
(2021) 04 GUJ CK 0077
In the Gujarat High Court
Case No : R/Admiralty Suit No. 12 Of 2021

Ashapura Holdings Uae Fze

APPELLANT

Vs

F.C. Mallinath

RESPONDENT

Date of Decision : 23-04-2021

Acts Referred:

Admiralty (Jurisdiction And Settlement Of Maritime Claims) Act, 2017 — Section 1(1), 4(1)(h)

Citation : (2021) 04 GUJ CK 0077

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Paurami B. Sheth

Judgement

Biren Vaishnav, J

1. Ms. Paurami Sheth, learned Advocate submitted that the Defendant Vessel is an Indian flagged Multipurpose Pontoon Crane Barge and is

registered under the Inland Vessels Act; that the registered owner of the Defendant Vessel is Link Shipping & Management System Pvt. Ltd. and at

the material time, her disponent owner was one Jarico Shipping Pte. Ltd. which is a wholly owned subsidiary of Link Shipping & Management System

Pvt. Ltd.; that the Owners of the Defendant Vessel agreed to charter the Defendant Vessel to the Plaintiff under charter party dated 8.11.2019 to be

used by the Plaintiff for loading iron-ore and bauxite at the port of Konta, Guinea, Africa; that the Plaintiff concluded the CP on the basis a

representation from the Owners of the Defendant Vessel that all relevant documents relating to the Defendant Vessel are in place/ available and that

there is no legal or physical impediment for the Defendant Vessel to be taken from India to Konta to perform the CP; that in pursuance of the said

Charter Party, the Plaintiff made an advance payment; that the Plaintiff incurred costs towards the towage of the Defendant vessel from Mumbai to Sikka / Bedi; that for carriage of the Defendant Vessel from Sikka/ Bedi to Konta, the Plaintiff chartered a semi-submersible vessel "m.v. HAWK" under a charter party of 07.01.2020; that since the Defendant Vessel was registered under the Inland Vessels Act and for the purposes of being shipped out of India, permissions were required from statutory authority, Gujarat Maritime Board (GMB), the Plaintiff applied for the permission which is granted in normal course between 24 and 48 hours; that GMB asked for required documents which the Owners were required to make available to the Plaintiff being in its exclusive custody and control as without these documents the Plaintiff would not be able to obtain the required permissions from GMB for outward shipment of the Defendant Vessel; that however, despite follow-ups over several days by the Plaintiff, the Owners did not provide all the required documents as a result GMB refused to issue permission for the Defendant Vessel to be loaded on the Vessel m.v. HAWK and for her to be carried to and mobilized at Konta; resultantly the Plaintiff could not perform the concerned Charter Party on account of failure of the Owners to submit these documents; that since m.v. HAWK stood at Sikka/ Bedi for an inordinately long time she incurred demurrage which was levied on the Plaintiff by the owner of m.v. HAWK; that if the Owners had provided the required documents in a timely manner, m.v. HAWK would not have been required to wait for an inordinately long time at Sikka/ Bedi and in which case demurrage would not have been levied on the Plaintiff; that apart from demurrage, the Plaintiff also paid wharfage of INR 1,84,553 relating to the Defendant Vessel because she was scheduled to be loaded on M.V. HAWK.

2. Ms. Paurami Sheth, learned Advocate further submitted - that the Plaintiff sent an email notifying the Owners that it reserved its right to recover demurrage and costs from the Owners in view of the Owners' failure to provide the required documents, that in response, the Owners clearly admitted that they are liable to contribute to the losses suffered by the Plaintiff; that the Plaintiff mooted various proposals (including offering to purchase the Defendant Vessel) which would allow the Owners to compensate the Plaintiff for losses suffered between February and October 2020

