

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

ADMIRALTY SUIT NO. 64 OF 2015

Valimohamed Hashem Khakhra ... Plaintiff
vs.
M. V. Labitra Carmel and Ors. ... Defendants
Mr. Kunal Gaikwad for the Plaintiff.
None for the Defendants.

CORAM : A. K. MENON, J.

DATED : 22nd FEBRUARY, 2022

P.C. :

1. Called for ex-parte decree. The suit seeks recovery in a sum of Rs.67,25,549.67 together with interest thereon @ 18% per annum on the principal sum of Rs.50,42,325/- from date of the filing of the suit till payment. Particulars of claim at Exhibit K is supported by a computation of interest which has been set out invoice wise. A total of 12 invoices are said to be outstanding in respect of supply of fresh water to defendant no.1-vessel. The claim arises pursuant to Work Order dated 1st August, 2011 issued by defendant no.3.

2. It is the case of the plaintiffs that supplies of fresh water was made to vessels of defendant nos. 3 and 4. On 22nd December, 2017 this suit came to be withdrawn as against defendant no. 2 vessel. Defendant nos. 3 and 4 though served were not represented and the suit against defendant nos. 1, 3 and 4 was transferred to the list of undefended suits.

3. On 5th July, 2019 counsel for the plaintiff expressed a doubt whether defendant nos. 3 and/or 4 had been ordered to be wound up, but as of today it is stated that they are active. Learned counsel for the plaintiff has relied upon extracts of the website of the Ministry of Corporate Affairs in relation to defendant nos. 3 and 4 appearing at pages 460 and 462 to the compilation of original documents. The learned counsel for the plaintiff has also filed original documents which includes (i) the original Work Order, dated 1st August, 2011, (ii) amendment to the Work Order dated 20th September, 2011 and (iii) letter dated 30th January, 2012 by which defendant no. 3 agreed to revise all rates for supply of fresh water. These originals are to be read in evidence. The plaintiff have also filed a compilation consisting of the counterparts of 12 invoices supported by numerous delivery challans. The challans acknowledge receipt of the supplies made pursuant to the Work Order and compilation contains a list of such invoices supported by challans which are described with individual challan numbers correlatable to each invoice. The defendants are absent on call.

4. It is the plaintiffs' case that liability is admitted by Certificates of Confirmation dated 23rd April, 2013 and 30th August, 2013 at pages 404 and 405 of the original compilation of documents. Thus it is obvious that there is an acknowledgment of liability. In any event the plaintiffs confirm receipt of amounts of Rs.42,84,080/- and Rs.6,14,725/-. on 23rd April, 2013 and 30th August, 2013 respectively as part payments. In the total

there is minor difference in the amount of the claim in the suit as compared to the Certificates of Confirmation referred to above. However, the fact remains that none of the invoices or supplies have been disputed. The amounts claimed in the plaint is not disputed.

5. The plaintiffs' proprietor Mr. Valimohamed Hashim Khakra has deposed by way of filing an affidavit of evidence dated 1st February, 2022 in lieu of examination-in-chief. He has deposed on oath to the truth of its contents. In view thereof, there is no challenge to the evidence. In my view the plaintiffs' claim stands proved and accordingly I pass the following order :

- (i) Suit is decreed in terms of prayer clause (a) except that interest on the principal sum of Rs.50,42,325/- from the date of the suit till payment or realisation shall be @ 12% per annum.
- (ii) Decree shall be drawn up after giving credit to a sum of Rs.9,09,000/- admittedly received and as set out in the evidence at paragraph 48 of the affidavit of evidence.
- (iii) Plaintiffs Advocate to lodge a draft decree within a period of two weeks from today.
- (iv) Suit disposed in the above terms with costs to be computed in accordance with the Rules.
- (v) Draft decree shall be lodged within four weeks.

(A. K. MENON, J.)

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