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ADMS72.14-1

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**ORDINARY ORIGINAL CIVIL JURISDICTION
ADMIRALTY & VICE ADMIRALTY JURISDICTION**

ADMIRALTY SUIT NO.72 OF 2014

State of Goa through Captain of Ports)
Government of Goa, having his office at)
Dayanand Bandodkar Road, Panaji,)
Goa-403 001)....Plaintiff

V/s.

1) Sale Proceeds of the Vessel)
M.T.PRATIBHA BHEEMA)
Currently lying deposited with the)
Registry and Custody of the Hon'ble High)
Court of Judicature at Bombay)
2) Pratibha Shipping Company Limited)
(In liquidation), through the Official)
Liquidator, High Court, Bombay)
Having his office at 5th Floor, Bank of India)
Building, M.G.Road, Mumbai-400 023)....Defendants

Mr.Amrut Mukund Vernekar for plaintiff.

Mr.Prathamesh Kamat i/by Ms.Sapana Rachure for defendant (in liquidation).

CORAM : K.R.SHRIRAM,J

DATE : 7.6.2018.

Oral Judgment :

1 Plaintiff is the State of Goa which has filed this suit through Captain of Ports who is head of captain of ports department, Government of Goa. Captain of Ports is incharge of all activities and

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inland water ways.

2 Plaintiff's case is that plaintiff had rendered services to a vessel by name m.t.PRATIBHA BHEEMA that was owned by Pratibha Shipping Corporation Pvt. Ltd. (in liquidation).

3 On 13.12.2012, PRATIBHA BHEEMA, which was outside the Panaji Port limits which is under the charge of plaintiff, developed a technical snag and engines went out of order so also the generators. To ensure the vessel's safety and to avoid the vessel posing navigational hazard, the master of the vessel anchored the vessel just outside the Panaji port limits. On 4.1.2013 in another Admiralty suit, warrant of arrest against the vessel m.t.PRATIBHA BHEEMA was issued. Deputy Sheriff, by a letter dated 4.1.2013 directed plaintiff to keep a watch on PRATIBHA BHEEMA until further orders of this court. On 14.1.2013 plaintiff received an email from the master of PRATIBHA BHEEMA informing him that the main engines were immobilised and the generators were not functional and that the master cannot heave up the anchor and move PRATIBHA BHEEMA. The master of PRATIBHA BHEEMA also requested for release of some of the crew members and retain only the minimum crew required as per the directions of Director General of Shipping. As the owner did

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not take steps to move PRATIBHA BHEEMA to a sheltered area, and in view of the impending monsoon, the plaintiff took steps to protect PRATIBHA BHEEMA from any impending disaster. On 13.5.2013 PRATIBHA BHEEMA was towed to Mormugao Port. On 15.9.2013 PRATIBHA BHEEMA was shifted by plaintiff from Mormugao to Panaji port anchorage.

PRATIBHA BHEEMA was thereafter, sold pursuant to an order of this court on 4.4.2014.

4 PRATIBHA BHEEMA therefore, remained at the anchorage within the limits of Panaji port from 16.9.2013 till 17.4.2014 when the title passed to the new owners pursuant to confirmation of sale. Since the location (anchorage) where PRATIBHA BHEEMA remained anchored was within the limits of Panaji port, which plaintiff claims is within plaintiff's control, plaintiff is demanding various charges. According to plaintiff, plaintiff is entitled to the following :-

Sr. No.	Description	Total dues in Rs.
1	License Fee GRT-25/20 x Rs.80 + Rs.320/- = 79718-25/20 x 8 + 320 x 2 years	6,38,240/-
2	Port dues GRT 79718 x Rs.1/-	79,718/-
3	Tonnage dues GRT-25/20 x Rs.56/- + Rs.280/- = 79718-25 /20x56 + 280 x 8 months	17,87,520/-
4	Mooring Rs.200/- x 214 days	42,800/-

5	O.T.	W.day 144xRs.295/-	42,480/-
		Holiday 70 x Rs.430/-	30,100/-
6	Total above (1 to 5)		26,20,858/-
7	Service tax @ 12.36% (2 to 5)		2,45,052/-
	Grand Total (6 to 7)		28,65,910/-

As the owners did not make payment, plaintiff is claiming this amount from the sale proceeds of the vessel.

