
(1998) 12 BOM CK 0039

In the Bombay High Court

Case No : Appeal No. 1248 of 1998 in Admiralty Suit No. 91 of 1998 with Appeal No. 1249 of 1998 in Admiralty Suit No. 84 of 1998

M.T. Arctic Flower and others

APPELLANT

Vs

Star Ship Management Ltd.

RESPONDENT

Date of Decision : 21-12-1998

Acts Referred:

Citation : AIR 1999 Bom 169 : (1999) 2 ALLMR 383 : (1999) 2 BomCR 182

Hon'ble Judges : R.J. Kochar, J;B.P. Saraf, J

Bench : Division Bench

Advocate : D.D. Madan and Paresh Shah, instructed by Shah and Sanghavi, Iqbal Chagla, S.C. and P.S. Pratap, for the Appellant; Mahendra Shah, S.C., Sanat Mukherjee and Uttam Hati, instructed by . Mahimkar and Company, for the Respondent

Judgement

Dr. B.P. Saraf, J.—These appeals arise out of orders dated 6th November, 1998 and 17th November, 1998 passed by the learned Judge in Admiralty Suit Nos. 91 of 1998 and Admiralty Suit No. 84 of 1998 respectively, by which the learned Single Judge issued warrants of arrest of two ships viz, m.t. ARCTIC FLOWER and m.t. CUSIANA STAR. The impugned orders have been challenged by the appellants on the ground, inter alia, that the orders had been obtained on the basis of false averments in the complaints to the effect that their claims against the appellants on account of supply of necessities to the ships remained unpaid. The learned Counsel for the appellants Mr. Chagla submits that no necessities were ever supplied by the respondents to the appellant ships nor any amounts are due to them on account thereof. The supplies had been made by various parties all over the world who have raised their demands on the appellants, which are being scrutinised and they are being paid accordingly

2. Our attention was drawn to the complaint in Admiralty Suit No. 84 of 1998 wherein in para 3 it is stated as below :--

"By this suit the plaintiff is seeking to recover from the defendants the sum of

U.S. \$ 2,23,776.01 plus interest poundage and costs by the arrest, sequestration, condemnation and sale of first defendant vessel and otherwise for the supply of necessaries and/or necessary services to the 1st defendant vessel."

It is categorically stated in para 4 of the plaint that the plaintiffs at the request of the owners provided and/or procured various services for the vessels in the nature of

- a) actual cost of providing crew and manning;
 - b) actual cost of providing spares, repairs and obtaining and/or performing surveys of the vessel;
 - c) actual cost of providing communication to and from the 1st defendant vessel;
 - d) the plaintiffs fees and charges for providing these services and/ or goods;
- which according to the plaintiffs constituted a maritime lien upon the vessels.

3. Similarly, in Admiralty Suit No. 91 of 1998, which pertains to the vessel m.t. ARCTIC FLOWER, it is stated in para 3 as below :

"By this suit the plaintiff is seeking to recover from the defendants the sum of U.S. \$ 298130.25 plus interest, poundage and costs by the arrest, sequestration, condemnation and sale or otherwise of first defendant vessel."

In para 4 of the plaint, the plaintiffs have stated that at the request of the owners the second defendant provided and/or procured various services for the vessel in the nature of;

- a) crewing and manning;
- b) procuring insurance;
- c) purchasing and delivery of supplies stores and spares;
- d) surveys of the vessel and repairs;
- e) communication to and from the vessel;
- f) technical management. In para 5 it is stated that an amount of U.S. \$ 298130.25 is due on account of these services and goods and the same remains unpaid despite repeated requests and demands from the plaintiffs.

4. The learned Counsel for the appellants submits that no supplies were ever made by the respondents (plaintiffs) nor any amounts are due and payable to them on account thereof. As such, no claims whatsoever of the respondents would constitute maritime lien under the Admiralty Courts Act, 1961, to give jurisdiction to the High Court.

