



A.No.1494 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 16.07.2025

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

A.No.1494 of 2021

in

CS NO. 96 OF 2021

Banque Cantonale De Geneve,
Having its Office at Case Postate 2251, 1211 Geneve 2,
Represented herein by its Power of Attorney Agent,
V.Padmanadhan.

...Applicant/Plaintiff

Vs.

Owners and Parties interested in the Vessel M V
Polaris Galaxy, having IMO 9339648,
now lying at the outer anchorage of the Port of Tuticorin
(V.O.Chidambaranar Port), Tuticorin – 628 004.
Represented herein by its Master. and another

...Respondents/Defendants

For Applicant(s): Mr.Zarir Barucha, Senior Advocate,
for M/s.S.Raghunathan

For Respondent(s): M/s.Deepika Murali



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ORDER

The matter is listed today upon being mentioned by learned counsel for the 1st defendant.

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2. Learned counsel for the 1st defendant submits that an oral request for suspension or stay of the Summary Judgment and Decree had been prayed for on 09.07.2025, and requested for an order thereon.

3. At this juncture, the decree has not been drawn up and issued to the parties. Therefore, the plaintiff has not filed proceedings for execution and is, in fact, not in a position to do so.

4. In these circumstances, I see no urgency warranting suspension or stay of the Summary Judgment and Decree. It is needless to say that it is always open to the 1st defendant to file a statutory first appeal against such Judgment and Decree and seek interim protection therein.

16.07.2025

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SENTHILKUMAR RAMAMOORTHY, J.

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A.No.1494 of 2021

in

C.S.No.96 of 2021

16.07.2025



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	23.04.2025
Orders Pronounced on	09.07.2025

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

A.No.1494 of 2021
in C.S. No.96 of 2021

Banque Cantonale De Geneve,
having its Office at Case Postale 2251,
1211 Geneve 2, represented herein by its
Power of Attorney Agent Mr.V.Padmanabhan ... Applicant/Plaintiff

VS.

1. Owners and Parties interested in the Vessel
MV Polaris Galaxy, having IMO:9339648,
now lying at the outer anchorage of the Port of
Tuticorin (V.O.Chidambaranar Port),
Tuticorin-628 004 represented by its Master.

2. Gulf Petrochem FZC,
Hamriyah Free Zone, P.O.Box No.41506,
Sharjah, United Arab Emirates.
(2nd respondent impleaded as per order dated
19.03.2025 passed in A.No.988 of 2025). ... Respondents/Defendants



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Prayer : Application is filed under Order XIV Rule 8 and Order XIII A of the Code of Civil Procedure as amended by the Commercial Courts Act, 2015 Read With Section 151 of the CPC, to order for a decree and judgment in favour of the plaintiff and against the defendant vessel and the parties interested in her by summary proceedings for the sum of USD 6,705,357.38 (approx. INR 48,94,91,089/- (Forty eight crores, Ninety four lakhs, Ninety one thousand and eighty nine only) (calculated at 1 USD=73 INR) and further interest at 12% (or whatever other rate this Court may deem fit) from the date of filing of the suit until payment/realisation with costs.

For Applicant/Plaintiff : Mr. Zarir Bharucha, Senior Counsel
for Mr.S.Raghunathan
Mr.Chandrasekar Haridh
Ms.Sharanya Vaidhiyanathan

For R1/D1 : Mr.Prashant S. Pratap, Senior Counsel
for Ms.Deepika Murali
Mr.Ashutosh Tiwari

JUDGMENT

Background

The applicant/plaintiff, Banque Cantonale De Geneve ('BCGE'), is engaged *inter alia* in trade finance. Gulf Petrochem FZC ('GP') requested BCGE to finance the purchase of 27,000 to 28,000 Metric Tonnes (MT) of 0.5% marine fuel from the Indian Oil Corporation Limited ('IOCL') for



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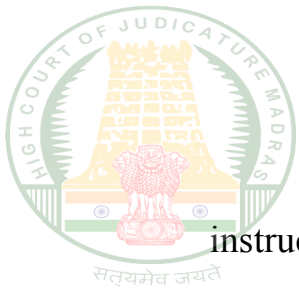
onward sale to Aramco Trading Fujairah FZE ('Aramco'). As security for financing the said cargo, the original bill of lading for the cargo was to be made to the order of BCGE. BCGE also called upon GP to provide the sale contract between GP and Aramco as a condition for financing the transaction. GP confirmed to BCGE, by e-mail of 11 May 2020, that the original bill of lading would be endorsed to the order of BCGE. The sale contract was provided to BCGE on 12 May 2020 and BCGE opened letter of credit of even date for a sum of USD 6,050,000 for the purchase of marine fuel from IOCL. The letter of credit specified the required documents, which *inter alia* included the full set of clean on board ocean bills of lading signed by the Master and made out to the order of Banque Cantonale de Geneve. Upon request by GP, the letter of credit was amended on 18 May 2020 by substituting Fujairah with Singapore as the port of delivery. In response to a request from BCGE, a copy of invoice dated 11 June 2020, issued by GP to Aramco, was sent to BCGE as an attachment to email of 15 June 2020 from GP.



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2. On 21 May 2020, the Master of the vessel, MV Polaris Galaxy ('the Vessel'), which was flying under a Liberian flag, issued three sets of the original bill of lading marked "To the order of Banque Cantonale De Geneve or order". While the Vessel was at Kandla, Gujarat, GP wrote to the carrier and instructed that the entire cargo be discharged at the Horizon Terminal at Singapore. The charterer of the Vessel, Profitable Wealth Inc.('Profitable Wealth'), a company registered in the British Virgin Islands and operated by Wirana Shipping Corporation Private Limited, Singapore, then instructed Polaris Marine Services LLC ('Polaris Marine'), the Commercial Manager of the Vessel, acting on behalf of the registered owner, Galaxy Marine Services Limited ('Galaxy Marine'), to deliver the cargo to Chevron Singapore Private Limited ('Chevron') without production of the original bill of lading by undertaking to indemnify Galaxy Marine against any claims in respect of such delivery without the original bills of lading. BCGE made payment of a sum of USD 5,985,084.28 to IOCL under the letter of credit on 27 May 2020. On 31 May 2020, the Vessel arrived at the Singapore Port. Between 9 June 2020 and 10 June 2020, the cargo was delivered to Chevron without production of the original bill of lading on the



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instructions of Profitable Wealth on the basis of letter of indemnity dated

24 May 2020.

3. GP provided BCGE with invoice dated 15 June 2020 issued to Aramco for a sum of USD 6,705,357.38. The due date for payment was shown as 10 August 2020. In the factual context of such payment not being received, BCGE issued notices to the Master of the Vessel, P & I Club of the Vessel, and Galaxy Marine on 10, 11 & 13 August 2020 calling upon them not to deliver the cargo without the written consent of BCGE. Galaxy Marine did not reply to the notice. An admiralty action *in rem* was filed in the circumstances seeking the arrest of the Vessel and for a decree in a sum of USD 6,705,357.38 with further interest at 12% per annum on the principal amount from the date of institution of the suit until payment. By order dated 09 March 2021, a warrant for arrest of the Vessel was directed to be issued. Thereafter, upon Galaxy Marine providing a bank guarantee for a sum of USD 7,300,000, a warrant for release of the Vessel was issued.



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4. The present application was filed in these facts and circumstances in March 2021. The affidavits in support of or in response to the application consist of: affidavit of V.Padmanabhan dated 26 March 2021 on behalf of BCGE; counter affidavit of Siddhesh Sham Kshirsagar dated 16 July 2021 on behalf of Galaxy Marine; rejoinder affidavit of V.Padmanabhan dated 23 August 2021 on behalf of Galaxy Marine; sur-rejoinder affidavit of Siddhesh Sham Kshirsagar dated 18 March 2024 on behalf of Galaxy Marine; and affidavit in reply to sur-rejoinder of V.Padmanabhan dated 20 March 2024 on behalf of BCGE. The contesting parties filed documents in support of their respective positions.

