

IN THE HIGH COURT AT CALCUTTA
Admiralty Jurisdiction
ORIGINAL SIDE

IA NO. GA/4/2023
In AS/10/2006

AGRITRADE INTERNATIONAL PVT. LTD.
Vs
THE OWNERS & PARTIES IN VESSEL M. T. BEL

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 5th June, 2023

Appearance:

Mr. K. Thaker, Adv.
Mr. Amitava Majumdar, Adv.
Mr. S. Mitra, Adv.
Mr. S. Kundu, Adv.

The Court:- Notwithstanding, service having been effected, the plaintiff remains unrepresented. Affidavit of Service filed by the defendant no.2 be kept with the records.

This is an application filed by the defendant no.2 seeking dismissal of the suit and vacating of the interim order.

In or around August, 2006 the plaintiff had filed this suit praying, inter alia, for the following reliefs:-

- (a) Decree directing the defendants to furnish security for the sum of US\$ 902,480 equivalent to about Rs.4.20 crores as mentioned in the plaint.*
- (b) Arrest of the vessel, MT Belicia lying at Kidderpore Docks, Kolkata along with her tackle, apparel and furniture.*

(c) Appraisal and sale of the vessel, MT Belicia along with her tackle, apparel and furniture and for the payment of the proceeds thereof for the purpose of securing the claim of the plaintiff as mentioned in the plaint.

(d) Injunction,

(e) Receiver,

(f) Attachment,

(g) Costs,

(h) Further and other reliefs.

Upon filing of this suit, by an order dated September 4, 2006 the defendant vessel was arrested subject to payment of security. Ultimately, by an order dated 18 September, 2006 upon the defendant owners furnishing security in the form of a bank guarantee, the order of arrest stood vacated.

It is contended on behalf of the defendant no.2 that the plaintiff has taken no steps whatsoever since the filing of the suit. The Writ of Summons has also not been served on the defendant no.2. The plaint discloses no cause of action. In any event, notwithstanding a categorical averment in the plaint, the arbitration clause contained in the charterparty has not yet been invoked by the plaintiff. The suit as framed is simply an *inter partes* suit for interim reliefs pending arbitration and as such not maintainable.

Paragraph 17 of the plaint reads as follows:

“The Charter Party mentioned above contained an arbitration clause, which provides that-

Any dispute arising from the making, performance or termination of the Charter Party shall be settled in London, the Owner and Charterer each appointing an arbitrator, who shall be a merchant,

broker or individual experienced in the shipping business; the two chosen, if they cannot agree, shall nominate a third arbitrator who shall be an Admiralty lawyer. Such arbitration shall be conducted in conformity with the provisions and procedure of the English Law and a judgment of the Court shall be entered upon any award made by the said arbitrators”.

“In view of the arbitration clause the plaintiff will have to proceed by way of arbitration to enforce its claim against the defendant No.2. But the plaintiff is entitled to institute the present proceedings for the purpose of obtaining security for such maritime claim, which will have to be ultimately determined in accordance with the arbitration clause in the Charter Party.” [emphasis supplied]

Admittedly, no arbitration proceeding has been commenced till date. The suit as framed is only for interim reliefs. The suit is an *inter partes* suit for interim reliefs pending arbitration even if it be for the limited purpose of restraining dissipation of assets of the defendants and is not maintainable. [Bharat Aluminium Company vs. Kaiser Aluminium Technical Services Inc. (2012) 9 Supreme Court Cases 552 @ Para 175 and Rushab Ship International LLC & Ors. vs. Bunkers Onboard the Ship M.V. African Eagle and the Freight Due for Transportation & Ors. 2014 SCC OnLine Bom 620 @ Paras 33, 38 and 51]

On a plain and meaningful reading of the plaint, the suit is for securing an alleged maritime claim without any final relief claimed in respect thereof. Despite the categorical averment by the plaintiff to proceed by way of arbitration to enforce its claim against the defendant no.2, no steps whatsoever have been taken by the plaintiff to commence the arbitration. Moreover, this suit contemplates safeguarding the property which the plaintiff may or may not be

entitled to proceed against. The plaintiff's claim would depend on the outcome of an arbitration proceeding in a foreign country and outside the jurisdiction of this Court which is contingent, clearly speculative and therefore, gives rise to no cause of action. In any event, any such right is now *ex facie* barred by limitation. The plaintiff has taken no steps to proceed with the suit or to continue the same. This suit is only for interim reliefs pending an arbitration outside India. In such circumstances, the plaint discloses no cause of action and is liable to be dismissed.

Accordingly, GA/4/2023 stands allowed.

AS/10/2006 stands dismissed. Interim orders stand vacated.

The Registrar Original Side is directed to return the original bank guarantees furnished pursuant to the order dated 4 September, 2006 as expeditiously as possible and preferably within a period of 14 (fourteen) days from the date of communication of this order.

(RAVI KRISHAN KAPUR, J.)