In addition, plaintiff is claiming sum of Rs.2,10,491/- expenditure incurred towards monitoring PRATIBHA BHEEMA by utilizing two of plaintiffs' vessel M.T.Pehlvan - II-PNJ-667 and M.L.Cabo-II-PNJ-678.

Plaintiff is claiming these amounts with interest @ 18% plus costs. Details of plaintiff's claim can be found at Exh.P1/84 and Exh.P1/85, respectively.

5 As the company that owned PRATIBHA BHEEMA had gone into liquidation, the Official Liquidator, introduced as defendant no.2, filed Written statement.

6 Issues were settled on 30.6.2017 and the 4 issues are as under :-

“(1) Whether plaintiff proves that plaintiff is entitled to a decree in the sum of Rs.33,76,792/- together with

interest on the principal amount of Rs.30,76,401/- @ 18% per annum ?

(2) Whether plaintiff proves that plaintiffs claim in the suit is secured by maritime lien on the sale proceeds of the vessel M.T.Pratibha Bheema ?

(3) What is plaintiff's priority amongst the various creditors ?

(4) What decree ? What order ?”

7 Plaintiff led evidence of only one witness Capt.James Braganza (PW-1). Defendants did not lead any evidence.

8 In the cross-examination, the defendants' counsel has made a dent in the evidence of PW-1 only to the extent of claim for overtime made in the sum of Rs.72,580/-. Plaintiff has claimed overtime for 144 hours on working days @ 295 per hour equal to Rs.42,480/- and 70 hours on Holidays @ 430 per hour amounting to Rs.30,100/-. The cross-examination of PW-1, at question nos.18 & 19, read as under :-

“Q.18 : Can you point out any documents from the record of the court to substantiate your claim for overtime ?

Ans. : No. There are no such documents on record.

Witness volunteers : However, the overtime which reflects in the said table are based on government dues and notification which are not on record.

Q.19 : I put it to you that you have failed to substantiate

your claim and are not entitled to the sum as prayed ?

Ans. : I disagree.”

9 Shri Kamat submits that even if one accepts that the Government has given a Notification, which is not on record, that indicates the rate of Rs.295 and Rs.430 per hour as mentioned by PW-1, still there is no evidence to prove that 144 and 70 hours of overtime was worked. No breakup has been given.

Shri Vernekar in fairness submitted that there is no evidence to prove number of hours worked.

10 Shri Kamat states there is no quarrel with the other heads of claim apart from the interest claimed. Shri Kamat states that there is no evidence for the claim for interest @ 18% and the witness in response to question nos.15 & 16, as to what was the basis for claiming interest @ 18% p.a., has answered that it is based on advice of finance department and legal department of State Government and such advice is not available. Therefore, no interest was payable.

11 I have considered the plaint, the exhibits and the evidence.

12 The plaintiff has produced all the documents required to

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prove the heads of claim at serial nos.1, 2, 3, 4 & 7 mentioned in Exh.P1/84 and heads of claim mentioned in Exh.P1/85. The counsel for defendants has also conceded that these heads of claim have been sufficiently proved.