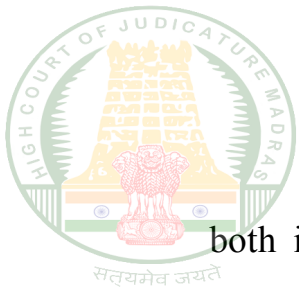
5. By order dated 24 September 2021, this Court concluded that GP is a proper and necessary party to the suit. The said order was challenged by BCGE before the Division Bench and the Division Bench allowed the appeal. Galaxy Marine carried the matter in further appeal before the Supreme Court and the Supreme Court, by judgment dated 23rd September 2022, reversed the judgment of the Division Bench by holding that GP was a proper party whose presence was necessary for the effective adjudication



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of issues raised in the suit. GP was impleaded as the 2nd defendant in the suit in those circumstances and the plaint was amended. Private summons to GP was permitted and the envelope containing the summons was dropped at the P.O. Box of GP on 29 December 2023. Eventually, after multiple efforts to serve summons through regular modes, substituted service was permitted by order dated 20 November 2023 and effected by publication in the 'Gulf Times' on 27 November 2023. GP did not, however, enter appearance to contest the suit.

6. After arguments in the summary judgment application were heard in part, BCGE filed Application No.988 of 2025 to implead GP as a party to the application. The said application was allowed on 19 March 2025 by directing BCGE to carry out the consequential amendments in the affidavit and Judge's summons on or before 26 March 2025. As directed, the amendments were carried out on 26 March 2025. After dispatching notice to GP, BCGE filed affidavit of service dated 28 March 2025 and enclosed copies of notices issued to GP both directly and through the Chief Executive Officer of the Ministry of Justice, United Arab Emirates. Relief is claimed



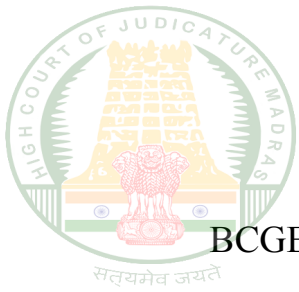
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both in the suit and the application only against Galaxy Marine and not against GP.

Counsel and their contentions

7. Oral arguments on behalf of BCGE were advanced by Mr. Zarir Bharucha, learned senior counsel, assisted by Mr.S.Raghunathan and Ms.Sharanya Vaidhiyanathan, learned counsel. Oral arguments on behalf of Galaxy Marine were advanced by Mr.Prashant S. Pratap, learned senior counsel, assisted by Ms.Deepika Murali and Mr.Ashutosh Tiwari, learned counsel. The 2nd respondent did not enter appearance. Both the contesting parties filed written submissions.

8. Learned senior counsel for BCGE opened his submissions by stating that both the suit and this application are in respect of mis-delivery of cargo by Galaxy Marine without production of the original bills of lading. Learned senior counsel submitted that the material facts are undisputed. By referring to e-mail of 11 May 2020 from the Transaction Manager, Commodity Trade Finance, BCGE to GP, he pointed out that



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BCGE requested for confirmation that the original bills of lading will be to its order. By a response issued on the same date, he pointed out that Mr.Mukul Agarwal, Treasurer, GCC of GP confirmed that the original bill of lading will be issued to the order of BCGE. By further referring to the letter of credit issued by BCGE, learned senior counsel pointed out that the document provided for the full set of bills of lading to be made to the order of BCGE.

9. With specific reference to the bill of lading, learned senior counsel pointed out that it was drawn to the order of BCGE as agreed to. Thus, he contended that Galaxy Marine was under an obligation not to deliver the cargo without production of the original bills of lading. In this case, he submitted that Galaxy Marine mis-delivered the cargo to Chevron on 09/10 June 2020 on instructions from Profitable Wealth against a letter of indemnity dated 24 May 2020 from Profitable Wealth.

10. According to learned senior counsel, Galaxy Marine is, consequently, liable for the loss caused by the mis-delivery. In view of

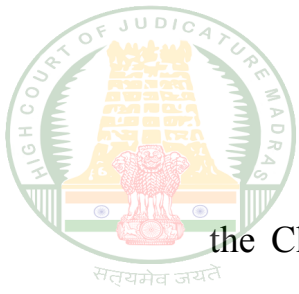


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Galaxy Marine admitting that it committed breach of the contract of carriage, he contended that BCGE is entitled to summary judgment. Even with regard to quantum of loss, Mr. Zarir Bharucha submitted that the value of the cargo as on the date of intended delivery is the appropriate measure of loss. The cargo was intended to be delivered to Aramco against payment of a sum of USD 6,705,357.38. Therefore, the said invoice value constitutes the fair value of goods at the time of intended delivery under the relevant sales contract.

11. Learned senior counsel next contended that the defences raised by Galaxy Marine are completely misconceived and not merely improbable. He pointed out that Galaxy Marine has raised the defence that a trial is necessary to consider the following counterfactual/hypothetical: whether BCGE would have authorised delivery of cargo without production of the original bills of lading. According to learned senior counsel, Galaxy Marine has not specifically pleaded this line of defence. Even if pleaded, he contended that such defence is inconsistent with Galaxy Marine's case of being under an obligation to deliver the cargo to Chevron under the terms of

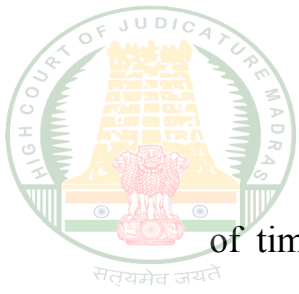


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the Charter-Party without BCGE's approval or consent against a letter of indemnity. He further submitted that the admitted factual position is that the cargo was delivered to Chevron and not Aramco by Galaxy Marine. Therefore, in the absence of even *prima facie* evidence that BCGE would have agreed to surrender its proprietary security by permitting delivery of cargo to Chevron or any other third party without production of the original bills of lading, he contended that any counterfactual inquiry of the nature proposed by Galaxy Marine is totally unwarranted.

12. Since delivery instructions were issued to Galaxy Marine by Profitable Wealth and not by GP, learned senior counsel contended that the correct counterfactual inquiry, if any, would be whether BCGE would have agreed to the delivery of cargo to Chevron or any other third party under instructions from Profitable Wealth. If such counterfactual were to be raised, he further submitted that the resounding answer would be that BCGE would not have permitted such delivery. Consequently, he contended that the defence raised by Galaxy Marine is wholly baseless and does not justify the relegation of parties to a trial resulting in the disproportionate allocation

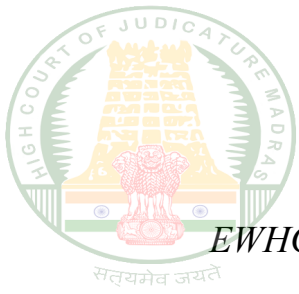


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of time and resources. By revisiting the e-mails of 8 May 2020, 11 May 2020, 12 May 2020 and 15 May 2020, learned senior counsel submitted that these documents lead to the unequivocal conclusion that the defence raised by Galaxy Marine is *ex facie* untenable.

13. Learned senior counsel distinguished the judgments relied upon by Galaxy Marine on the ground that there was evidence of the bank's express agreement or prior knowledge of delivery of cargo to the intended recipient without production of the original bills of lading in those cases. For instance, by referring to paragraphs 73, 74 and 83 of the judgment in *Unicredit Bank A.G. v. Euronav N.V. (The Sienna)*, (2022) EWHC 957 (Comm), learned senior counsel pointed out that the Court *inter alia* found that delivery of cargo to approved sub-buyers without presentation of the original bills of lading had been expressly authorised by the bank in that case.

14. Likewise, by referring to paragraphs 20 to 23 and 26 to 32 of *Fimbank PLC v. Discover Investment Corporation ("The Nika")*, (2020)



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EWHC 254 (Comm), learned senior counsel contended that the causation defence succeeded therein *inter alia* because clause 2.3.4 of the stock management agreement expressly contemplated delivery of cargo to the bank's customer without presentation of the original bills of lading. Similarly, by referring to paragraphs 8 & 50 to 51 of *Standard Chartered Bank (Singapore) Ltd. v. Maersk Tankers Singapore Pte Limited* (“*Maersk Tankers*”), (2022) *SGHC 242*, learned senior counsel contended that summary judgment was refused therein because the documents on record reflected that the bank's letter of credit was opened on 4 May 2020, whereas the cargo was to be delivered even prior thereto on 29 February 2020. In those circumstances, he pointed out that the Court concluded that the bank knew that the cargo would be delivered even prior to the financing and, therefore, without the security in relation thereto.

