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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ADMIRALTY AND VICE ADMIRALTY JURISDICTION
COMM ADMIRALTY SUIT (L) NO.12602 OF 2024
WITH
JUDGE'S ORDER NO.63 OF 2024

Pagro Frozen Foods Pvt. Ltd.

...Plaintiff

Versus

M.V. KMTC Manila IMO NO.9375496

...Defendant

Ram Jay Narayan for the Plaintiff.

None for the Defendant.

CORAM : R.I. CHAGLA J.
DATE : 12TH APRIL, 2024.

ORDER :

1. Not on board, mentioned and taken on board. The Plaintiff's Advocate has informed me that there is no valid/ active Caveat against Arrest of the Defendant Vessel entered in the Caveat Warrant Book. The Caveat Warrant Book has also been produced in Court.
2. The above Judge's Order is moved *ex-parte* after circulation was granted to the Plaintiff.
3. The urgent relief sought for by the Plaintiff in the suit is arrest of the Defendant Vessel.

4. The Owners of the Defendant Vessel are one Korea Marine Transport Co. Ltd. / KMTC (**“Owners”**). It is the Plaintiff’s contention that the Owners failed in its duties as a Carrier while transporting the Plaintiff’s cargo of frozen Broccoli from India to Japan (**“Cargo”**). The Plaintiff submits that the Owners breached the terms of the Bills of Lading it issued to the Plaintiff wherein it was, *inter alia*, agreed that the Owners would carry the Plaintiff’s Cargo at minus 25°C. The Plaintiff submits that this temperature was not maintained by the Owners through the Voyage from India to Japan. The Plaintiff further submits that this breach of the Owners occasioned a loss to the Plaintiff. On this basis the Plaintiff seeks a judgment and decree against the Defendant Vessel, and the arrest, sequestration, condemnation and sale of the Defendant Vessel, for securing and/ or satisfying its claim of US\$ 158,041.34. The Plaintiff also claims interest and costs.
5. The Plaintiff submits that it engaged the services of the Owners to transport 38.43 MTs Frozen Broccoli from ICD (Ludhiana) to Nagoya and Tokyo, Japan. The Owners issued Bills of lading Nos. KMTCLDH0063061 and KMTCLDH0066069, both dated 19 March 2023, to the Plaintiff for this carriage (**“Bills of Lading”**).

In the Bills of Lading, the Plaintiff is named as the Shipper, and the consignee is one Kohyo Co. Ltd. from Japan. The Bills of Lading, *inter alia*, provides that the Owners will carry the Cargo at minus 25°C.

6. The Owners, while the Cargo was in transit, informed the Plaintiff that the Containers under the Bills of Lading were facing temperature issues / fluctuations and the Cargo had to be re-stuffed into new Containers at Port Klang, Malaysia. The Plaintiff co-operated with Owners for this and the Cargo was accordingly re-stuffed into two new Containers by the Owners. The Plaintiff submits that the Owners re-stuffed the Cargo in open air conditions – this should not have been done given the nature / temperature sensitivity of the Cargo, according to the Plaintiff.
7. The Plaintiff also claims that it installed temperature loggers in the Containers and found that the Cargo was exposed to temperatures up to 15 to 16°C while under the Owners' custody - when the Bills of Lading provided for the Cargo to be transported at minus 25°C. The Plaintiff claims that, *inter alia*, this temperature abuse by the Owners caused the Plaintiff's

Cargo to form lumps, thaw and consequently rot / decay. The Plaintiff further submits that upon the Cargo arrival at Japan, the Consignee rejected the Cargo and the Plaintiff was constrained to ship-back the Cargo as a measure of mitigation. The Plaintiff thereafter took delivery of the Cargo in Punjab India. The Plaintiff's claim against the Owners of the Cargo is towards the losses occasioned to it, as a result of the Owners' breaches of the Contracts of Carriage / Bills of Lading. The Plaintiff also submits that the Owners of the Defendant Vessel are liable to it under the provisions of the Indian Carriage of Goods by Sea Act, 1924.

8. Against the backdrop of the foregoing, the Plaintiff claims damages to the extent of US\$ 158,041.34. The Plaintiff's claim comprises of, *inter alia*, the value of the cargo, the expenses incurred in testing, packing / loading the Cargo, the freight charges paid to the Owners, etc.
9. I have heard the learned Counsel appearing on behalf of the Plaintiff and have considered the averments made in the plaint and the documents produced with the Plaint. After going through the Plaint and exhibits, I find that a *prima facie* case for arrest of the Defendant Vessel is made out.

10. The Plaintiff's claims arises on account of the Owners' breaches of the Bills of Lading / Contracts of Carriage between them, due to which the Plaintiff suffered a monetary loss. The Plaintiff's claims are therefore a '*maritime claim*' as contemplated by, *inter alia*, Sections 4(1)(f), and 4(1)(g) of the Admiralty (Jurisdiction & Settlement of Maritime Claims) Act, 2017. The right to arrest the Defendant Vessel for the aforesaid maritime claims is to be found in section 5(2) read with section 5(1) of the Admiralty (Jurisdiction & Settlement of Maritime Claims) Act, 2017.
11. In these circumstances, I find that there is a cause of action in favour of the Plaintiff. I also find that since the Defendant Vessel is presently at JNPT, Mumbai she is within the admiralty jurisdiction of this Court. As stated above, the Plaintiff has made out a prima facie case. I am also satisfied that the balance of convenience lies with the Plaintiff to whom, irreversible prejudice would be caused if the reliefs sought in the Judge's Order are denied. Accordingly, I order and direct the arrest of the Defendant Vessel m.v. KMTC MANILA (IMO No. 9375496), along with her hull, tackle, engines, machinery, boats, bunkers, equipment, paraphernalia and other appurtenances presently at JNPT Port, Mumbai or wherever she is within the territorial

waters of India until the satisfaction of the Plaintiff's claim.

12. I have seen the Judge's Order and it seems to be in the proper form and with the appropriate contents. I accept the undertakings contained in the Judge's Order as undertakings to the Court. I therefore make an order in terms of the Judge's Order in the facts and circumstances of the present case.
13. The Warrant of Arrest is dispensed with.
14. After service of this order of arrest, if the Defendant Vessel is not released by furnishing security or bail amount or an application for vacating the order of arrest is not filed within 45 days, or the vessel is found abandoned by the person in-charge of her or her owner, or if she is found unmanned, then, in such an event, on a communication being sent by the Plaintiff, the office of the Sheriff of Mumbai shall present a Sheriff's report for auctioning the Defendant Vessel within 14 days from the date of receiving such communication. The Plaintiff is also entitled to file an application for sale of the vessel even prior to the 45 days, if it is apparent that the owner of the Defendant Vessel will not be furnishing security or filing an application for vacating the order of arrest or if the circumstances are such that the sale of the Defendant Vessel is justified.

15. All concerned, including Port and Customs Authorities will act on production of an authenticated copy of this order (signed by the Associate/ Private Secretary of this Court) sent to them by email by the Plaintiff's advocate.

[R.I. CHAGLA J.]