13 In the circumstances, so far as the plaintiffs' claim is concerned, the following heads of claim are allowed :-

(A)

Sr.No.	Description	Total dues in Rs.
1	License Fee GRT-25/20x Rs.80/- + Rs.320/- = 79718 -25 /20 x80 +320 x2 years	6,38,240/-
2	Port dues GRT 79718 x Rs.1/-	79,718/-
3	Tonnage dues GRT-25/20 x Rs.56/- + Rs.280/- + 79718 - 25/20 x56 + 280 x 8 months	17,87,520
4	Mooring Rs.200/- x 214 days	42,800/-
5	Total above (1 to 4)	25,48,278/-
6	Service Tax @ 12.36% on Rs.25,48,278/-	3,14,967/-
	Total	28,63,245/-

(B)

1. **M.T.Pehlvan-II-PNJ-667**

Expenditure incurred : Rs.1,51,366.00

2. **M.L.Cabo-II-PNJ-678**

Expenditure incurred : Rs. 59,125.00

Total Expenditure incurred

Rs.2,10,491.00

GRAND TOTAL (A) + (B) =

Rs.30,73,736.00

14 So far as interest is concerned, I am inclined to grant interest at 12% p.a., since in my view, that is a reasonable rate. Therefore, plaintiff will be entitled to interest @ 12% p.a. on the principal amount of Rs.30,73,736.00 from 17.4.2014 until date of winding up of the company.

15 Therefore, Plaintiff is entitled to a decree in the sum of Rs.30,73,736.00 together with interest thereon @ 12% p.a. from 17.4.2014 until the date the company was wound up, i.e., 20.7.2014.

16 Plaintiffs' right to claim further interest in addition to the decretal amount from the Official Liquidator is expressly kept open.

17 Issue nos.1 & 4 are answered accordingly.

18 So far as issue no.2 is concerned, the plaintiffs' claim is a maritime claim within the meaning of Article 1(l) of International Convention for the unification of Certain Rules Relating to the Sea going Ships, 1952 and Article 1 (n) of International Convention on

the Arrest of Ships, 1999.

19 Article 4(1)(d) of the International Convention on Maritime Liens and Mortgages 1993 reads as under :-

“claims for port, canal, and other waterway dues and pilotage dues.”

Therefore, even under this Convention, claims for Port, canal and other waterway dues and pilotage dues constitute a maritime lien. Plaintiff's claim is for port dues.

20 This Hon'ble Court in the matter of ¹*Elinoil-Hellenic Petroleum Company S.A. Vs. M.V.Anny L (Ex-Alexia S) & Anr.* has held that India is a signatory to the International Convention on Maritime Liens and Mortgages 1993 and has followed it as having the force of law. The relevant portion of the said Judgment are reproduced as under :-

“17. Mr. Pratap has contended in this regard that the judgment of the Supreme Court in M. V. Elizabeth's case was delivered on 26-2-1992 and judgment of Justice Dhanuka was delivered on 8-2-1995. However, on 6-5-1993 India became a signatory to the International Convention on Maritime Liens and Mortgages, 1993 which was signed at Geneva and in this convention only some specific maritime liens were recognized and supply of necessities have not been recognized as maritime liens and hence the judgement of Justice Dhanuka is of no help

1 1999 (Supp.1) Bom. C.R.946

in the present case. Mr. Pratap has contended that since the International Convention on Maritime Liens and Mortgages, 1993 was not brought to the notice of either the Supreme Court or Justice Dhanuka in case of Elizabeth and Sigma Coatings BV respectively the judgement of Justice Dhanuka in the case of Sigma Coatings BV was treated as being given per incuriam i.e. given in ignorance of the terms of a statute or of a rule having the force of a statute. Therefore, the judgment of Justice Dhanuka was not applicable to the present case.

18. I find strong force in this argument of Mr. Pratap. He has produced copy of the International Convention of Maritime Liens and Mortgages, 1993 which shows that India was the signatory to this convention and it also shows that the maritime liens have been defined for [Article 4](#) which do not cover supply of necessaries on maritime liens. [Article 4](#) of the said convention is reproduced as under:-

"Article 4 : MARITIME LIENS;

1. Each of the following claims against the owner, demise chartered, manager or operator of the vessel, shall be secured by a maritime lien on the vessel:

(a) Claims For wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;

(b) Claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;

(c) Claims for reward for the salvage of the vessel;

(d) Claims for port, canal and other waterway dues and pilotage dues;

(e) Claims based on port arising out of physical loss or damage caused by the operation of the vessel other than loss of or damage to cargo, containers and passengers' effects carried on the vessel.