15. By referring to the judgment of the Singapore High Court in *Oversea-Chinese Banking Corporation Limited v. Owner and/or Demise Charterer of the Vessel “Yue You 902”* (the *Yue You*), (2019) *SGH 106*, he submitted that the Court held that the carrier's breach of the obligation to



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deliver cargo only upon presentation of the original bill of lading was a fundamental breach of contract entitling the claimant to summary judgment.

He also relied upon the judgments of the Hong Kong High Court in *Kai Min Fashion (HK) Limited v. Fond Express Logistics Limited and another*, dated 28 September 2012 in Commercial Action No.20 of 2011 (*Kai Min*) and *Star Line Trades Limited v. Transpac Container System Limited and another (Star Line)*, [2009] HKCU 1355 . He finally relied on the recent judgment of the Singapore High Court in the *Union Overseas Bank Limited v. Owner and/or Demise Charterer of the Vessel "MAERSK KATALIN"* ("Maersk Katalin"), (2024) SGHC 282 for the proposition that the onus was on the carrier to establish the likelihood of the bank authorising delivery without presentation of the original bills of lading. He further submitted in conclusion that the Singapore High Court held therein that the bank takes security to protect itself against risk and an inference that such security would be relinquished cannot be drawn in the absence of commercial reasons justifying such relinquishment.



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16. Mr.Prashant S.Pratap responded to these contentions. He opened

submissions by pointing out that there are three parties to the transaction, namely, GP, BCGE and the carrier. After further pointing out that BCGE has not placed on record all material documents relating to the financing of the purchase by GP from IOCL, he pointed out that the answer to the following question may be elicited only in course of trial: whether BCGE had anything to do with instructions relating to the delivery of cargo to Chevron? By referring to paragraph 50 of the judgment of the Supreme Court dated 23 September 2022 in the appeal before the Supreme Court against the Division Bench judgment allowing the appeal against the order directing BCGE to implead GP (*Owners and Parties Interested in the Vessel M.V.Polaris Galaxy v. Banque Cantonale De Geneve, 2022 SCC OnLine SC 1293*), learned senior counsel submitted that the Supreme Court expressly held that it is necessary to examine the underlying transaction between BCGE and GP. In view thereof, learned senior counsel submitted that a trial is warranted to ascertain all material facts relating to the dispute.



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18. With reference to paragraphs 6, 12 to 17, 22 to 28, 32, 35, 39, 40 & 45 to 56 of the judgment in *Maersk Tankers*, he contended that, in substantially similar facts and circumstances, the Singapore High Court held

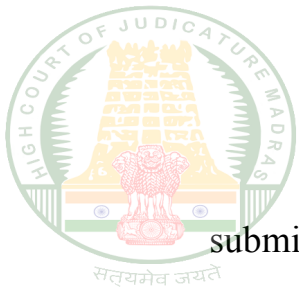


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that the bill of lading was not the security for the financing of the cargo.

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Likewise, by referring to paragraphs 27, 103, 105 and 108 of *The Sienna*, Mr.Prashant S. Pratap contended that the English Court of Appeal held that it is inherent in the bank's transaction with the borrower that delivery of cargo may be made without production of the original bills of lading. He also relied on paragraphs 1 to 12, 18 to 24, 47 to 52, 73, 89, 92 and 120 of the judgment of the single Judge in the same case. Relying upon the judgment of the Delhi High Court in *OCM Singapore Njord Holdings Hardrada Pte. Ltd. & another v. Mr.Prerit Goel & others*, dated 06.05.2024 in *C.S.(Comm)No.54 of 2021*, he contended that GP had adopted an identical *modus operandi* and defrauded several banks and ship owners. He also relied upon the judgment of the Division Bench of this Court in *Syrma Technology Private Limited v. Powerwave Technologies Sweden AD (in bankruptcy) and another('Syrma Technology)*, 2020 SCC OnLine Mad 5737, particularly paragraphs 12 to 21 thereof, to contend that only a conditional order is liable to be passed if it were possible that the defence may succeed. After further pointing out that the suit claim has been secured not only in respect of the principal sum but even in respect of interest, he



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submitted that it certainly cannot be concluded at this juncture that Galaxy

Marine does not even have a possible defence in respect of causation.

19. He distinguished the judgments relied upon by BCGE by pointing out that no bank was involved both in *Kai Min* and *Star Line* and that payment was to be made upon production of documents, including original bills of lading. Even with regard to the judgment of the Singapore High Court in the *Yue You*, Mr.Prashant S. Pratap contended that the said case did not involve an onward sale financing without bills of lading. In order to succeed in an action for damages, learned senior counsel submitted that it is insufficient to prove breach of contract and loss. It is further necessary to establish that such loss was caused by the breach and not by any other factor. In the case at hand, he contended that it is necessary for BCGE to establish that delivery of cargo to Chevron was the proximate cause of the loss suffered by BCGE. In the absence of a trial, he submitted that it is not possible to ascertain whether BCGE consented to or did not object to the delivery of cargo to Chevron by GP without production of the original bill of lading. According to learned senior counsel, the likelihood or possibility



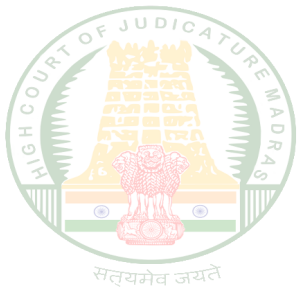
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of GP informing BCGE of its intention to deliver the cargo to Chevron cannot be ruled out. Without prejudice to the above contentions, he further submitted that BCGE's claim should be limited to the value of the letter of credit opened by BCGE to finance the purchase of cargo by GP from IOCL. Put differently, if the Court were inclined to direct summary judgment, he submitted it should be limited to the sum of USD 5.9 million and not extend to the invoice value for onward sale by GP to Aramco.

20. By way of rejoinder, Mr.Zarir Bharucha submitted that BCGE had sued the carrier for breach of the contract of carriage. The carrier, Galaxy Marine, admits that it committed breach by delivering the cargo to Chevron without the original bills of lading. In those circumstances, he submitted that the onus was on Galaxy Marine to establish that the loss was not caused by mis-delivery. As regards the contention that BCGE would have taken trade credit insurance, he submitted that trade credit insurance was not taken because Aramco was a strong counter party. By referring to the letter of indemnity, Mr.Zarir Bharucha submitted that such indemnity was provided by Profitable Wealth and not by GP.

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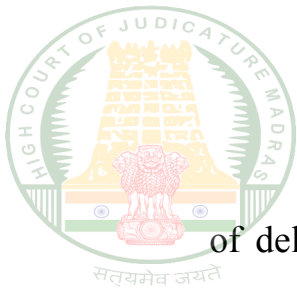


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21. He also referred to clause 13(b) of the Time Charter-Party between Profitable Wealth and Galaxy Marine to contend that the said contract placed an obligation on Galaxy Marine to discharge the cargo even without production of the original bills of lading against an indemnity from Profitable Wealth. Thus, he contended that Galaxy Marine ran the risk of discharging the cargo without production of the original bills of lading by relying on the indemnity. Having done so, he further contended that it is not open to Galaxy Marine to evade liability on the specious ground that BCGE did not suffer loss on account of mis-delivery, but suffered loss on account of the nature of the financing transaction between BCGE and GP. In all the cases relied upon by Galaxy Marine, such as *The Sienna* and *The Nika*, Mr.Zarir Bharucha contended that delivery was made to the buyer specified in documents provided to the financing bank. By contrast, in this case, he contended that the cargo was delivered not to Aramco but to Chevron.

