

AD-10
Ct No.09
20.12.2023
TN

WPA No. 28564 of 2023

Sri Maharshi Shipping Private Limited and another
Vs.
Syama Prasad Mookerjee Port, Kolkata and others

Mr. Rudraman Bhattacharyya,
Mr. Suryaneel Das,
Mr. Chiranjit Pal

.... for the petitioners

Mr. Tilak Kumar Bose,
Mr. Ashok Kumar Jena

.... for the respondents

- 1.** The present challenge has been preferred against a notice of demand issued by the Syama Prasad Mookerjee Port, Kolkata to the petitioners raising a claim of Rs. 9 crore plus GST.
- 2.** The brief facts of the case are that on October 23, 2020, NV Sohom-I, a barge which was carrying the cargo of the vessel of the petitioners, sunk near the Anchorage point of the navigable channel of the Kolkata Port.
- 3.** Subsequently, several salvagers were appointed. However, for some reason or the other, the salvage work could not be done completely.
- 4.** An amount of Rs. 5 lakh and odd was also imposed as penalty on the petitioners, which the petitioners paid without demur.

5. Subsequently, however, in view of the petitioners not being able to complete the salvage work, the Kolkata Port Authorities issued a demand notice. Learned counsel for the petitioners submits that the petitioners have already contacted salvagers afresh, after the previous one failed to do the work, who are on their way to inspect the site.
6. It is also argued that despite repeated requests by the petitioners for the Kolkata Port Authorities to permit blasting in order to complete the salvage work, the same was not granted to the petitioners, thereby precluding the petitioners from doing the salvage work.
7. Since the petitioners have already appointed a new salvager, who will, in all likelihood, complete the salvage within a reasonable time during the present fair-weather which lasts till March, 2024 according to the petitioners, it is argued that the claim of Rs. 9 crore made by the Kolkata Port Authorities is premature. That apart, it is submitted that the petitioners have already spent a considerable amount for the salvage work.
8. The amount claimed by the Kolkata Port Authorities is also exorbitant, it is contended.
9. Learned senior counsel appearing for the Kolkata Port Authorities submits that the Kolkata Port

Authorities are on the verge of instituting a suit, for which the impugned demand was raised.

- 10.** It is contended that several opportunities have been given to the petitioners to complete the salvage work. However, even after the appointment of four salvagers, it is alleged that the petitioners failed to complete the salvage work. Such work, it is contended, can only be done during the fair-weather season, which is about to end in the month of February, 2024 for the current season. It is argued that due to the salvage not being completed till date, the free movement of the vessels in the concerned navigation channel is being affected.
- 11.** Learned senior counsel also places reliance on Section 14 of the Indian Ports Act, 1908 (for short “the 1908 Act”) in support of his contentions.
- 12.** In the instant case, the petitioners have sought to argue that no claim under Section 14(1) has been raised by the Kolkata Port Authorities as yet.
- 13.** The scheme of Section 14 is such that initially the owner of the vessel is required to clear the salvage within the contemplation of Section 12 of the 1908 Act.
- 14.** Section 14(1) envisages that if any vessel is wrecked, stranded or sunk in any port in such a

manner as to impede or likely to impede any navigation thereof, the conservator shall give notice to the owner of the vessel to raise, remove or destroy the vessel within such period as may be specified in the notice and to furnish such adequate security to the satisfaction of the conservator to ensure that the vessel shall be raised, removed or destroyed within the said period.

- 15.** In the present case, it is an admitted position that the petitioners had already paid penalty for non-removal of the salvage, although no security was claimed.
- 16.** It transpires from the notice dated June 10, 2023 issued by the Kolkata Port Authorities to the petitioners that the petitioners were directed to remove the complete wreck of the barge Sohom-I lying at Sagar Anchorage, immediately within one month from the said date and clear the area of any submerged debris of the wreck.
- 17.** The petitioners contend that the said notice of removal within one month was an impossibility, since June, 2023 does not come within the purview of the fair-weather zone and, as such, it was impossible to complete the task of removal of

the wreckage within one month from the said notice.

18. Whatever may be the worth of the said notice, however, it cannot be gainsaid that the said notice satisfies *prima facie* the requirements of a notice under Section 14(1) of the 1908 Act. In the absence of any challenge to the said notice by the petitioners, the same cannot be overlooked.
19. Once such notice was sent and the petitioners also paid penalty, the petitioners cannot resile from the position that a notice was given to the petitioners to remove the wreckage.
20. After the issuance of such notice, as such, the provisions of sub-section (1A) come into play. The necessary corollary thereafter, if the wreckage is not removed within the notice period, is that under sub-section (3) of Section 14, the expenses and further sum which have been expended or is to be expended by the conservator in removal of the wreckage shall be payable to the conservator, out of the sale proceeds of the property, and the balance shall be paid to the person entitled to the property recovered, or, if no such person appears and claims the balance, shall be held in deposit for payment, without

interest, to any person thereafter establishing his right thereto.

- 21.** Sub-section (4) of Section 14 provides that where the sale proceeds of the property are not sufficient to meet the expenses and further sum aforesaid, the owner of the vessel at the time the vessel was wrecked, stranded or sunk shall be liable to pay the deficiency to the conservator on demand.
- 22.** Thus, a demand having been made by way of the impugned notice annexed at page-76 of the writ petition which has been assailed by way of the present writ petition, the court cannot interdict the process of law by precluding the Kolkata Port Authorities from initiating appropriate proceedings/suit in due course of law for recovery of the amount on the basis of the said impugned notice.
- 23.** The impugned demand is merely a prelude to a suit, the institution of which cannot be interdicted by the writ court.
- 24.** Thus, there is no occasion to hold that the Kolkata Port Authorities acted *de hors* their jurisdiction or contrary to law in making the said claim, which is the precursor of a suit being instituted for recovery of the amount, after having

given several opportunities for removal of the wreckage to the petitioners.

- 25.** In such view of the matter, there is no scope of interference in the present writ petition.
- 26.** Accordingly, WPA No. 28564 of 2023 is dismissed without any order as to costs.
- 27.** However, it is made clear that this court has not entered into the merits of the claims and counter-claims between the parties and it will be open to the parties to agitate their respective contentions before the competent civil court. If so agitated, the said court shall be free to adjudicate the suit independently without being influenced in any manner by any of the observations made herein.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)