**(2002) 04 BOM CK 0073**

**In the Bombay High Court**

**Case No :** Chamber Summons No. 932 of 2001 in Admiralty Suit No. 85 of 1999

Berner Shipping Inc., Bombay and Another APPELLANT

Vs

Mrs. Kala Ramchandran RESPONDENT

**Date of Decision :** 05-04-2002

**Acts Referred:**

Bombay Court Fees Act, 1959 — Article 7, 6
Merchant Shipping Act, 1958 — Section 352B

**Citation :** AIR 2002 Bom 432 : (2002) 3 ALLMR 356 : (2002) 4 BomCR 460 : (2002) 3 MhLj 501

**Hon'ble Judges :** J.A. Patil, J

**Bench :** Single Bench

**Advocate :** D.C. Gomes, P.G. Lad, Assistant Government Pleader, for the Appellant; Sudeep Dasgupta, for the Respondent

# Judgement

J.A. Patil, J.—The plaintiffs have taken out this chamber summons and prayed for setting aside the order dated 20th October, 2000 passed by the learned Taxing Master, High Court, Mumbai directing the plaintiffs to pay Court fee of Rs. 75,000/- on prayer (f) of the plaint. The learned Taxing Master overruled the plaintiffs contention that the suit falls u/s 6(iv)(j) of the Bombay Court Fees Act, 1959 (for short, the ''Act'') and ruled that it falls under Article 7 of Schedule I of the said Act. It is the plaintiffs contention that the subject matter of the suit is not susceptible to the monetary evaluation. They have, therefore, paid the Court fees on the footing that the value of the subject matter of the suit is Rs. 600/- u/s 6(iv)(j) of the Act. The short question which therefore, arises for the decision in this chamber summons is whether the present suit falls u/s 6(iv)(j) of the Act or under Article 7 of Schedule I of the Act.

2. In Gulam Mohamed Yunus and Another Vs. Lalchand Chelaram and Others, , the division bench of this Court has pointed out the distinction between the provisions of Section 6(iv)(j) and Article 7 of Schedule I of the Act and observed that Section 6(iv)(j), contemplates suit where the subject matter in dispute is not susceptible of monetary evaluation and where the suit is not otherwise

provided for by the Act. Whereas Article 7 of the Schedule I on the other hand refers to the obtaining of substantive relief capable of being valued in terms of monetary gain or prevention of monetary loss. It was pointed out that whereas Section 6(iv)(j) lays down emphasis on the subject matter of the suit, Article 7 of Schedule I lays emphasis on the substantive reliefs claimed. The Division Bench laid down guidelines for assessing the prayers made in the plaint and observed that the recitals in the plaint should be looked into to find out what relief is substantively prayed for. The next step would be to find out whether such relief is or is not capable of being valued in terms of money value or at least loss to be occasioned could be estimated in money value. It was held that if any suit satisfied the element of Article 7, it would automatically be out of the purview of Section 6(iv)(j). It will therefore, be necessary to take a cursory look on the recitals made by the plaintiffs as well as the reliefs claimed by them.

