
(2001) 08 MAD CK 0091
In the Madras High Court
Case No : C.S. No. 140 of 1997

S. Samiyullah

APPELLANT

Vs

Owners and Parties interested in the Vessel M.V. Makar

RESPONDENT

Date of Decision : 06-08-2001

Acts Referred:

Colonial Courts of Admiralty (India) Act, 1891 — Section 2

Citation : AIR 2002 Mad 150 : (2001) 3 LW 658

Hon'ble Judges : M. Chockalingam, J

Bench : Single Bench

Advocate : S. Sampath Kumar, for the Appellant; S. Ragunathan, for the Respondent

Judgement

M. Chockalingam, J.—This suit has been filed for payment of Rs. 3,65,103.50 with interest at 18% p.a. from the date thereof till the date of payment in full and for arrest and sale of the vessel m.v. Makar [Formerly m.v. Eagle II) in the Port of Vizag all Its gears, tools, tackles, hinders, machinery, apparel, plant, furniture and paraphernalia towards the suit claim, interest and for costs.

2. Plaintiff averments are as follows : The plaintiff was carrying on business as Ship Chandler. The headquarters of the business of the plaintiff is at Madras. On 25-1-96, the plaintiff received orders at Madras for supply of ship stores and provisions to the vessel m.v. Eagle II then, due to call at Port at Vizag. For the said order the plaintiff arranged for supply to the vessel at the Port of Vizag shop stores and provisions between 27-1 -96 and 3-2-96 for a total value of US \$ 8416.60. The plaintiff requested the defendant to remit the said amount in his account with the Standard Chartered Bank, Mylapore Branch, Madras 5. The defendant had promised to make payment but failed and neglected to do so. The interest for the said amount is payable at 18% per annum as per the terms of supply. The defendant is now due and payable to the; plaintiff a sum of US \$ 8416.60 towards principal and US \$ 1725.15 towards interest aggregating to a sum of US \$ 10141.75 equivalent to Rs. 3.65,103.50. The name of the ship m.v.

Eagle II has now been changed to M.V. Makar by the defendant and the very same vessel is now due to call at the Port of Vizag on 23-3-97 as per Vizag's Port's Steamer Movements Bulletin issued on 18-3-97. The defendant had changed the name of the ship to hoodwink the creditors. The plaintiff wants the vessel to be arrested to recover his dues. Hence the present suit.

3, in the written statement filed by the defendant, it is contended that the vessel m.v. Makar (which was earlier known as m.v. Eagle II) is presently owned by M/s. Permana Shipping Company. Limassol, Cyprus. Under a Memorandum of Agreement dated 14-6-1996. the said M/s. Permana Shipping Company. Limassol, Cyprus, purchased the vessel from M/s. Belgica Company Limited, free from all encumbrances, maritime liens and any other debts whatsoever, and a bill of sale dated 19-6-96 was issued by M/s. Belgica Company Ltd. that the sale was free of all encumbrances, mortgages, maritime liens and any other debts whatsoever. After such purchase the vessel m.v. Eagle II was renamed as m.v. Makar. The defendant denies that the plaintiff is entitled to claim Interest at 18% per annum and a sum of US \$ 8416.60 towards principal and US \$ 1725.15 towards Interest are due and payable by the defendant to the plaintiff. The defendants are not liable to pay any amount since the supplies were made prior to the purchase of the vessel by the said M/s. Permana Shipping Company. The sellers of the vessel M/s. Belgica Company Limited had also clearly stated that they would settle all liabilities and other outstandings incurred prior to the delivery of the vessel, and the purchase of the vessel by M/s. Permana Shipping Company has been duly registered with the Councillor of Maritime Affairs. Republic of Cyprus on 27-6-96 and at the time of the purchase of the said vessel the name was changed, and they also denied the statement that the name of the ship has been changed only to defraud the creditors and to hoodwink them as alleged by the plaintiff. It is denied that the plaintiff will not be able to recover the dues unless the vessel was arrested. The plaintiff's action for arrest of the vessel is not in accordance with law and the plaintiff has no claim at all either against the present owners or the vessel. The defendant denies the provisions and stores as claimed by the plaintiff were supplied to the vessel m.v. Eagle II while he was at the port of Vishakapatnam between 27-1-1996 and 3-2-1996. The suit is not maintainable and the suit has to be dismissed.