2. No maritime lien shall attach to a vessel to secure claims as set out in sub-paragraphs (b) and (e) of

paragraph 1 which arise out of or result from:

(a) damage in connection with the carriage of oil or other hazardous or noxious substances by sea for which compensation is payable to the claimants pursuant to international conventions or national law providing for strict liability and compulsory insurance or other means of securing the claims; or

(b) the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or of radioactive products or waste.

19. Counsel for plaintiffs could not contradict Mr. Pratap that India was the signatory to this convention and this convention was binding on India and further that [Article 4](#) which defines maritime lien has not taken into consideration or has excluded supply of necessaries as maritime. From the judgment of Justice Dhanuka it is clear that even though this convention was signed on 6-5-1993, the same was not brought to the notice of Justice Dhanuka when he has given his judgment in the case of Sigma Coatings BV on 8-2-1995. Since this convention is an International Convention on Maritime Liens and Mortgages 1993 and since India was the signatory to the same, it is the convention having force of law and since the same was not brought to the notice of Justice Dhanuka when he decided the case of Sigma Coatings BV the judgment of Justice Dhanuka has to be held as a judgment per incuriam and consequently same can not be applied. Consequently, it has to be held that neither the judgment of Supreme Court nor the judgment of Justice Dhanuka in Sigma Coatings BV are of any help to the plaintiffs.

20. Since there is no legal support to, the contentions of the plaintiffs that supply of necessaries constitutes maritime liens and since the plaintiffs have failed to prove that apart from [Article 4](#) of the International Convention on Maritime Liens and Mortgages, 1993, something more can be considered by the Court as constituting maritime liens, the issue is required to be answered in the negative and against the plaintiffs, i,

therefore, pass the following order on Issue No. 6.”

(emphasis supplied)

Thus, the International Convention on Maritime Liens and Mortgages 1993 can be said to be a part and parcel of India law or to have the force of law in India.

21 The recently enacted The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (Admiralty Act 2017) also provides under Section 4 (1) (n) that dues in connection with any port, harbor, canal, dock or light tolls, other tolls, waterway or any charges of similar kind chargeable under any law for the time being in force will be a maritime claim. Section 4(1) (n) read with section 9(1) (d) of the Admiralty Act 2017 provides that the plaintiffs' claim will be in the nature of Maritime lien. Section 4(1)(n) and section 9(1)(d) read as under :-

“Section 4. Maritime claim- (1)The High Court may exercise jurisdiction to hear and determine any question on a maritime claim, against any vessel, arising out of any-

- (a).....
- (b).....
- (c).....
- (d).....
- (e).....
- (f).....
- (g).....
- (h).....
- (i).....

(j).....

(k).....

(l).....

(m).....

(n) : *dues in connection with any port, harbour, canal, dock or light tolls, other tolls, waterway or any charges of similar kind chargeable under any law for the time being in force*”

Section 9. Inter se priority on maritime lien-

(1) *Every maritime lien shall have the following order of inter se priority, namely :-*

(a).....

(b).....

(c).....

(d) : *claims for port, canal, and other waterway dues and pilotage dues and any other statutory dues related to the vessel.*”

Therefore, even under this Act, the claims of Plaintiff will constitute a maritime lien.

22 In the circumstances, plaintiffs claim would certainly constitute a maritime lien. Issue no.2 is accordingly answered.

23 So far as issue no.3 is concerned, since there are many other claimants against sale proceeds, the same can be decided at the appropriate stage and the rights of the plaintiff is expressly kept open.

24 Suit disposed accordingly.



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25 All to act on authenticated copy of this order.

(K.R.SHRIRAM,J)