3. The first plaintiff is a company incorporated under the Laws of Liberia and was at the relevant time owner of a Panama Flag Vessel m.v. "Cordigliera". The second plaintiff was at the material time, the agent of plaintiff No. 1. The defendants are claimed to be the legal heirs/next-of-kin/nominees/dependents of the officers and crew members who were employed on board of the said vessel at the material time under the individual employment contracts. The said vessel after loading cargo on 13-11-1996, left the port of Durban for Cape Town in South Africa but after departing from Durban, she sank off the coast of Durban on the same day with all the officers, crew members and the cargo. The plaintiffs claim that the said vessel was fit and seaworthy in all respects. But the sinking of the said vessel was on account of Vis Majeure/Force Majeure and that the plaintiffs were not at all at any fault nor they were guilty of any negligence. It is the plaintiffs case that the officers and crew members were entitled to their balance wages as on 13-11-1996. The individual employment contracts of the crew members provide for the amount of compensation in the event of death/ loss of life of the crew members, payable to the next of kin/nominees of the crew members as per the National Maritime Board (NMB) Agreement. As far as the officers are concerned, their employment contract do not provide any amount for compensation and therefore, the plaintiffs claim that they have no liability to pay any compensation for the deaths of the officers. However, on compassionate and humanitarian grounds, the first plaintiff agreed to pay to the nominees/next to-kin of the said officers a compensation equivalent to 24 months basic wages as ex-gratia payments. The plaintiffs have calculated the amount of said ex-gratia payment to its 10 officers who died in the occurrence of sinking of the said vessel, at US $ 3,61,304/-. It is further stated that as per NMB agreement, the legal heirs/next-of-kin/nominees of the crew members are entitled to sum of Rs. 7,38,349/-. It appears that accordingly the payments have been made to the widow of the Master of the vessel and widow of a fitter. The plaintiffs have alleged that the defendants are being misguided by some vested interests and are being induced to demand higher amounts of compensation. The defendants have been demanding compensation at the rate of US $ 60,000/- to the next-of-

 

kin/nominee + US $ 15,000/- per each dependent child under the age of 18 years. 4. The plaintiffs claim that the terms and conditions applicable in the case of the officers and crew members on board the said vessel at the time of her sinking on 13-11-1996 are strictly as per and in accordance with the individual-employment contracts entered into between the officers and crew members. The plaintiffs have also pointed out that in case of defendant No. 13 they have deposited the amount of balance wages as well as the amount of compensation in the Court of Comarca Judge of Salcete and Quepem Margao, Salcete, Goa. As ordered by the said Court in Civil Misc. Application No. 18/1997 in Inventario Proceedings No. 43/1997 filed by the father of the deceased crew member Mr. Brain H. Gracias. They have further pointed out that one Deirdre Fitzapatrick claims to be the administrator on behalf of the estate and the dependents of the crew members and officers has filed proceeding No. 1998 Folio No. 1339 in the High Court of Justice, Queen''s Bench Division, Commercial Court, London, England. Similarly, one Mrs. Nafisa Ismail claimed to be the first wife of crew member deceased M.I.A. Maulana who has filed suit No. 4492/1997 in the City Civil Court, Mumbai. The parents of Mauel J. Fernandes, who was an Electrical Officer on Board vessel have filed Admiralty Suit No. 59/1999 against the plaintiffs, claiming the damages of US $ 1,00,000/-. In addition the owners of the cargo which was on board of the said vessels at the time of her seeking have also made claim against the plaintiffs arising out of the occurrence.

5. The plaintiffs have submitted that under the provisions of Part XA of the Merchant Shipping Act, 1958, the owner of a sea-going vessel may limit his liability for loss of life or loss of damage to any property which is caused by the act, neglect or default of any person on board the vessel for whose act, neglect or default the owner is responsible. The plaintiffs have therefore, filed the present suit u/s 352(B) of the Merchant Shipping Act, 1958 to limit their liability, which is to be based upon the tonnage of the vessel concerned. It is averred in the instant case, that the tonnage of the said vessel was 11,281 tonnes GRT. Therefore, according to the plaintiffs their liability, if any, for the purpose of Section 352(B) comes to Rs. 1,74,85,550/-. The plaintiffs have also contended that the High Court of Justice Queens Bench Division, Commercial Court, London, has no jurisdiction over the plaintiffs and that the defendants are not entitled to file actions or obtain judgments/orders/ decree in the proceedings in the said Court in London. The plaintiffs contend that the defendants are bound to file their claims if any, against the plaintiffs in this Court only.