4. On the above pleadings the following issues were framed :

(i) Whether the plaintiff is entitled for money decree for a sum of Rs. 3,65,103.50 with interest at 18% p.a.?

(ii) Whether this Court has jurisdiction to entertain the suit, since the cause of action has arisen in Andhra Pradesh?

5. Issues 1 and 2 :- The plaintiff has sought for money decree for a sum of Rs. 3.65.103.50 with interest at 18% p.a.

6. Mr. S. Samlullah was examined as P.W. 1. He would depose that Ex. P1 is the order placed on them by the ship owners. Ex. P2 is the 2nd order placed on them

by the ship owners for wire ropes and they have made the supplies to the defendant. The acknowledgement by the Master of the ship for acknowledging receipt of wire-ropes ordered vide Ex. P2 is found under Ex. P3. Invoice sent by the plaintiff to the ship owners after the defendant acknowledged the receipt of wire-ropes is Ex. P4, Ex. P5 is the acknowledgement from the Master of the Ship in receipt of the stores supplied by the plaintiff. Exs. P6 and P7 are the xerox copy of the Invoices sent by the plaintiff to the ship owners supplying the stores wherein the Master of the ship has acknowledged the receipt of the stores. Exs. P8 & 9 are the xerox copy of the invoices dated 1 -2-90 and 3-2-90 respectively sent by the plaintiff to the ship owners for the supply of stores made by the plaintiff wherein the Master of the ship has acknowledged the receipt. All the original invoices from Exs. P6 to 9 have been sent to the ship owners, claiming payment from them. Ex. P. 10 is the copy of the covering letter dated 28-2-1996 along with the postal receipt thereof sent by the plaintiff to the ship owners enclosing all the four invoices. Original acknowledgement for the supply of stores made by the plaintiff is found under Ex. P11. The nature of supplies made by the plaintiff to the ship were all essential items like food-stuffs and other things for consumption and also items required for repairing and maintenance. The defendant had replied to the letter Ex. P. 10 that they would make the payment after the credit period of 90 days given to them is over, but they did not make any payment. The plaintiff is having only the copy of the invoices Exs. P6 to 9 since after the supply of the stores to the ship one original invoice would be given to the Master of the ship and the other original is sent to the ship owner, and only the copy has been retained by them. The plaintiff did not know about the subsequent purchaser of the ship free from all its encumbrances. From the Lloyeds Shipping index that is printed in London for every 15 days, the plaintiff came to know that the ship "Eagle II" is now being called as "M. V. Makar". Even now the plaintiff do not know the present owner of the ship.

7. Arguing for the plaintiff, learned counsel would submit that the plaintiff has been carrying on business as Ship Chandler and having the head quarters at Madras. The defendant is a carrier by sea owning a vessel M. V. Makar formerly known as Eagle II having its headquarters at Greece. The plaintiff received the orders at Madras for supply of ship stores and provisions to the vessel M. V. Eagle II then, due to call at Port at Vizag on 25-1-1996. Those orders were placed at the plaintiffs head office at Madras; that Exs. P1 and P2 are the orders placed on the plaintiff by the ship owners: that the plaintiff made the stated supply to the defendant; that under Ex. P3 the acknowledgement was given by the master of the ship as to the receipt of the wire-ropes ordered under Ex. P2 order; that Ex. P4 invoice was sent by the plaintiff to the ship owner after they acknowledged the receipt of wire ropes and Ex. P5 is the acknowledgement from the master of the ship in respect of the stores supplied by the plaintiff, Ex. P6 is the xerox copy of the invoice sent by the plaintiff to the ship owners supplying the stores whereby the Master of the ship has acknowledged receipt for supply the said stores. Exs. P7 to 9 are also xerox copy of the invoices sent by the

plaintiff to the ship owners for the supply of the stores made by the plaintiff wherein the Master of the ship has categorically acknowledged; that the plaintiff could not produce the original invoices because the original invoices of Exs. P6 to 9 were sent to the ship owners claiming payments; that the plaintiff sent a letter found under Ex. P10 dated 28-2-96 to the ship owners enclosing all the four invoices; that the plaintiff has also filed Ex. P 11 the original acknowledgement for the supply of the stores made by the plaintiff; that after supply of the stores to the ship, one original Invoice would be given to the Master of the Ship, while the other original was sent to the ship owner and the plaintiff used to retain a copy of the said Invoice; that the nature of the supply made by the plaintiff to the ship were all essential items like foodstuffs and other things for consumption and also items required for repairing and maintenance; that the defendant by their reply has stated that they would make the payment after the credit period of 90 days given to them was over. Even after the said period, the defendant did not make any payment which necessitated the plaintiff to file the suit for recovery of the said sum.

