
(2020) 05 OHC CK 0010
In the Orissa High Court
Case No : Admiralty Suits No. 1 Of 2020

Cockett Marine Oil Dmcc

APPELLANT

Vs

M/V Leonkidas

RESPONDENT

Date of Decision : 15-05-2020

Acts Referred:

Citation : (2020) 05 OHC CK 0010

Hon'ble Judges : S.K.Sahoo, J

Bench : Single Bench

Advocate : Gautam Mishra, B.N.Mohanty, S.J.Biswal, A.Mohantys.J.Biswal, A.Mohanty, Sudipto Panda, S.P.Sahoo, A.Majumdar, A.Dhowan, S.Kundu, B.Jena

Judgement

Heard the learned counsel for the plaintiff and learned counsel for the defendant.

Perused the office note dated 14.05.2020 which indicates regarding non-payment of deficit court fees of Rs.8,97,981/- (rupees eight lakhs ninety seven thousand nine hundred eighty one only). An additional affidavit has been filed by Plaintiff where he has attached a copy of the receipt showing deposit of Rs.8,98,000/ (rupees eight lakhs ninety eight thousand only) in SBI towards Court Fees through the designated challan of the Treasury Officer, Cuttack and the receipt dated 12.05.2020 is annexed herewith as Exhibit-I. Today the learned counsel for the plaintiff file the acknowledgement sheet indicating about the filing of the Court fees which is taken on record.

In view of such state of affairs, office shall place a note on the removal of this defect.

The learned counsel for the plaintiff shall furnish the provision of law as pointed out by the Stamp Reporter.

Though it is mentioned by the Office that receipt showing service of copy of the plaint, documents and I.A. is not received, but the learned counsel for the defendant submitted that he has received the copy of the plaint, the documents

as well as the Interim Application filed by the plaintiff. The learned counsel for the defendant further submits that he has filed two objections to the Interim Application of the plaintiff opposing the prayer for an order of arrest of the vessel. The learned counsel for the defendant has also filed memo of citations. The objections and the memo of citations are taken on record.

In this Admiralty Suit, the Plaintiff COCKETT MARINE OIL DMCC has sought for following reliefs:

(a) That this Hon'ble Court be pleased to pass an order and decree in favour of the Plaintiff and against the Defendant Vessel M/V LEONIDAS (IMO No. 9293686) and/or her master and/or managers and/or operators and/or owners all persons interested in her in the claim of USD 393,904 (United States Dollar Three Hundred Ninety Three Thousand Nine Hundred Four Only) which is equal to Rs.2,98,93,375/- in Indian Currency. The principal claim amounting to a sum of USD 327,904 interest from due date of invoice till filing of the suit USD 46,000, cost of litigation in India amounting to USD 20,000, plus interest at the rate of 2% per month on the principal claim from filing of the suit till its realization, plus poundage as per particulars of claim.

(b) that the Defendant vessel M/V LEONIDAS (IMO No. 9293686) together with her hull, engines, gears, tackles, bunkers machinery, apparel, plant, furniture, fixtures, appurtenances and paraphernalia, plant and machinery at present lying at Port and Harbor at Dhamra, or wherever she is within the territorial waters of India be arrested and detained by a Warrant of Arrest of this Hon'ble Court until the satisfaction of the Plaintiff's claim in the claim of USD 393,904 (United States Dollar Three Hundred Ninety Three Thousand Nine Hundred Four Only) and the same be condemned in respect of the claim herein and be ordered to be sold along with her hull, engines, gears, tackles, bunkers, machinery, apparel, plant, furniture, fixtures, appurtenances and paraphernalia and the net sale proceeds thereof be ordered to be applied to the satisfaction of the Plaintiffs' claim herein and the cost of this Suit;

(c) that pending the hearing and final disposal of the Suit, this Hon'ble Court be pleased to order and direct the arrest of the Defendant vessel M/V LEONIDAS (IMO NO. 9293686) along with her hull, engines, gears, tackles, bunkers, machinery, apparel, plant, furniture, fixtures, appurtenances and paraphernalia, plant and machinery at present lying at Port and Harbor at Dhamra or wherever she is within the territorial waters of India until the satisfaction of the Plaintiff's claim as per Particulars of Claim;

(d) that pending the hearing and final disposal of the Suit the Defendant Vessel M/V LEONIDAS (IMO No. 9293686) along with her hull, engines, gears, tackles, bunkers, machinery, apparel, plant, furniture, fixtures, appurtenances and paraphernalia, plant and machinery at present lying at the Port and Harbor of Dhamra, or wherever she is within the territorial waters of India be committed for sale and the same be sold under the orders and directions of this Hon'ble

Court and the sale proceeds thereof be utilized in satisfaction of the Plaintiff's claims herein.

Perused the plaint and the documents annexed thereto.

Admit.

Learned counsel for the defendant seeks time to file written statement.

Prayer of the learned counsel for the defendant is accepted and four weeks' time is granted.

In this interim application, the plaintiff has sought for following reliefs:

(i) That pending the hearing and final disposal of the Suit, this Hon'ble Court be pleased to order and direct the arrest of the Defendant vessel M/V LEONIDAS (IMO No. 9293686) along with her hull, engines, gears, tackles, bunkers, machinery, apparel, plant, furniture, fixtures, appurtenances and paraphernalia, Plant and Machinery at present lying at Port and Harbor at Dhamra or wherever she is within the territorial waters of India until the satisfaction of the

Plaintiffs claim as per Particulars of Claim.

(ii) To pass any other order which it deems fit to meet the ends of justice.

It is submitted by the learned counsel for the plaintiff that unless the order of arrest of defendant vessel is passed, the very purpose of filing the suit will be frustrated as the vessel is to leave Dhamra Port at any point of time. The learned counsel for the plaintiff relied upon the decision of the Hon'ble Supreme Court in the case of *Videsh Sanchar Nigam Ltd. -Vrs.- M.V. Kapitan Kud and others*, reported in (1996) 7

Supreme Court Cases 127.

The learned counsel for the defendant submitted that the interim prayer made by the plaintiff is not sustainable. He placed reliance on the decisions which he has given in a memo of citation.

In view of the submissions made by the learned counsel for the respective parties, since the defendant has already entered appearance and filed her objection to the interim application along with memo of citation and full fledged hearing of interim application is necessary, list this matter in my next sitting.

As an interim measure, it is directed that the Port Officer at Dhamra shall arrest the defendant vessel at present lying at Dhamra Port in the district of Bhadrak and keep the vessel under arrest until further orders. It is further directed that the Port Officer and Custom Officer at Dhamra Port shall render all assistance to the plaintiff or its representatives in effecting the warrant of arrest of the defendant vessel.

It is open to the plaintiff's advocate to communicate this order by fax message/e-

mail and the authorities are directed to act on such fax or e-mail message along with an ordinary copy of the order duly authenticated by the Deputy Registrar (Judicial) of this Court or on production of certified copy of this order.

Put up this I.A. for final hearing in my next sitting.

Issue urgent certified copy as per the rules.