6. It is pointed out that the claims made by the legal heirs/nominees of the deceased crew members and officers as well as the cargo owners in this Court as well as elsewhere against the plaintiffs will exceed the above mentioned sum of Rs. 1,74,85,550/-. The plaintiffs have therefore, prayed for the following reliefs which include five declarations, one injunction and two directions. The declarations sought by the plaintiffs are in brief as under :--

(a) that the said vessel was fit and seaworthy in all respects at the material time and that sinking of the said vessel was on account of vis majeure/force majeure;

(b) that the occurrence of sinking of the vessel was not as a result of the actual fault or privity of the plaintiffs and that the sinking of the said vessel was not due to any failure and/or negligence on the part any failure and/or negligence on the part of the plaintiffs;

(c) that defendants Nos. 1 to 26 either by themselves or through any other person are not entitled to file and/or continue the London Proceedings in the Court of Justice, Queen''s Bench Division, Commercial Court, London or any other Court or forum outside India and that they are bound to file their claims, if any, against the plaintiffs only in this Court;

(d) for a perpetual injunction, restraining the defendants either by themselves or by/through any other person or party from filing and/or continuing the London proceedings in the said Court in London or any other Court or forum outside India for making any claims against the plaintiffs;

(e) for a declaration that the individual employment contracts entered into between the first plaintiff and the officers and crew members of the vessel who were on board the said vessel at the relevant time are subject to and governed by the laws of India;

(f) for a declaration that plaintiffs'' liability, if any, arising from the occurrence of the sinking of the said vessel is and be limited to the sum of Rs. 1,74,85,550/-;

(g) for determination of the amount of limitation fund to be set up in accordance with the Part XA of the Merchant Shipping Act;

(h) for determining or prescribing the time limit within which the claims, if any, arising out of the said occurrence should be filed against the plaintiffs;

(i) such other further directions and orders as may be necessary to determine the claims.

7. I have heard Mr. David Gomes for the plaintiffs and Mr. Sudeep Gupta for the defendants Nos. 1 to 6. Since the question involved in this case relates to the revenue of the State, I thought it necessary to issue a notice to the Government Pleader to address the Court on the question regarding payment of appropriate Court fee. Accordingly, Mr. Lad, the learned Assistant Government Pleader appeared before me and made his submissions. Mr. Gomes pointed out that the proceeding is not really a suit but an application under Chapter X(A) of the Merchant Shipping Act and that no monetary claim has been made by the plaintiffs. He further submitted that the plaintiffs are only asking for direction to themselves to deposit the amount of limitation fund and that there is no monetary gain for the plaintiffs. Mr. Lad on the other hand supported the order of the learned Taxing Master and submitted that the suit squarely falls under Article 7 of the Schedule I of the Act. Section 6(iv)(j) which contemplates suit for declarations other than those referred in Sub-clauses (a) to (i) and it reads as

 

under:--

6. Computation of Fees Payable in certain suits for money, -- The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows :--6(iv)(j) -- for other declarations :--

(j) In suits where declaration is sought, with or without injunction or other consequential relief and the subject matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by this Act (... ad valorem fee payable as if the amount or value of the subject matter was six hundred rupees). In all suits under clauses (a) to (i) the plaintiff shall state the amount at which he values the relief sought, with the reasons for the valuation;

Article 7 of Schedule 1 of the Act reads as under : ?

Number  Proper fee

7. Any other plaint, application or petition (including memorandum of appeal), to obtain substantive relief capable of being valued in terms of monetary gain or prevention of monetary loss, including cases wherein application or petition is either treated as a plaint or is described as the mode of obtaining the relief as aforesaid.

A fee on the amount of the monetary gain, or loss to be prevented, according to the scale of prescribed under Article 1.