22. By also relying upon the judgment in *Piloo Dhunjishaw Sidhwa v. Municipal Corporation of the City of Poona, 1970 (1) SCC 213*, learned senior counsel submitted that the market value of goods at the intended time



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of delivery is the appropriate measure of damages. The invoice issued by GP to Aramco qualifies as the document evidencing the market value of the goods at the intended time of delivery. Especially in the absence of any evidence that such market value is incorrect, he submits that BCGE is entitled to a summary judgment for such value. He also relied upon the Standard and Poor Global Platts Report containing the Mean of Platts Price of the cargo on 10 June 2020. If calculated on such basis, as on 10 June 2020, he submits that the price would be USD 246.726 per MT. For the total contracted quantity, the market value would be USD 8,033,894.66 instead of USD 6,705,357.38. Therefore, learned senior counsel submitted that the lower amount has been claimed on the basis of the invoice issued by GP to Aramco and that this qualifies as the appropriate and reasonable measure of damages.

Discussion, analysis and conclusions:

23. The facts are largely undisputed. As stated at the outset, BCGE financed the purchase of marine fuel by its customer, GP, from IOCL. The e-mails of 11 May 2020 between BCGE and GP evince that BCGE insisted



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on the original bill of lading being to the order of BCGE. Such financing was by opening a letter of credit for a sum of USD 6,050,000 on 12 May 2020. The beneficiary of the letter of credit was IOCL. Among the required documents was the full set of (3/3 originals plus 3 non-negotiable copies) clean on board ocean bills of lading with each original signed by the Master and made to the order of BCGE. The bill of lading is on record and was issued on 21 May 2020 by the Master of MT. Polaris Galaxy “to the order of Banque Cantonale De Geneve or order”. The notify party mentioned therein is GP. Also on record is Charter-Party dated 25 July 2019 between Polaris Marine and the Charterer, Profitable Wealth. Clause 13(b) of the Charter-Party provides as under:

“13(b) Notwithstanding the foregoing, Owners shall not be obliged to comply with any orders from Charterers to discharge all or part of the cargo

(i) at any place other than that shown on the bill of lading and/or

(ii) without presentation of an original bill of lading unless they have received from Charterers both written confirmation of such orders and an indemnity in a form acceptable to Owners.”



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After arriving at anchorage in the Singapore Port on 31 May 2020, it is common ground that the cargo was discharged between 09 /10 June 2020 to Chevron. Such discharge was admittedly made without production of the original bill of lading on instructions from GP and Profitable Wealth and against letter of indemnity dated 24 May 2020. With this preamble, I turn to the principles governing an application for summary judgment.

24. When the Code of Civil Procedure, 1908 (the CPC) was amended in respect of commercial disputes, provision was made for parties to apply for a summary judgment under Order XIII-A thereof. Rule 3, which stipulates the grounds for summary judgment, is as under:

"3. Grounds for summary judgment-The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that

(a) the Plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and

(b) there is no other compelling reason why the



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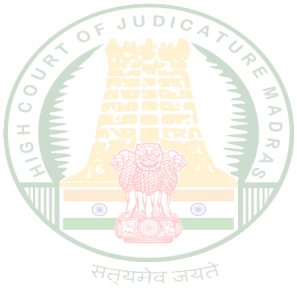
claim should not be disposed of before recording of oral evidence.'

In *Godaddy.com v. Puravankara Projects Limited*, 2022 (91) PTC 440 (Mad), I had formulated the following principles for the adjudication of an application for summary judgment :

" (i) The applicant should discharge the burden of establishing that the counter party has no real prospect of succeeding on the claim, including a part thereof, or successfully defending the claim, or a part thereof, as the case may be. The adjective 'real' is used to indicate that such prospect is not 'illusory', 'theoretical or statistical' or 'imaginary' or 'fanciful'.

(ii) Rule 6 of Order XIII-A confers wide latitude on the court to pass a range of orders in an application for summary judgment either on the whole or part of the claim. The types of order specified in Rule 6 are illustrative and not exhaustive.

(iii) If the Court concludes that the counter party could probably succeed, as regards the whole of the claim, the application is liable to be dismissed. If the court considers the success of the counter party probable as regards a part of the claim, or, in respect of some of the reliefs claimed, but not the remainder,



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the application may be considered as regards the remainder.

(iv) If the court concludes that it is really possible but not probable that the counter party could succeed, a conditional order may be passed. Although Rule 7 of Order XIII-A uses the word 'possible', it does not mean statistical or theoretical possibility but real possibility.

(v) Once the applicant satisfies the requirement of clause (a) of Rule 3 of Order XIII-A, it becomes necessary for the court to consider whether there is any other compelling reason to direct parties to record oral evidence. Since the conjunction 'and' is used between clauses 'a' and 'b' of Rule 3, the requirements should be construed as cumulative.

(vi) The obligations imposed by Rules 4 and 5 on the parties to plead their respective cases and produce all material evidence in relation thereto does not shift the burden of proof. Instead, it is a procedural device to enable the court to meaningfully consider whether the whole or part of the suit claim may be disposed of summarily.

(vii) The scope of Order XIII-A is wider than Order XII, Rule 6 CPC, which is triggered only on the



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basis of admissions. It is also far wider than Order VII Rule 11 CPC because the court goes well beyond the plaint and examines all the evidence placed before it. However, such application is maintainable in the limited window after summons' are served but before issues are framed.

(viii) In the ultimate analysis, Order XIII-A facilitates fulfilment of two salient but often undervalued objectives of a fair and just dispute resolution system, namely, expeditious disposal and equitable and proportionate allocation of the limited resources of the public court system. It represents a paradigm shift from a blinkered trial-is-the-only-method approach to the adjudication of civil suits to a more balanced approach, which preserves the trial process wherever appropriate and necessary.”

25. While applying these principles to this case, the first question to consider is regarding the nature, and implications, of the bill of lading. The answer is self-evident and obvious. Since the original bill of lading is to the order of BCGE, in effect, BCGE is the consignee. GP is referred to therein as the notify party, thereby indicating that notice of arrival and notice of



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readiness to discharge cargo should be given to it. Given the nature of the bill in this case, it is not a mere receipt and constitutes both a document of title and evidence of a contract of carriage. Indeed, on perusal of both the counter and subsequent affidavits in this application and the written statement in the suit, it follows that discharge to Chevron without production of the original bill of lading on instructions from GP and Profitable Wealth and on provision of indemnity by Profitable Wealth is admitted. Since cargo was delivered to Chevron without production of the original bill of lading, according to BCGE, it was deprived of its security. With this, I turn to the assertions of Galaxy Marine in its counter and subsequent affidavits in this application.

26. At paragraphs 10 and 15 of counter affidavit dated 16 July 2021, Galaxy Marine stated as under:

“10. It is relevant to note that at all times during the pendency of the Charter-party, the Vessel was placed at the disposal of and was under the orders and directions of the Charterers. Further, the Charter party at Clause 13(b) provided that if the Charterers gave orders to



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discharge the cargo without presentation of the original bills of lading, the Owners would be obliged to comply with such orders upon receiving an indemnity from the Charterers in the form as set out in the Appendix to the Charter party. Accordingly, the Respondent herein was under a duty to discharge the cargo even without production of the original bill of lading, upon receiving a Letter of Indemnity from the Charterers. It is submitted that this is general trade practice and is widely accepted as standard custom industry-wide. Letters of Indemnity are accepted in normal course and this procedure is always adopted by oil tankers when the original bill of lading is not available at the discharge port, in order to avoid delaying discharge, unnecessarily prevent detaining the vessel and to reduce congestion at ports.”

