IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION NO.2383 OF 2022
IN
COMM. ADMIRALTY SUIT NO.75 OF 2021

Cockett Marine Oil DMCC ... Applicant/Plaintiff
versus
SV Ganga Dolphin and Anr. ... Defendants

Mr. Dhruva Gandhi with Mr. Naishadh Bhatia i/by M/s. Crawford Bayley and Co., for Plaintiff.

CORAM: N.J.JAMADAR, J.

DATE: 29th NOVEMBER, 2022

P.C.:

1. This is an application under Order XIIIA read with Order XII Rule 6 of the Code of Civil Procedure, 1908 for a summary judgment against the sale proceeds of SV Ganga Dolphin – Defendant No.1 Vessel.

2. SV Ganga Dolphin was flying the flag of India. Dolphin Offshore Shipping Limited – Defendant No.2 was the registered owner of the said Vessel. At the instance of Defendant No.2, the Plaintiff had supplied bunker to the Defendant No.1 Vessel on 26 March 2019 at Mumbai Port. On 1 April 2019 the Plaintiff raised invoice for the sum of USD 16,160. The amount covered by the invoice was payable on 24 May 2019. In accordance with the terms and conditions of the sale of bunker fuel, the buyer was liable to pay interest @ 2% p.m. beyond the due date, and full legal costs

and expenses incurred in recovering the said amount.

3. During 29 May 2019 to 30 January 2020 the Plaintiff issued a series of letters and reminders calling upon the Defendant No.2 to pay the amount covered by the invoice. Vide letter dated 14 August 2019 and 7 January 2020 the Defendant No.2 acknowledged the liability to pay the amount. However, ascribing certain reasons, the Defendant No.2 sought time. Defendant No.2 could not honour the commitments. Hence, the Plaintiff was constrained to institute the Suit.

4. Defendant No.1 Vessel came to be arrested on 27 July 2020. Warrant of arrest was served on the Defendant No.1 Vessel on 7 September, 2020. By an order dated 1 April 2021 the Defendant No.1 Vessel was sold to M/s. Shree Saibaba Ship Breaking Company for a sum of Rs.91 Lakhs. Hence, this application for summary judgment against the sale proceeds of Defendant No.1 Vessel.

5. Defendant No.2 could not be served in usual mode as the office of the Defendant No.2 was found closed. However, Defendant No.2 has been served by email.

6. From the perusal of the averments in the plaint and the documents annexed thereto, it becomes evident that the claim of the Plaintiff is substantiated by documents of unimpeachable character. The bunker delivery note evidences the delivery of the bunker on 26 March 2019. The delivery was acknowledged by the then Chief Engineer on board the Defendant No.1 Vessel. The sale and delivery of the

bunker is further evidenced by the invoice (Exhibit D) raised by the Plaintiff for the sum of USD 16,160

7. It seems that the Plaintiff addressed multiple communications calling upon Defendant No.2 to clear the outstanding amount from 24 May 2019 to 30 January 2020. In a communication dated 14 August 2019, the then Managing Director of the Defendant No.2 assured to clear the outstanding amount between end of August 2019 and 15 October 2019. Likewise, in the Reply dated 7 January 2020 to one of such communications, the then Joint Managing Director of Defendant No.2 clearly acknowledged the liability and undertook to settle the Plaintiff's account in two installments. Reasons were assigned for delay in payment. No dispute, however, seems to have been raised by the Defendant No.2 regarding quantity, quality and price of the bunkers sold and delivered by the Plaintiff to the Defendants.

8. In view of the aforesaid clear and explicit admission coupled with the documents which evidence the supply of the bunker fuel to Defendant No.1 Vessel, there does not seem to be any real prospect of Defendants successfully defending the Plaintiff's claim. There is no other compelling reasons not to dispose of the suit before recording of oral evidence.

9. On the aspect of interest, however, levy of interest @ 2% p.m. seems on the higher side. In my view, award of interest @ 9% p.a. from 29 May 2019 till payment would satisfy the justice of claim.

10. Hence, the following order :

ORDER

(i) The Interim Application stands allowed.

(ii) There shall be a summary judgment in favour of the Applicant/Plaintiff and against the sale proceeds of Defendant No.1 Vessel in the sum of USD 161,60 along with interest @ 9% p.a. from 25 May 2019 till payment and/or realization.

(iii) The Plaintiff is entitled to costs quantified at Rs.1 Lakh.

(iv) The Suit stands decreed in the above terms.

(v) Drawn up decree dispensed with.

(N.J.JAMADAR, J.)