8. It is true that, in this suit the plaintiffs have not made any monetary claim against the defendants and that on the contrary what they are trying to do is to offer a certain amount to the defendants towards payment of wages and ex-gratia amounts. Thus ex-facie there is no substantive relief claimed by the plaintiffs for any monetary gain. But it cannot be lost sight of the fact that what the plaintiffs are seeking is in fact and substance, to prevent their monetary loss. In the instant case, the apparently main relief claimed by the plaintiffs is related to limiting their liability to a sum of Rs. 1,74,85,550/-. The plaintiffs apprehend that the various claims made by the defendants are likely to exceed the said amount. The plaintiffs therefore, relying upon the provisions of Section 352B of Part X (A) of the Merchant Shipping Act, have worked out the amount of their liability, if any, towards the defendants. It is, therefore, obvious that in substance the plaintiffs are asking to get monetary reliefs for the amount which is an amount of claim made by the defendants minus the amount of liability sought to be limited by the plaintiffs in this suit. The plaintiffs are thus trying to prevent their monetary loss which they may have to suffer in case they do not limit their liability by invoking the provisions of Section 352B of Part XA of the Merchant Shipping Act. If the plaintiffs do not file any such application against the defendants then the plaintiffs would be required to face various claim applications which are filed or which may be filed by the legal heirs/nominees of the deceased officers and crew members of the said vessel. The plaintiffs also want this Court to set up a limitation fund for the total sum representing the

 

limits of their liability of the claims of the defendants and others. This, the plaintiffs are trying to do by obtaining the abovementioned declarations, injunction and directions from the Court. Thus the substantive relief which the plaintiffs are claiming is capable of being valued in terms of preventing of monetary loss. The declarations sought are not such as are insusceptible to monetary evaluation. The monetary loss which the plaintiffs are trying to prevent by means of the reliefs sought is in fact the amount of difference after deducting the amount of plaintiffs alleged limited liability of Rs. 1,74,85,550/- from the total of claims which the defendants are, according to the plaintiffs, making. We have not on record the exact figure of the defendants claim but that does not matter much because on plaintiffs own saying it is much more than Rs. 1,74,85,550/-. Hence the plaintiffs are liable to pay Court fee of Rs. 75,000/ which is the maximum Court fee payable under the Bombay Court Fees Act on a claim of Rs. 15,00,000/- or above. Taking these facts into consideration it is abundantly clear that the substantive relief sought by the plaintiffs is for monetary gain or prevention of monetary loss. By proposing to limit their liability to the extent of Rs. 1,74,85,550/-, the plaintiffs have made it clear that the relief they are claiming is quite susceptible of monetary evaluation. As observed in the case of Gulam Mohamed Mohamed Yunus (supra), the expression "subject matter" occurring in Section 6(iv)(j) of the Act, is a wider expression. In the context of the present suit, the same will have to be read as amount of Rs. 1,74,85,550/- or the amount of difference referred to above. Therefore, it is not correct to say, that the subject matter of the suit is not susceptible to any monetary evaluation. Considering these things, I am of the opinion that the learned Taxing Master is right in directing the plaintiffs to pay the Court fee of Rs. 75,000/- being the maximum Court fee. The plaintiffs have already paid Court fee of Rs. 600/-. They will therefore, be liable to pay or deposit Court fee of Rs.74,400/-.

9. Mr. Gomes referred to the decision in World Tanker Carrier Corporation Vs. SNP Shipping Services Pvt. Ltd. and Others, . However, that the decision is altogether on different point and it has nothing to do with the question of payment of Court fee in action prayed under part XA of the Merchant Shipping Act. That was a case wherein this Court had entertained two admiralty suits and issued injunction against the claimants who had filed proceedings against the owners and the vessel in the Courts of United States prior to the filing of the admiralty suit. The Supreme Court observed that the Bombay High Court ought not to have entertained the admiralty suit filed by the plaintiffs. In fact this decision goes against the plaintiffs insofar as their reliefs under clauses (c) and (d) are concerned.

10. In view of the above discussion, the chamber summons taken out by the plaintiffs is dismissed.

C.C. expedited. An ordinary copy of this order duly authenticated by the Associate is allowed.

 