5. We have heard the learned Counsel for the respondents. There is no dispute about the fact that no necessaries had been supplied by the respondents to the appellant ships. There was a management agreement between the appellants

and the respondents (plaintiffs). Under the said management agreement, the respondents arranged supplies of necessities to the appellants vessels from various parties. Those parties made supplies directly to the appellants and raised their bills on the appellants. They made their demand for payment also on the appellants. The admitted position is that none of the parties, who supplied necessities to the appellants, have raised any bills on the respondents nor any demand has been made till today by any of the parties on the respondents on account of such supplies. The ship management agreement clearly provides that the manager will only act as an agent of the owners (appellants) and the owners would indemnify and held the manager harmless for all actions, claims, demand and liabilities asserted by the owner or any third party in respect of such contract including the cost of defending the same so far as the same may concern the vessel.

6. We asked the learned Counsel for the respondents to show us that any supply of necessities had been made by the respondents to the appellant ships or any of the suppliers have raised any bill or have made any demand on them on account thereof. The learned Counsel for the respondents could not show any such document. The admitted position thus appears to be that neither any necessities have been supplied by the respondents nor any bills have been raised on the respondents by the suppliers. The bills for the supplies have been raised by the suppliers directly on the owners which are being settled by the owner with the suppliers. There is no demand pending against the respondents on account of any supplies of necessities by the parties to the appellant ships.

7. In view of the above, we asked the learned Counsel for the respondents to tell us as to how the suit was maintainable under the Admiralty jurisdiction of this Court. We also asked him to explain to us as to why the respondents made false averments in the plaints to the effect that necessities were supplied under the ship management agreement by the respondents to the appellants and that the respondents had demanded payment of amounts mentioned in the plaint from the appellants which they failed to pay. We did not get any satisfactory answer. However, the learned Counsel for the respondents stated that the respondents were interested in the settlement of the bills of the suppliers and they would not like to pursue this litigation if the learned Counsel for the appellants can assure the payment or settlement of the bills of the suppliers. Mr. Chagla, learned Counsel for the appellants, informed the Court that the appellants were ever keen to settle all the bills of the suppliers and, in fact, they have already deposited a sum of U.S. \$ 3,50,000/ in the trust account of their attorney for the settlement of the claims of the various suppliers. The learned Counsel for the respondents at this stage stated that if the appellants could furnish an affidavit from the attorney concerned to this Court to the effect that the U.S. \$ 3,50,000/-, which have been deposited by the appellants in trust with them, would be utilised only for the purpose of making payment of dues to the third party vendors in respect of the goods and services supplied to the vessels m.t. ARCTIC FLOWER and m.t. CUSIANA STAR, and that no part of such funds shall

be returned to the appellants unless and until all outstanding dues of third party vendors and suppliers were paid or settled. Mr. Chagla, learned Counsel for the appellants, agreed to obtain such an affidavit from the concerned attorney. The matter was therefore adjourned. On the adjourned date the affidavit from the attorney of the appellants was filed by Mr. Chagla, which reads thus :--

"I. JON W. ZEDER, Attorney with the firm of Adorno & Zeder P.A. having my office at 2601 South Bayshore Drive, Suite 1600, Miami, Florida 33133, U.S.A. do hereby solemnly affirm and say as follows:--

1. I say that Adorno & Zeder, P.A. are Attorneys appointed by the owners of the vessels m.t. Arctic Flower and m.t. Cusiana Star in respect of their disputes with Star Ship Management Ltd. I am generally aware of the facts and circumstances of the above proceedings from the documents and advices received by me from the Mumbai Advocate representing the appellants in the above matter.

2. I say that a sum of U.S. \$ 3,50,000 was deposited on November 19, 1998 in the trust account of Adorno & Zeder, P.A. by Panamanian Carriers Corporation at the request of the Owners of m.t. Arctic Flower and m.t. Cusiana Star for payment of all legitimate dues of all third party vendors and suppliers of goods and services to the vessels m.t. Arctic Flower and m.t. Cusiana Star. I say that out of the sum of U.S. \$ 3,50,000, a sum of no less than U.S. \$ 85,697.19 has been disbursed to, third party suppliers through December 9, 1998, and letters have been issued by my firm to all known third party suppliers to confirm their legitimate outstanding dues so as to enable payments to be made if the same are found to be in order. Annexed hereto and marked as Exhibit 1 is a statement showing the list of third party suppliers to whom letters have been issued in respect of payment of their legitimate outstanding obligations.