“15. The Vessel thereafter sailed for the port of discharge i.e. Singapore. Relevantly, during this entire period, Gulf Petrochem was communicating with the Vessel and providing voyage/discharge instructions to the Vessel. In fact, on 21st May 2020 itself, Gulf Petrochem provided the Vessel with discharge orders wherein it advised that the entire quantity of the Cargo on board the Vessel was to be discharged at the Horizon Terminal, Singapore. It is relevant to note that the said discharge



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*order clearly stated that the Receivers of the Cargo were Chevron Singapore Pte Ltd. i.e. Chevron. The said discharge order also directed the Vessel to send ETA notifications to Gulf Petrochem, the Terminal and relevantly Chevron (as Receivers). **Presumably therefore, the Plaintiff herein had been advised and/or was aware and/or was deemed to and/or ought to have been aware as far back as 21st May 2020 that the Cargo was being sold by Gulf Petrochem to Chevron and not to Aramco.***

(emphasis added)

27. In paragraph 16, after stating that Profitable Wealth provided letter of indemnity dated 24 May 2020 and that the letter of indemnity clearly stated that the cargo was to be delivered to Chevron, significantly, Galaxy Marine further stated as under:

“16. It is relevant to note that under the terms of the Charter party, upon the LOI being provided, the Respondent herein was obliged to deliver the Cargo as per the instructions stated therein. ”

In paragraph 18, Galaxy Marine asserts that GP was in constant communication with the Vessel from 31 May 2020 when the Vessel arrived at the nominated discharge port of Singapore until 9 June 2020. After



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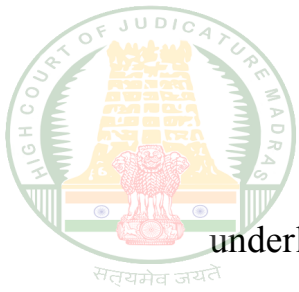
further stating that instructions to discharge at Horizon Terminal were received on 09 June 2020, Galaxy Marine states that the discharge was commenced on 09 June 2020 and completed by 8:54 hours on 10 June 2020.

Thereafter, at paragraph 21, it is stated, in relevant part, as under:

“21. It is apparent from the Sale Contract and the Plaintiff's conduct that the Plaintiff was agreeable to the cargo being delivered by Gulf Petrochem without presentation of the original Bill of Lading.”

28. After asserting at paragraph 31(c) that BCGE informed Galaxy Marine only on 10 August 2020 that it financed the cargo and that Galaxy Marine should not proceed to unload or discharge the cargo without the consent of BCGE, at paragraph 31(e), Galaxy Marine asserts that the facts indicate that the bill of lading was never the plaintiff's security.

29. In sur-rejoinder affidavit dated 18 March 2024, Galaxy Marine relied on the Supreme Court's observation that it is *“difficult to accept that the Court is not required to ascertain the nature of the underlying transaction”* as indicating that BCGE should adduce evidence regarding the



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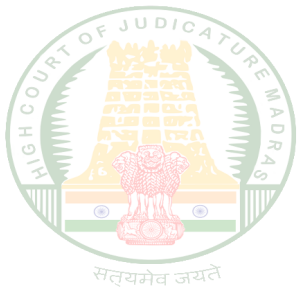
underlying transaction. In paragraph 8 thereof, in relevant part, Galaxy

WEB.COM Marine stated as under:

“8.The Plaintiff never had any intention to treat the Bills of Lading as security when it financed Gulf's purchase of the Cargo from Indian Oil Corporation Limited ('IOCL'). The Plaintiff had impliedly, if not expressly, approved the discharge without production of the bill of lading as it believed that Aramco was a solvent entity. The payment term was open credit to Aramco and the Plaintiff relied upon Aramco's name for security.”

At paragraph 9 (erroneously mentioned as paragraph 8), a new contention that BCGE was not the owner of the cargo was raised, in relevant part, as under:

“....The inaction of the Plaintiff in taking any action against Chevron to whom the cargo was sold and delivered by Gulf, indicates that the Plaintiff themselves believed that Gulf had clean title to the Cargo which they delivered to Chevron....The Plaintiff was never the owner of the Cargo and the Defendant has delivered the Cargo basis the instructions received from Gulf who were the owners of the Cargo....”



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30. In paragraph 10 (erroneously written as paragraph 9), after stating that English law governs the bill of lading, the legal defences are set out as under:

“(1) The Claimant (Plaintiff) never regarded the Bills of Lading as security when it provided the financing; (2) The Claimant never intended to look to the Defendant for delivery of the cargo if Gulf defaulted in its payment obligations to the Claimant; (3) Claimants were aware that the cargo would be delivered without the Bills of lading as a part of the underlying trade financing arrangement and acquiesced in the delivery of the cargo without presentation of the Bills of Lading (4) the Claimants have no title to sue under Spent Bills of Lading (5) the purported misdelivery of the goods or breach is not the effective or proximate cause of the Claimant's purported loss....”

The averments in the written statement are substantially similar to those in the counter affidavit.

31. Thus, from the affidavits and pleadings of Galaxy Marine, it appears that its defences are the following:



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(i) Galaxy Marine was under an obligation to discharge the cargo without production of original bills of lading, if a letter of indemnity were to be provided by the Charterer. Such letter of indemnity was provided by the Charterer on 24 May 2020.

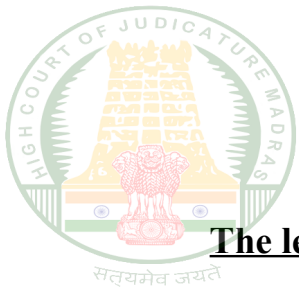
(ii) The sale contract and BCGE's conduct disclose that BCGE was agreeable to the cargo being delivered by GP without presentation of the original bill of lading on account of the nature of the underlying financing transaction. Evidence is required to be adduced at trial on this aspect and, therefore, the matter cannot be decided by summary judgment.

(iii) The bill of lading was never BCGE's security and the claim was made on the basis of the bill of lading as an afterthought because BCGE did not receive payment from GP.

(iv) BCGE was, or, is deemed to be, aware that the cargo was being sold by GP to Chevron and not Aramco.

(v) BCGE does not have the title to sue on a spent bill of lading and the sale was effected by GP as the owner of the cargo.

(vi) The purported mis-delivery was not the proximate cause of BCGE's purported loss.



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The letter of indemnity defence

WEB COPY 32. The first defence set out above is on the basis of the Charter-Party between Profitable Wealth and Galaxy Marine. The contention of Galaxy Marine is that it was contractually obligated under the Charter-Party to discharge the cargo without insisting on the original bill of lading if a letter of indemnity were to be provided by the Charterer, as was done by Profitable Wealth. Undoubtedly, BCGE is not a party to the Charter-Party and contractual obligations thereunder cannot be set up as a defence to the charge of breach of the contract of carriage. Such defence is patently untenable.

The spent bill and the GP as the owner defences

33. The next defence that I turn to is the defence that BCGE does not have title to sue on a spent bill of lading and that GP sold the cargo as the owner thereof. On this issue, it is sufficient to advert to three documents. The letter of credit opened by BCGE in favour of IOCL specifies the required documents. One of the documents mentioned therein is the original bill of lading signed by the Master and made to the order of BCGE. The second document is the bill of lading executed by the Master of MT. Polaris

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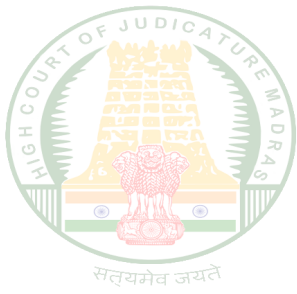
Galaxy to the order of BCGE or its order. As noticed earlier, BCGE is the consignee under the document. The third document being the letter of indemnity issued by Profitable Wealth to Polaris Marine. The letter of indemnity records, in relevant part, as under:

“The above cargo was shipped on the above ship by INDIAN OIL CORPORATION LIMITED and consigned to TO THE ORDER BANQUE CANTONALE DE GENEVA for delivery at the port of SINGAPORE but the bill of lading has not arrived and we, PROFITABLE WEALTH CO, hereby request you to deliver the said cargo to CHEVRON SINGAPORE PTE LTD or to be acting on behalf of CHEVRON SINGAPORE PTE LTD at SINGAPORE without production of the original bill of lading.

In consideration of your complying with our above request, we hereby agree as follows:

1. To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage, or expense of whatsoever nature which you may sustain by reason of delivering the cargo in accordance with our request.

5. As soon as all original bills of lading for the



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above cargo shall have come into our possession, to deliver the same to you, or otherwise to cause all original bills of lading to be delivered to you, whereupon our liability hereunder shall cease.”

