to pass a summary judgment under Order XIII-A of the Code.

9. Hence, the following order:

: O R D E R :

(i) The application stands allowed.

(ii) There shall be summary judgment against the sale proceeds of MV TAG NAVYA in the sum of US$ 33,19,734 along with further interest at the rate of 5.25% p.a. on the principal amount of US$ 31,55,697.96 from the date of the suit till realization.

(iii) The plaintiff is entitled to refund of Court-fees in accordance with the Rule.

(iv) The suit stands partly decreed in the aforesaid terms.

(v) Decree be drawn and sealed expeditiously .

[N. J. JAMADAR, J.]