8. Added further the learned counsel that from the Lloyd's Shipping index printed in London the plaintiff came to know that the ship Eagle II is now being called as MV. Makkar. Learned counsel would further submit that the plaintiff has filed the suit in this Court since it is vested with the admiralty jurisdiction within which the cause of action for the suit had arisen and that it is pertinent to note that the orders were placed on the plaintiff for supply of stores and provisions to the defendant vessel and that they were accepted and the value of the sale is also payable at Madras and hence the Court has got jurisdiction. Apart from that, the plaintiff cannot now raise the question of jurisdiction since when the application was filed by the plaintiff for arrest of the vessel, the defendant came forward to deposit the suit claim in Court and thus the defendant has submitted the Jurisdiction of this Court and at this stage, the defendant cannot raise the question of Jurisdiction; that the next contention of the defendant side that the ship Eagle II was purchased by M/s. Permana Shipping Company and that all the alleged orders and supplies had taken place during the period when the ship was owned by the previous owners and hence the defendant cannot be made liable for the supplies made by the plaintiff and it has got to be rejected for the simple reason that when ever the ship is sold by one owner to the other, the ship carries with it this liability also under maritime lien. Hence the plaintiff has proved his claim and the suit has got to be decreed.

9. Countering to the above contentions, the learned counsel for the defendant would submit that the plaintiff has admitted in his pleadings that the supply were made between 27-1-96 to 3-2-96 at Vizag and thus the cause of action of the suit had arisen at Vizag within the Jurisdiction of the Hon'ble High Court of Andhra Pradesh and hence the suit should have been filed only at Andhra Pradesh High Court; that the vessel M. V. Makkar was originally known as M. V. Eagle II is presently owned by M/s. Permana Shipping Company, Cyprus; that the said vessel was earlier owned by M/s. Begica Company Limited and the said

M/s. Permana Shipping Company purchased the said vessel under Memorandum of Understanding dated 14-6-1996 under the terms of which the purchase was made free of all encumbrances, maritime liens and any other debts whatsoever and hence after such purchase, the plaintiff cannot claim for the supply which are admittedly made before the purchase of the said vessel by M/s. Permana Shipping Company and in particular, the vessel was purchased free from all encumbrances; that the plaintiff has not come with the clear pleadings in respect of the supplies of stores and provisions and in respect of the acceptance of the same. Nor they have clearly stated as to who had placed the orders on the plaintiff; that the defendant had categorically denied in the written statement that the plaintiff supplied the stores and provisions to the vessel Eagle II. but in order to prove the same the plaintiff has not come forward with necessary proof. It is pertinent to note that P.W. 1 has categorically admitted that he verified with the Lloyds register which show the name of the ship, year of its built, its tonnage and the name of the owner, they have not filed the same before the Court; that though P.W. 1 has claimed that he verified the register in March 1997, he could not even now say who is the owner of the vessel that he deposed that the owner of the ship who placed the orders on them for the steel wire ropes and essentials was Globe Trade and Transport, Greece, but he would add that he did not know exactly who are the owners or the managers of the ship. He has stated that they are authorised persons to place the orders for the ship, though material is placed before the Court except the mere assertion by P.W. 1.

10. Added further learned counsel that in the face of the admission made by P.W. 1 that Ex. P1 was sent to them by their agent in Greece who was working for them that a perusal of Ex. P1 would read "after approval and supply please send hereby the invoice for payment as usual"; that it is pertinent that the plaintiff has not filed any documentary proof to show that they have sent the invoice to the United Maritime in Greece who were their agents. P.W. 1 further admitted that the supplies were made at Vizag from the end of January, 1996 to the first week of February, 1996. The xerox copy of the invoices are filed before the Court has got to be rejected by the Court for the simple reason that P.W. 1 has admitted that they used to prepare three copies of the invoices of which one was sent to the Master of the ship, second one to the ship owners and the third one was retained by them; that while P.W. 1 categorically admitted that they have retained the third copy of the invoices, they have not produced it before the Court but only for the reasons best known to them. The plaintiff has produced only the xerox copy and hence Exs. P3, 4, 5, 7, 8, 9 and all could not be attached to any evidentiary value though it is contended by the plaintiff side. Ex. P10, is the copy of the covering letter dated 28-2-96 sent by the plaintiff to the ship owner enclosing all the four invoices. It has to be necessarily stated that P.W. 1 himself had admitted that the postal receipt of Ex. P10 has addressed to M/s. Globe Trade and Transport but the postal receipt of the rear side was addressed to their agents namely United Maritime and from the available evidence it would be very clear that the supplies were not made to the ship at