but the Owners rejected the Plaintiff's proposals on some pretext or the other and it soon became clear that the Owners had no intention of compensating the Plaintiff. Accordingly, the Plaintiff therefore called upon the Owners to inter alia reimburse the expenses/ losses suffered vide email dated 08.10.2020, that in response, vide an email dated 14.10.2020 the Owners, for the first time, made a frivolous and untenable attempt to totally disown liability, and also refused to refund even the advance of US\$ 1,00,000 paid by the Plaintiff, though the CP was not performed; that there were numerous attempts by the Plaintiff provided but the Owners untenably disowned liability; that the Plaintiff discharged its contractual obligations as required by the CP and in the process incurred substantial expense but due to the Owners acts, omissions and/ or breaches (as set out above) the Defendant Vessel could not be mobilized to Konta and the CP could not be performed; that Plaintiff is therefore entitled to seek reimbursement of losses/ expenses suffered from the Owners which are admitted; that the Plaintiff has a lien on the Defendant Vessel for any advances paid and not earned.

3. Ms. Paurami Sheth, learned Advocate also submitted - that the Defendant Vessel is a "Vessel" within the meaning of s.1(l) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ("Act") inter alia because she is constructed for/ used in navigation by water and has been registered as a vessel under the Inland "Vessels" Act; that having regard to what is set out above and in the Plaint, the Plaintiff has a "maritime claim" within the meaning of section 4 (1) (h) of the Act and for the purpose the Plaintiff is constrained to file the present Suit and inter alia has prayed for arrest of the Defendant Vessel as the Defendant Vessel is currently at Okha port and within jurisdiction of this Court.

4. Upon hearing Ms. Paurami Sheth, Learned Advocate for the Plaintiff and upon reading the plaint herein signed at Ahmedabad on 16.04.2021 filed by the advocate for the Plaintiff herein and the affidavit of Mr. Rajul Shah, authorized representative of the Plaintiff above named declared on 16.04.2021 and upon hearing counsel for the plaintiff and upon the Plaintiff giving an undertaking in writing to the Registrar of this Court to pay such sums by way of damages as this Court may award as compensation in the event of the defendants sustaining prejudice by this order, I do order that

the Registrar of this Court do issue a warrant for the arrest of the Defendant Vessel F.C. MALLINATH along with her hull, engines, gears, tackles,

bunkers, machinery, apparel, plant, furnitures, equipments and all appurtenances, at present lying at Okha within the Indian territorial waters and that

the Warrant of Arrest be executed at any time of the day or night or on Sundays or holidays and I do further order that the Port Officer and the

Customs Authorities at Okha do effect the arrest, seizure or detention of the defendant Vessel at present lying Okha within the Indian territorial

waters or such other place or wherever she may be within the territorial waters of India and I do further order that in the event of the defendant and/

or those interested in her depositing in this Court the principal amount of US\$ 3,89,433 with interest of US\$ 45,556 calculated from due date till filing of

this suit together with legal costs of US\$ 20,000 aggregating sum of US\$ 4,54,989 along with further interest @ 12% on the principal sum of US\$

3,89,433 from date of Suit till its payment / realization as per particulars of claim, the said Warrant of Arrest shall not be executed against the

defendant Vessel at present lying at Okha within the Indian territorial waters.

5. The Port Officer and the Customs Authorities at Okha are directed to arrest the Defendant Vessel to be at Okha Port, within the Indian territorial

waters and to keep the vessel under arrest until further orders of this Court. It is further ordered that the Port Officer and the Customs Officer at

Okha Port shall also intimate about this order to the Master/Chief Engineer of the Defendant Vessel through her Agent and effect the warrant of

arrest for the Defendant Vessel through email.

6. Looking to the present situation, the Registry is directed to send this order to Port and Customs at Okha Port through Email at following addresses

and the Authorities at Okha Port, shall act on Email copy of the order and take the Defendant Vessel under arrest.

a) gmbad1@sancharnet.in

b) customokha@gmail.com

c) commrprev-cusjmng@nic.in

d) info@gmbports.in

e) pojam.gmb@gmail.com

f) gmbho.nb@gmail.com

7. It is also open for the plaintiff's advocate to communicate the above order by Email at their own cost and the Port and Customs authorities at Okha

are directed to act on Email message with an ordinary copy of this order.

8. Notice to the Defendants returnable on 30.04.2021. It is made clear that it will be open for the Defendant to approach this Court even prior to the returnable date with an adequate notice to the plaintiff.