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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COM ADMIRALTY SUIT NO.1 OF 2023

Elesbao Pereira & Sons

...Plaintiffs

Versus

Sale Proceeds of MV San Domino
(IMO No.8807129) & Anr.

...Defendants

Mr. Kunal Naik for the Plaintiffs.

None for the Defendants.

CORAM : R.I. CHAGLA J.

DATE : 18TH JANUARY, 2024.

ORDER :

1. This is a suit filed by the Plaintiff for recovery of its dues from the Defendants pursuant to agency services rendered by the Plaintiff to the Defendant No. 1 vessel m.v. SAN DOMINO (IMO No. 8807129) [**"Vessel"**] . Prayer clauses (a) and (b) of the Suit read as follows :

"a) For an order and decree in its favour jointly / severally against the Defendant Nos. 1 & 2 in the sum of INR 26,86,977 together with further interest @ 12 % p.a. on the principal amount of INR 19,92,560 WEF the date of filing

of this suit till payment / realization as per the Particulars of the Plaintiff's Claim annexed at Exhibit O hereto.

b) For an order directing that the sale proceeds of the Defendant No. 1 Vessel lying deposited with the Ld. Prothonotary and Senior Master of this Hon'ble Court (or part thereof) be paid out to the Plaintiff towards satisfaction of any decree passed in its favour. ”

2. By an Order dated 21st June 2022 passed in Interim Application (L) No. 26347 in Commercial Admiralty Suit (L) No. 26345 of 2021 , the Sheriff of Mumbai was directed to conduct an auction sale of the Vessel. By Orders dated 15th July 2022 and 04th August 2022 in the same proceedings, the sale of the Vessel to M/s New Goa Enterprises was confirmed for a consideration of Rs. 4.5 Crores. The sale proceeds, after deductions in relation to costs of advertisements , poundage , etc., have been transferred to the Prothonotary and Senior Master of this Court – where they currently lie.
3. Pursuant to the Order dated 29th November 2023 passed in this suit , the Plaintiff has filed its Affidavit of Documents on 13th December 2023 . Today, the Ld. Counsel for the Plaintiff tenders a Compilation of Documents, which is taken on record. The documents at Sr. Nos. 1 – 16 of the Compilation of Documents are marked as **Exhibit Nos. P/1 to P/16** respectively.

4. I have heard Mr. Naik , the learned Counsel for the Plaintiff. I have perused the averments in the plaint and documents annexed thereto .
5. The Plaintiff's case is as follows :
 - a) The Defendant Nos. 1 and 2 in the present suit are the sale proceeds of the Vessel , and the erstwhile owners of the Vessel respectively.
 - b) As set out at Exhibits O and P of the Plaint , the Plaintiff's claims against the Defendants comprise of *inter alia* (i) disbursements incurred on behalf of the Defendants towards port dues which have not been reimbursed, and (ii) unpaid agency fees between 01st January 2020 to 28th July 2022 . The Plaintiff also claims interest on these principal claims @ 12 % p.a. and legal costs .
 - c) In March 2019 , the Vessel was to call at Mormugao Port , Goa [**"Mormugao Port"**] for repairs / survey / maintenance works.
 - d) Accordingly , vide letter dated 11.03.2019 produced at Exhibit P/4 , the Defendant No. 2 appointed the Plaintiff to render ship agency services to the Vessel during its stay at Mormugao Port.
 - e) Although no written contract was executed , the Plaintiff and Defendant No. 2 agreed that an aggregate sum of Rs. 59,000 (comprising Rs. 50,000 + 18 % GST of Rs. 9,000) is payable to the Plaintiff as consideration for

rendering these services .

- f) From March 2019 to December 2019 , the arrangement continued smoothly , with the Defendant No. 2 making ad-hoc payments to the Plaintiff from time to time .
- g) On/about January 2020 , the Defendant No. 2's representatives became increasingly non responsive. The Defendant No. 2's ad hoc payments to the Plaintiff became less frequent. It was apparent that the Defendant No. 2 was undergoing financial difficulties. The situation worsened upon the onset of the COVID-19 pandemic in March 2020. However, as the vessel's ship agents, the plaintiff had no choice but to continue to render services to the vessel and the crew.
- h) *Vide* the various emails sent between 20th December 2019 and 11th October 2021, produced at Exhibit P/6 , the Plaintiff *inter alia* requested payments to be released to the Mormugao Port Trust and/or the Plaintiff for their dues. As is standard trade practice, the Mormugao Port Trust would raise invoices for the port dues upon the Plaintiff along with a demand for payment. The Plaintiff would then forward these invoices along with invoices for the Plaintiff's agency fees from time to time to the defendant. From these emails, it can be seen that the Plaintiff was regularly following up with the Defendant No. 2 and informing them of the mounting of outstanding port dues and agency fees.
- i) By the letters dated 21st December 2020, 2nd January 2021, 8th January 2021, 28th January 2021 and 19th

January 2021 , which are produced at Exhibits P/7 to P/11 respectively , Mormugao Port Trust made several demands upon the Plaintiff for payment of the Vessel's outstanding port dues. However, since no payments were forthcoming from the Defendants, the Plaintiff was unable to make payments to Mormugao Port Trust.

- j) By the demand letter dated 30th September 2022, produced at Exhibit P/14 , the Plaintiff sought recovery of its dues from the Defendant No. 2 . However , the said letter came back undelivered as the Defendant No. 2 had shut down its offices , and also its email servers .
- k) The Plaintiff has faced severe financial distress due to the Defendants' actions. The Plaintiff has supported the Mormugao Port Trust as well as the Vessel's crew members during the COVID-19 pandemic pursuant to the abandonment of the Vessel by Defendant No. 2.
- l) The Plaintiff has a maritime claim within the meaning of Section 4(1)(p) and 4(1)(t) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 which the Plaintiff is entitled to enforce against the Defendants by way of the present suit.

6. In the face of the aforesaid documents and averments, I find that there is no compelling reason not to decree the suit in favour of the Plaintiff . It does not appear that the Defendants can have any contest to the merits of the Plaintiff's claim . The material on record establishes beyond a doubt that the Plaintiff

rendered its services to the Vessel, and that there are outstanding dues pursuant to the same. At no point has the Defendant No. 2 disputed this liability. Further, the Defendant No. 2 has made part payments of the Plaintiff's invoices , which would amount to acknowledgements of liability. It appears that the Defendant No. 2 has imploded under the circumstances ensuing in the wake of the Covid-19 pandemic , resulting in the closure of the Defendant No. 2's offices , arrest and subsequent sale of the Vessel .

7. Accordingly , I find substance in the submission of Mr. Naik that the Plaintiff's claim constitutes a 'maritime claim' under Section 4 (1)(p) and 4(1)(t) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 , and that the Plaintiff is entitled to enforce the same against the Defendants for recovery of its dues.
8. In view of the foregoing, the following order is passed:
 - a) There shall be a judgement and decree in favour of the Plaintiff in terms of prayer clause (a) and (b) of the suit.
 - b) The Plaintiff is entitled to refund of Court fees , if any , in accordance with the rules .
 - c) Drawn up Decree is dispensed with .

d) The Suit is accordingly disposed of.

15. This Judgment will be digitally signed by the Personal Secretary / Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this Judgment.

[R.I. CHAGLA J.]