3. I say that the said fund of U.S. \$ 3,50,000 shall be utilised only for the purpose of making payment of all legitimate dues of third party vendors in respect of goods and services supplied to the vessels m.t. Arctic Flower and m.t. Cusiana Star. I say that no part of such fund shall be returned to Panamanian Carriers Corporation unless and until all legitimate outstanding dues to third party vendors and suppliers are paid and/or settled.

4. I say that copies of money transfer instructions to the bankers in respect of payments made to third party vendors and suppliers or trust account checks and cover letters to such vendors and suppliers, as the case may be, shall be furnished to Prashant S. Pratap, Advocate, as soon as transfers are effected. I further confirm that any claim received by Star Ship Management Ltd. from any third party vendors or suppliers of goods or services to the vessels m.t. Arctic Flower and m.t. Cusiana Star may be forwarded by them directly to the firm of Adorno & Zeder, P.A., so that these can receive immediate attention."

8. We perused the above affidavit and found the same to be in order. The learned Counsel for the respondents, however, at this stage, stated that the respondents would not like the money to be kept in trust with the attorney of the appellants

but want it to be placed in trust with some other independent attorney. This suggestion of the respondents, was vehemently opposed by Mr. Chagla, the learned Counsel for the appellants. He submitted that the respondent had no right to make such a suggestion in the absence of any cogent reason.

9. The learned Counsel for the respondents despite the above affidavit wanted to pursue this appeal and proceed with the matter. He wanted to argue the case on merits. We, therefore, heard Mr. Mukherjee, the learned Counsel for the respondents, at length. Mr. Mukherjee could not satisfy us about the veracity of the statements made in the plaint to the effect that the supplies of necessities had been made by the respondents to the appellants and that any amount was due and payable to the respondents on that account. He fairly stated that the amounts claimed in the plaints were due to the suppliers for the supplies made by them to the appellants and not to the respondents plaintiffs. He also did not dispute the fact that the bills of the suppliers were in the name of the appellants and that some of them had already been settled and the amounts due to them had been paid. He, however, contended that the respondents were entitled to be indemnified in the event of the appellants failing to settle the bills of the suppliers. He, therefore, claimed that the respondents were entitled to get the arrest of the ships on that account. The learned Counsel however could not show any pleadings in the plaints to that effect. Nor could he reply to the queries of the Court as to how in the absence of pleadings, he could make such submissions. Admittedly, in the plaints, there is not even a mention of indemnity. The suit is not to enforce indemnity. The learned Counsel also could not show as to how suit for enforcement of indemnity was maintainable in admiralty jurisdiction. The admiralty jurisdiction cannot be invoked to enforce an indemnity. It is clear from the above discussion that the impugned orders of arrest of the ships have been obtained by the respondents on the basis of averments made in the plaints which, on the face of it, are not true. No necessities had been supplied by the respondents to the ships nor any amount is due to them on account of any such supplies. The impugned orders of arrest of the ship in such circumstances, on the face of it, are not tenable.

10. In the premises, we are of the clear opinion that the warrant of arrest of the ships. m.t. ARCTIC FLOWER and m.t. CUSIANA STAR issued by the learned Single Judge are not tenable. Accordingly, the orders of arrest dated 6th November, 1998 and 17th November, 1998 in respect of the ships, m.t. ARCTIC FLOWER and m.t. CUSIANA STAR respectively are vacated and the vessels stand released from arrest.