all; that all the above invoices were not sent to the owners also. It is significant to note that the plaintiff has made the claim without making necessary document to show that the then owners had approved all the value of the supplies made by the plaintiff.

11. The plaintiff has filed the suit for recovery of Rs. 3,65,103.50 with subsequent interest alleging that he received orders at Madras for supply of ship stores and provisions to the vessel M. V. Eagle II; that the same were supplied to the vessel at the port of Vizag ship stores and provisions between 27-1-96 and 3-2-96. The suit is contested by the defendant on the ground that the plaintiff should have been filed the suit in the Hon'ble High Court of Andhra Pradesh since all the causes of action had arisen within the admiralty of jurisdiction of that Court; that the alleged supply were made by the plaintiff when the ship was owned by the previous owner: that the defendant has purchased the same free from all encumbrances, maritime lien and any other debts whatsoever and part from that the plaintiff has not proved the alleged supply also. in so far as the question of Jurisdiction is concerned, the plaintiff has come with a specific plea that the orders for the supply were made at Madras and the value of the goods what were supplied was to be given at Madras and both were at Madras and hence the claim falls within the admiral Jurisdiction of this Court. in view of the specific pleadings and in view of the evidence of P.W. 1 in that regard, the Court has to necessarily agree with the plaintiff. Apart from that, when the plaintiff sought for an interim relief of the arrest of the vessel and it was when ordered accordingly by this Court, the defendant as per the orders of this Court had deposited the suit claim though without prejudice to his defence. Under such circumstances, the contention of the defendant that this Court is not vested with the Jurisdiction cannot be countenanced. in order to substantiate the claim that the orders were placed with and the provisions were supplied to the defendant, the plaintiff has exampled himself as P.W. 1 apart from marking the above said documents. According to the plaintiff side Ex. P1 and P2 were the orders placed on them by the ship owners for wire-ropes: that supplies were made and Ex. P3 is the acknowledgement by the Master of the ship as to the receipt of the wire-ropes ordered under Ex. P2. P.W. 1 has candidly admitted that Ex. P1 was sent to them by their agent in Greece who was working for them and that it is true that it has been stated in Ex. PI that "after approval and supply pleas send here the invoices for payment (as usual)". Though it is contended by the plaintiff side that the owner of the ship who placed the orders was Globe Trade and Transport Inc., Greece, what is relied by the plaintiff, Ex. P1 was sent to them by their agent in Greece. It is pertinent to note that the plaintiff has not filed any documentary proof to show that they have sent the invoices to the United Maritime with their agent in Greece. in respect of the other supplies, the plaintiff has much relied on the copies of invoices marked as Exs. P3. 4, 5, 6. 7, 8, 9 and 11. All those documents relied on by the plaintiff side are only xerox copies. The plaintiff has not filed the original invoices. Learned counsel for the plaintiff would submit that the original invoices were sent to the ship owners claiming their payment from

them. This explanation tendered by the plaintiffs side cannot be accepted in view of P.W. 1's evidence stating that they prepared three copies of invoices of which one was sent to the Master of the ship, the second to the ship owner and the third one was retained by them. During the chief-examination, the learned counsel for the plaintiff sought for a short time for production of the original invoices and accordingly it was granted. Instead of producing the original Invoices, the xerox copies of the invoices were marked with an explanation that the originals were sent to the ship owners. As stated above, it would be clear that the third copy of the original Invoices alleged to have been retained by the plaintiff has not been produced before the Court for the reasons best known to him. The non-production of the original invoices alleged to be in the custody of the plaintiff will lead to adverse Inference that those invoices if produced before the Court would be against the case of the plaintiff and hence they have not been produced.