(emphasis added)

34. Thus, the Charterer, Profitable Wealth, expressly recognised BCGE as the consignee of the cargo, but instructed Polaris Marine to deliver the cargo to Chevron at Singapore without production of the original bill of lading by stating that such bill of lading had not arrived. A bill of lading becomes spent if the obligations thereunder are fulfilled by making delivery to the consignee or an endorsee thereof, but not by delivery of cargo to a person not entitled thereto under the bill (See *Standard Chartered Bank v Dorchester LNG (2) Ltd (The “Erin Schulte”*) [2015 1 *Lloyd's Rep.* 97). In the face of the documents discussed above, the contention that the bill of lading was spent or that the cargo was delivered on instructions from the owner, GP, is *ex facie* fallacious and untenable.

Other defences

35. The remaining defences in a nutshell are as follows: that the sale



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contract and BCGE's conduct show that BCGE was agreeable to the cargo being delivered by GP without presentation of the original bill of lading; that the bill of lading was not intended to be BCGE's security; that BCGE was or is deemed to be aware that the cargo was being delivered to Chevron and not Aramco; and that the purported mis-delivery was not the proximate cause of purported loss. Since all these defences are inter-connected, they are examined conjointly in the admitted factual context of the cargo being delivered to Chevron and not to Aramco.

36. Rule 4 of Order XIII-A of the CPC deals with the procedure relating to an application for summary judgment and Rule 5 thereof deals with evidence. Sub-rule (3) of Rule 4 enables the respondent to such application to file a reply disclosing all material facts and include all documentary evidence in support of such reply. Sub-rule (3) is as under:

“(3) The respondent may, within thirty days of the receipt of notice of application of summary judgment or notice of hearing (whichever is earlier), file a reply addressing the matters set forth in clauses (a) to (f) mentioned hereunder in addition to any other matters that



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the respondent may deem relevant:—

(a) the reply must precisely—

(i) disclose all material facts;

(ii) identify the point of law, if any; and

(iii) state the reasons why the relief sought by the applicant should not be granted;

(b) in the event the respondent seeks to rely upon any documentary evidence in its reply, the respondent must—

(i) include such documentary evidence in its reply; and

(ii) identify the relevant content of such documentary evidence on which the respondent relies;

(c) the reply must state the reason why there are real prospects of succeeding on the claim or defending the claim, as the case may be;

(d) the reply must concisely state the issues that should be framed for trial;

(e) the reply must identify what further evidence will be brought on record at trial that could not be brought on record at the stage of summary judgment; and

(f) the reply must state why, in light of the evidence or material on record if any, the Court should not



proceed to summary judgment.”

Rule 5 provides further, in relevant part, as under:

“5. Evidence for hearing of summary judgment.—

(1) Notwithstanding anything in this Order, if the respondent in an application for summary judgment wishes to rely on additional documentary evidence during the hearing, the respondent must:—

(a) file such documentary evidence; and

(b) serve copies of such documentary evidence on every other party to the application at least fifteen days prior to the date of the hearing. ”

37. From the above provisions, it is evident that the respondent in an application for summary judgment is provided an opportunity to file not only a reply to the application, but to place all documentary evidence in support of such reply on record. While the burden of proof does not shift, especially in light of the admitted delivery by the carrier not to the consignee or endorsee but to a third party, the onus to establish that the above defences provide Galaxy Marine the real prospect of successfully defending the action lies on Galaxy Marine. Effectively, on the facts of this case, the question that arises is whether Galaxy Marine has placed on record



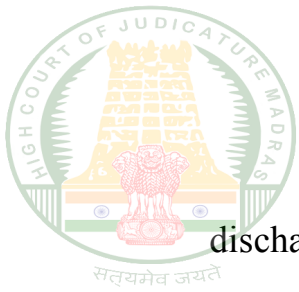
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any evidence to show, at least *prima facie*, that BCGE agreed to the cargo being delivered by GP to Chevron without presentation of the original bill of lading.

Whether BCGE agreed to delivery of cargo to Chevron without the production of the original bill of lading

38. The documents filed by Galaxy Marine include Charter-Party dated 25 July 2019 between Polaris Marine and Profitable Wealth. As discussed earlier, Clause 13(b) thereof enables the owners to discharge without presentation of the original bill of lading if a written confirmation of the discharge order and an indemnity in a form acceptable to the owners were to be received from the Charterer. Galaxy Marine has placed on record e-mail of 21 May 2020 from Tajinder Singh Chawla of GP to Polaris Galaxy with instructions to discharge the entire quantity on board to Chevron at the Horizon Terminal, Singapore. This email mentions the ETA notifications party list containing email addresses of persons representing the charterers, receivers (Chevron) and the port (Horizon Terminal). BCGE is not copied on the email or even mentioned as a party to be notified of arrival or



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discharge. Significantly, the email also does not even refer to BCGE or contain anything indicating that BCGE was informed of or consented to the discharge to Chevron instead of Aramco.

39. Similarly, the letter of indemnity dated 24 May 2020, which was issued shortly thereafter by the Charterer, Profitable Wealth, to Polaris Marine also does not indicate, expressly or implicitly, that BCGE was put on notice either about the delivery instructions from GP or the provision of the letter of indemnity in the context of non-production of the original bill of lading. Indeed, it is evident that in order to persuade the owner to assume such risk, in terms of clause 13(b) of the Charter-Party, Profitable Wealth agreed to indemnify the owner against all losses in relation to delivering the cargo in accordance with the request of the Charterer, and also agreed to deliver the original bill of lading to the owners as soon as the same comes into the possession of the Charterers. On examining these documents, the conclusion that emerges is that BCGE was not informed about the instructions from GP and Profitable Wealth to deliver the cargo to Chevron without production of the original bill of lading. *A fortiori* there is no



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evidence at all of BCGE consenting to such course of action.

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40. Strong reliance was placed on the Supreme Court judgment in relation to the impleading of GP in the suit to contend that a trial is necessary to ascertain whether BCGE had authorised the release of cargo in favour of Chevron. In particular, the following findings of the Supreme Court were relied on by Galaxy Marine:

“29. There is no doubt that in international trade, documents are of immense value and that Courts must proceed on the basis of the documents as held by the Division Bench. It is, however, difficult to accept that the Court is not required to ascertain the nature of the underlying transaction....”

“47.Whether the consignee authorised release of the cargo in favour of the notify party or any other party, can also be effectively adjudicated in the presence of Gulf Petrochem, shown as the notify party in the Bill of Lading.”

“50.Whether the Respondent Bank had anything to do with any instruction that Gulf Petrochem might have given is to be decided in the suit....”

These findings were recorded by the Supreme Court in support of the



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conclusion that GP was at least a proper party to the suit. In compliance, GP was joined as the 2nd defendant. As narrated earlier, in spite of service of summons in the suit by substituted service, GP failed to participate in the suit. Thereafter, GP was also joined as a respondent in this application and notice was sent to GP. GP, however, failed to participate.

41. BCGE categorically denies authorising or permitting GP to discharge the cargo to Chevron without production of the original bill of lading. With regard to the underlying transaction, BCGE has submitted *inter alia* the following: bid or tender document relating to the sale of marine fuel by IOCL; the email chain relating to the request for and acceptance of financing by BCGE on condition that the bill of lading be made to its order; the letter of credit issued by BCGE and specifying the required documents, including the original bill of lading to the order of BCGE; the email chain relating to the request for change in the discharge port and the acceptance thereof on receipt of confirmation that Aramco is the buyer and that there is no change; and the invoice issued by GP to Aramco. These documents strongly support BCGE's assertion. While it is

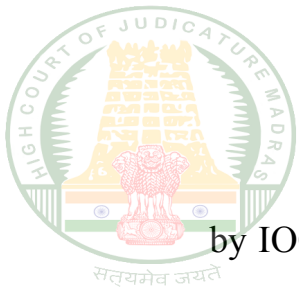


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noticeable that other documents relating to the underlying transaction, such as the loan agreement, are unavailable, such documents are not material in a suit against the carrier for mis-delivery. Thus, the conclusion that emerges is that the assertion by Galaxy Marine that BCGE was agreeable to the cargo being delivered by GP to Chevron without production of the original bill of lading is totally unsubstantiated. Therefore, the discharge of cargo to Chevron without the production of the document of title clearly constitutes breach of the contract of carriage between BCGE and the carrier, as evidenced by the bill of lading.