11. Needless to say that the appellants would stand by the affidavit of the Attorney filed by them in this Court.

12. Mr. Chagla, the learned Counsel for the appellants, submits that the warrants of arrest of the ships, m.t. ARCTIC FLOWER and m.t. CUSIANA STAR in this case having been obtained by the respondents on the basis of false and misleading averments in the plaint and the ships m.t. ARCTIC FLOWER and m.t. CUSIANA

STAR having remained under arrest from 6th November, 1998 and 17th November 1998, respectively, damages should be awarded against the respondents as compensation for the loss sustained by the appellants on account of such wrongful arrest and the respondents should be called upon to pay the same in terms of the undertaking furnished by them to pay compensation for the loss or damages suffered to the affected parties on account of wrongful arrest. Mr. Chagla has also filed two statements showing damages suffered by the appellants on account of the arrest of the two ships. In case of ship m.t. ARCTIC FLOWER, the damages claimed are in the sum of U.S. \$ 99,445.23 and in case of vessel m.t. CUSIANA STAR in the sum of U.S. \$ 78,267.50. We have taken the said statement on record. We however, do not propose to award damages at this stage. We leave the question of awarding damages to the learned Single Judge, before whom the suit is pending for consideration in terms of Rule 941 of the High Court (O.S.) Rules. The appellants shall be at liberty to apply before the learned Single Judge for that purpose.

13. The learned Counsel for the respondents at this stage prays for stay of operation of this order for two weeks. This prayer is strongly opposed by the learned Counsel for the appellants, who submits that in the instant case the respondents having filed the suits in admiralty jurisdiction and having obtained the arrest orders of the vessels on the basis of false and misleading averments in the plaints, there is no basis and/or justification for the respondents to pray for stay of this order. He further submits that this is in fact a fit case where this Court should direct the respondents to pay damages in terms of the undertaking filed by them. He further submits that this Court can itself quantify the damages and ask the respondents to pay the amount for damages straight away. The question of granting stay, according to Mr. Chagla, does not arise. He submits that the appellants have already suffered huge losses and any stay of this order would cause irreparable damage and injury as they may not get any purchaser for their vessels. If the existing purchasers refuse to purchase the same due to the inability of the appellants to deliver the ships to them in terms of the agreement.

14. On a careful consideration of the rival submissions of the learned Counsel for the parties, we do not find any merit in the prayer for stay of the operation of our order. As stated earlier, orders of arrest of the two ships in this case have been obtained by the respondents on the basis of false averments in the plaints to the effect that the supplies of necessities had been made by the respondents to the appellants in terms of the management agreement and that the amounts mentioned in the plaints were due and payable to them (plaintiffs) on account of such supplies. These averments, in course of hearing of the appeal, have been found to be patently false. In such circumstances, we do not find any cogent reason to stay the operation of this order.

Hence the following order :

i) The orders of arrest dated 6th November, 1998 and 17th November, 1998 in

respect of the vessels m.t. ARCTIC FLOWER , and m.t. CUSIANA STAR obtained by the respondents are vacated. The vessels, m.t. ARCTIC FLOWER and m.t. CUSIANA STAR stand released from arrest. Instrument of release dispensed with.

ii) Sheriff of Mumbai and the Port and Customs authorities at Along to act on an ordinary copy of the order duly authenticated by the Associate of this Court.

iii) There are in all following six caveats filed in respect of the vessels m.t. CUSIANA STAR and m.t. ARCTIC FLOWER.

a) 57 of 1998 by Alpha Omega Ship management Pvt. Ltd. against Arctic Flower.

b) 58 of 1998 by Alpha Omega Ship management Pvt. Ltd. against Cusiana Star.

c) 60 of 1998 by Chunnu Mohammed against Cusiana Star.

d) 61 of 1998 by Roger Peter Fernandes against Cusiana Star.

e) 62 of 1998 by Jaswinder Singh Sahi against Cusiana Star.

f) 63 of 1998 by Manish Kapila against Cusiana Star.

vi) So far as first two caveats are concerned, the amounts claimed by Alpha Omega are being deposited by the appellants tomorrow in the Court. We are told that the cheques are ready and they would be deposited in the Court positively tomorrow, however, without prejudice to the claims and contentions of the appellants. In view of the aforesaid statement, the first two caveats at Sr. No (a) and (b) are discharged.

v) So far as the caveats at Sr. No. (c), (d), (e), and (f) which are filed by the crew members are concerned, the learned Counsel for the appellants stated that the claims of all the crew members including the above caveators would be paid by the appellants within one week from today. In view of the above statement, the four caveats are withdrawn by the caveators.

15. The appeals to stand disposed of in the aforesaid terms. Certified copy expedited.