12. The plaintiff has also relied on Ex. P10 a copy of a covering letter dated 28-2-96 along with the postal receipt thereof sent by them to the ship owners enclosing the above four invoices. According to P.W. 1, Ex. P10 letter was addressed to M/s. Globe Trade and Transport inc., but a perusal of the postal receipt on the rear side of Ex. P10 letter would show that It was addressed to United Maritime, that Is, the agents of the plaintiff and hence it would be clear that the plaintiff cannot make a claim either on the xerox copies marked as Exs. P.3, 4, 5, 6, 7, 8, 9 and 11 or on the basis of the contents found in Ex. P10 letter. Except the aforestated documents, the plaintiff has not filed any documentary evidence to prove his claim. The above mentioned documents do not help the plaintiff to sustain the claim made in the suit.

13. The next contention putforth by the defence is that the vessel Eagle II was originally owned by M/s. Belgica Company Limited and the present owner namely M/s. Permana Shipping Company, purchased the same under the Memorandum of Understanding where it was agreed that the purchase of the ship was free from all encumbrances and maritime liens. It remains to be stated that the said memorandum of Understanding referred to by the defendant is not filed in Court. From the evidence, it would be abundantly clear that the plaintiff has not even taken steps to ascertain the owner of the ship though P.W. 1 has stated that he verified the Lloyds register containing the name of the ship, year of the built and tonnage and name of the owner but he is unable to say who is the present owner of the ship. He would further add that he did not exactly know whether the Globe Trade and Transport, incorporated, are the owners or the managers of the ship. The defendant has categorically stated in the written statement that the vessel M. V. Makkar was presently owned by M/s. Permana Shipping Company, Cuprus, but P.W. 1 would say that he did not verify the Lloyds Shipping register after August, 1997 when the written statement of the defendant is filed to find out whether the said statement is correct or not. Learned counsel for the defendant would submit that even according to the plaintiff, neither the orders were placed nor the supplies were made to the present owners of the ship and thus there was

no contractual relationship between the present plaintiff and the present owners of the ship and hence the present owners are not liable.

14. Countering the above contention, the learned counsel for the plaintiff would state that the essence of the maritime lien is that it is a right which travels with the ship into whosoever possess it might subsequent go (sic) and in the instant case though the ship has been subsequently transferred to the present purchaser, the plaintiff has got a maritime lien in view of the supply of the necessities. In support of his contention, he relied on Section 20(2) of the Supreme Court Act, 1951 wherein the types of claims or disputes which fell within the power of English admiralty Court to hear and determine. Section 20(2) (m) reads "Any claim in respect of a case or materials supplied to a ship for her operation or maintenance". Relying on the Halsbury's Laws of England Fourth Edition Volume 43, learned counsel for the defendant would urge that the maritime lien cannot be applied to the present facts and circumstances of the case. Describing the nature and extent of the maritime liens, Halsbury's Laws of England, Fourth Edition, Volume 43 Shipping and Navigation paragraph 1131 reads as follow ;

"A maritime lien is a claim or privilege a maritime res in respect of service done to it or injury caused by it. Such a lien does not import or require possession of the res, for it is a claim or privilege on the res to be carried into effect by legal process. A maritime lien travels with the res into whosoever possession it may come, even though the res may have been purchased without notice of the lien or may have been seized by the sheriff under a writ of fieri facias issued at the instance of execution creditors. A maritime lien is inchoate from the moment the claim or privilege attaches, and, when called into effect by the legal process of a proceeding in rem, relates back to the period when it first attached.

A maritime lien only attaches to the particular res in respect of which the claim arises and not to any other property of the owners."

Paragraph 1133 reads as follows :

"The maritime liens recognised by English law are those in respect of bottomry and respondentia bonds, salvage of property, seamen's wages and damage. A maritime lien has been held not to exist in respect of towage, necessities or insurance contributions. It is doubtful whether a maritime lien exists in respect of pilotage dues."

15. Applying the principles of law laid in the Halsbury's Laws of England as referred above, it would be clear that the supply of necessities will not fall within the admiralty lien and on that basis the plaintiff cannot seek recovery from the present owner for the alleged supply of the necessities made to the earlier owner. Hence, the Court without any hesitation has to hold that the plaintiff has neither adduced necessary and sufficient proof as to the orders for and supply of the necessities nor has he shown that he is entitled in law to recover the same from the present owner though the alleged supplies were made to the earlier

owner.

16. For the discussions made and the reasons stated above, it has to be held that the plaintiff is not entitled for the relief asked for. in the result, the suit is dismissed. Considering the facts and circumstances of the case, no order as to costs.