Whether the original bill of lading was BCGE's security and whether BCGE was aware or is deemed to be aware of the delivery to Chevron

42. Whether the original bill of lading was intended to be BCGE's security and whether BCGE was aware or is deemed to be aware of the delivery to Chevron warrant consideration next. The sequence of key events assumes significance in this context. BCGE relied on the following: email of 8 May 2020 from GP to BCGE requesting for financing of the purchase of marine fuel from IOCL; documents relating to the tender floated



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by IOCL for sale of marine fuel; the request by BCGE by email of 11 May 2020 to confirm that the original bill of lading would be to its order; the email from Mukul Agarwal of GP of 11 May 2020 confirming that the original bill of lading would be issued/endorsed to the order of BCGE; the sales contract between GP and Aramco sent as an attachment to email of 12 May 2020 from GP to BCGE; the documentary credit issued on 12 May 2020 by BCGE; and the bill of lading signed by the Master of the Vessel and made to the order of BCGE. Galaxy Marine has relied largely on the contract between GP and Aramco to contend that it discloses that payment was to be made by Aramco 60 days after the date of invoice. On that basis, Galaxy Marine contends that it is implied that delivery was to be made without the original bill of lading. In support of this proposition, Galaxy Marine has relied on the judgment of the Singapore High Court in *Maersk Tankers*.

43. In *Maersk Tankers*, the Standard Chartered Bank had provided trade financing to its customer, Hin Leong Trading (Pte) Limited (HLT). Under the contract, HLT was to purchase 750,000 barrels of gas oil 10 ppm



sulphur from Winson Oil Trading (Pte) Limited (WOT). Delivery took place

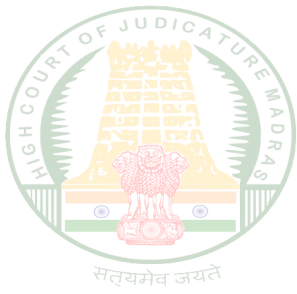
without production of the original bills of lading and was completed on 21

February 2020. On 3 March 2020, HLT applied to the bank for a letter of credit in favour of WOT and such letter of credit was opened. The Court concluded that there was a triable issue as to whether the carrier's mis-delivery had caused loss to the bank after noticing that the application for issuance of letter of credit was made after the date of the discharge, and that this was noticeable from the date of application for issuance of letter of credit. Paragraphs 49 & 50, in relevant part, are as under:

“49. In my judgment, whether the plaintiff looked to the Bills of Lading as security for its financing of HLT's purchase of the Gasoil Cargo is a triable issue. In turn, at least two triable issues of fact arise, which are material to the question of whether the plaintiff looked to the Bills of Lading as security.

(a) Whether the plaintiff had knowledge that the Gasoil Cargo had already been discharged into HLT's tanks at UT, at the time it accepted HLT's LC application; and

(b) What the specific financial arrangements between the plaintiff and HLT were.



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Whether the plaintiff had knowledge that the Gasoil Cargo had already been discharged into HLT's tanks at UT

50. The facts of this case are rather peculiar in that this is not a typical situation where it is immediately obvious that a bank has financed the purchase of goods, and finds itself having to look to the goods as security when its customer has failed to make payment of the loan. Rather, it is certainly arguable that, by the time the plaintiff agreed to finance the purchase of the Gasoil Cargo from WOT, it knew, or at least ought to have known, that the Gasoil Cargo was already in the custody of HLT. ”

It is noticeable from the above paragraphs that the conclusion of the Court turned largely on the fact that the letter of credit was opened subsequent to the discharge and that, therefore, the case was atypical. By contrast, in the case at hand, the bills of lading were made to the order of BCGE on 21 May 2020, which clearly preceded the date of discharge.

44. Galaxy Marine also relied heavily on the judgment of the Queen's Bench Division and the Court of Appeal in *The Sienna*. In *The Sienna*, the claim for damages was made by *Unicredit Bank A.G.* for alleged losses

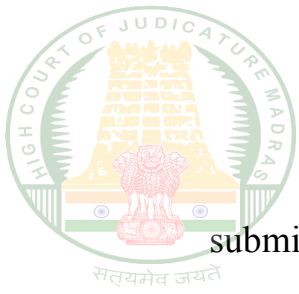


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caused by mis-delivery by *Euronav N.V.*, the owner of the vessel *Sienna*. In that case, the bill of lading was issued by the owner of the vessel to BP Oil International (BP), which was the Charterer of *Sienna*. The cargo was sold by BP to GP. Between 26 April 2020 and 2 May 2020, the cargo was discharged to another vessel by ship to ship transfer without production of the original bill of lading. At the time of delivery, BP was the lawful holder of the bill of lading, which was endorsed in favour of the *Unicredit Bank A.G.* subsequently on 7 August 2020. In the factual context of the bank not being the lawful holder of the bill of lading at the time of discharge, on the basis of the evidence adduced, including particularly the evidence of Ms.Diana Bodnya on behalf of the bank, the Court concluded that it was inherent in the financing scheme that the financed cargo would be discharged without production of the bill of lading.

45. Thus, in contrast to *Maersk Tankers* and *The Sienna*, in this case, the letter of credit was opened by BCGE on condition that the original bill of lading signed by the Master of the Vessel and made to its order should be



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submitted. The bill of lading was issued by the Master to the order of BCGE and this was done clearly prior to the admitted dates of discharge of the cargo. As discussed earlier, Galaxy Marine has failed to place on record even *prima facie* evidence that BCGE was aware of the instructions from GP and Profitable Wealth to discharge the cargo to Chevron at the Horizon Terminal, Singapore, without production of the original bill of lading. Indeed, the documents on record indicate that BCGE financed the purchase of marine fuel from IOCL for onward sale to Aramco on condition that the bill of lading would be made to its order, and would constitute security.

Whether the mis-delivery was the proximate cause of loss

46. All that remains to be considered is whether a counterfactual inquiry by way of trial is warranted for purposes of assessing the proximate cause of loss in the facts and circumstances and, if so, what could be the scope of such counterfactual inquiry. If the cargo had been delivered to Aramco without production of the original bill of lading, the counterfactual inquiry could have been directed at ascertaining whether BCGE would have consented to such discharge without production of the original bill of

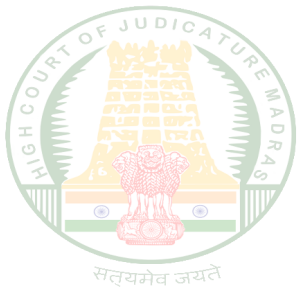


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lading. Given the fact that BCGE undertook the financing with full knowledge that the purchase by GP was for onward sale of the cargo to Aramco on open credit of 60 days, there may have been an arguable case for such counterfactual inquiry in that factual situation. The cargo was, however, admittedly discharged to Chevron and not to Aramco. Therefore, any counterfactual inquiry as to whether BCGE would have consented to discharge the cargo to Aramco without production of the original bill of lading would be meaningless.

47. Whether a counterfactual inquiry is warranted to assess the potential response of BCGE if a request for discharge to Chevron without production of the original bill of lading had been made is considered next. Before proceeding further, it should be borne in mind that one of the objects of Order XIII-A of the CPC is to allocate the resources of the public court system proportionately by enabling cases to be disposed of summarily, wherever appropriate, and by eschewing a blinkered trial-is-the-only-method approach to the adjudication of commercial disputes.



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48. Some documents submitted by BCGE assume significance on this issue. Immediately upon receiving a request from GP for a change in discharge port, by email of 15 May 2020 from Tatiana Kokina, Transaction Manager, BCGE to Bhavik Dedia of GP, BCGE stated, in relevant part, as under:

“Please update us on this change of discharge port as we have amended just this morning to read Fujairah.

Does the sale to Aramco cancelled?

We will not be able to proceed with any amendment prior having all information and documents....”

(emphasis added)

By reply email of 15 May 2020 from Mukul Agarwal of GP to Tatiana Kokina of BCGE, it was stated, in relevant part, as under:

“There is no change to the sales to Aramco.

As per request from the buyer, disport is being changed from Fujairah to Singapore....”

(emphasis added)

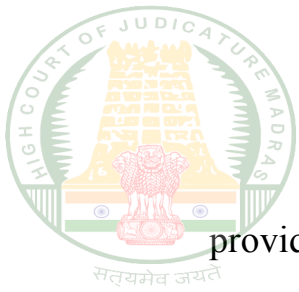


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Thereafter, on receipt of the amended sales contract between GP and Aramco with the changed discharge port, as an attachment to email of 17 May 2020 from Mukul Agarwal of GP to Tatiana Kokina of BCGE, the amended letter of credit of 18 May 2020 was issued by BCGE. By email of 15 June 2020, Tatiana Kokina of BCGE requested for Aramco's invoice and, by reply of even date from Mukul Agarwal of GP, invoice dated 11 June 2020 issued by GP to Aramco was provided to BCGE. All these documents indicate that BCGE requested for and received confirmation from GP that the onward sale was to Aramco notwithstanding the change in the discharge port. In fact, as is evident, even the sales invoice to Aramco was provided to BCGE and the correspondence relating thereto was subsequent to the actual dates of discharge to Chevron.

49. Especially in the light of the above evidence, in order to justify the conduct of a trial for purposes of a counterfactual inquiry, there should be at least *prima facie* contra evidence that GP had informed BCGE that it was intending to or had instructed Galaxy Marine to discharge the cargo to Chevron without production of the original bill of lading. In spite of being



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provided an opportunity to place on record all material evidence, Galaxy Marine has failed to place on record any evidence that BCGE was put on notice directly or even indirectly in the form of a reference thereto in the communications from GP or even Profitable Wealth to Galaxy Marine. In the absence of even *prima facie* evidence in such regard, in my view, there is no justification for such counterfactual inquiry. Put differently, there is no real prospect of Galaxy Marine succeeding in such counterfactual inquiry and the only reasonable inference is that BCGE would have answered resoundingly in the negative, if requested for consent or permission in relation to the discharge to Chevron without production of the original bill of lading. Hence, the mis-delivery was the proximate cause of loss arising out of the breach of contract of carriage, and no counterfactual inquiry is warranted in this regard.

Previously furnished security and implication thereof

50. The next issue to be examined is whether the application is liable to be rejected in view of security having been furnished previously. Under Rule 7 of Order XIII-A CPC, the Court may make a conditional order if it is



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possible but improbable that the defence may succeed. Such conditional order could be in the form of deposit of some money in Court, provision of security and the like. For reasons discussed above, even the defence relating to the necessity for a counterfactual inquiry as to whether, if requested prior to delivery of cargo to Chevron, the applicant would have consented thereto even without production of the original bill of lading is not tenable in light of the pleadings and evidence on record. In other words, Galaxy Marine has no real prospect or even possibility of successfully defending the claim. Once such conclusion is drawn, unless it is established that there is a compelling reason for the claim not to be disposed of without adducing oral evidence, a summary judgment should follow as per Rule 3 of Order XIII-A of CPC. Since Galaxy Marine has not placed even *prima facie* evidence to justify a trial, as held in *ICI Chemicals & Polymers Ltd v TTE Training Ltd [2007] EWCA Civ 725*, it is not enough to contend that something may come up in trial as a defence in an application for summary judgment. The contention of Galaxy Marine that the alleged consent or knowledge of BCGE about discharge to Chevron may only be discovered in course of trial is, effectively, a contention that a trial should be held because something



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may come up in course thereof, and this contention cannot be countenanced.

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In this regard, it should also be noticed that the Division Bench of this Court concluded in *Syrma Technology* that the onus lies on the respondent in a summary judgment application to establish that there is a compelling reason to lead oral evidence as per the second limb of Rule 3 of Order XIII-A CPC. Hence, Galaxy Marine has also failed to establish that there is any other compelling reason to permit evidence to be adduced with regard to the alleged counterfactual issue.

Quantum of damages

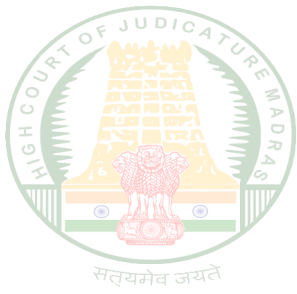
51. In the facts and circumstances outlined above, BCGE is entitled to summary judgment. This leads to the question of quantum. The documents on record disclose that the applicant financed the purchase of marine fuel by GP from IOCL by opening a letter of credit in favour of IOCL for a sum of USD 6,050,000. Such financing was in relation to a purchase for onward sale to Aramco. As a condition for financing, the invoice raised by GP on Aramco was required to be provided to BCGE. The said invoice is dated 11 June 2020 for the value of USD 6,705,357.38. In an action for damages in



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respect of mis-delivery, the measure of damages would be the fair value of the cargo at the time of intended delivery. Therefore, evidence of such fair value would be a material consideration. The applicant has relied upon the above mentioned invoice as indicative of the fair value of the cargo at the relevant time.

52. In addition, BCGE has placed on record the Standard and Poor Global Platts Report containing the mean of Platts Price as on 10 June 2020. The mean of Platts Price is a daily index *inter alia* of the price of marine fuel at the Port of Singapore and on 10 June 2020, the price was USD 246.726 per MT. If such unit price were to be the basis for computation for the total quantity of cargo, the value would be USD 833,894.66. The sales contract between GP and Aramco provided for a discount of US Dollar 13.50 per metric tonne on the mean of Platts price. Galaxy Marine has not adduced any evidence with regard to the fair value of the cargo at the relevant time. In that factual context, since the invoice value forming the basis of the claim in this application is lower than the mean of Platts price for the relevant period, the said invoice value forms an acceptable basis to compute the measure of loss.



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53. Effectively, BCGE's suit claim is liable to be decreed by summary judgment. As regards interest, in the absence of an agreed rate of interest, a reasonable rate should be fixed. BCGE is a bank headquartered in Geneva, Switzerland. The Swiss National Bank sets the benchmark interest rates. Such benchmark interest rates have never exceeded 3.5% in the last 25 years. Even allowing for a reasonable net interest margin, interest at 6% per annum would constitute a reasonable rate of interest. Therefore, nothing further survives for adjudication. As the successful party, BCGE is entitled to costs. BCGE paid a sum of Rs.49,11,961/- as court fees and Galaxy Marine is liable to pay this sum. In addition, BCGE is entitled to reasonable lawyer's fees and other expenses. Because the suit is being disposed of at the pre-trial stage, this is capped at Rs.10,00,000/-. Thus, Galaxy Marine is liable to pay an aggregate sum of Rs.59,11,961/- as costs to BCGE.

54. For reasons set out above, this application is allowed by issuing a



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decree on summary basis on the following terms:

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(i) The 1st defendant is directed to pay the plaintiff the sum of USD 6,705,357.38 with further interest thereon at 6% per annum from the date of filing of the suit until realization.

(ii) The 1st defendant is also directed to pay a sum of Rs.59,11,961/- as costs to the plaintiff.

(iii) Subject to the right of the contesting parties to apply for payment of the above amount from the proceeds of the bank guarantee, the 1st defendant shall renew and keep alive the bank guarantee provided earlier as security until the above amounts are realised by the plaintiff from the 1st defendant.

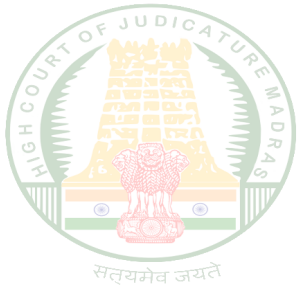
09.07.2025

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

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SENTHILKUMAR RAMAMOORTHY,J.

kj

Pre-delivery order in

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in C.S. No.96 of 2021

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