

(1999) 03 BOM CK 0042

In the Bombay High Court

Case No : Notice of Motion No. 517 of 1999 in Admiralty Suit No. 79 of 1998

St. George Shipping Co. Ltd.

APPELLANT

Vs

M.v. "Irene P" a foreign flag vessel and others

RESPONDENT

Date of Decision : 31-03-1999

Acts Referred:

Bombay High Court (Original Side) Rules, 1980 — Rule 941
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 7 Rule 10A, Order 7 Rule 11, Order 7 Rule 13
Foreign Exchange Regulation Act, 1973 — Section 26

Citation : AIR 1999 Bom 280 : (1999) 3 ALLMR 130 : (1999) 4 BomCR 256 : (1999) 4 CivCC 436 : (1999) 3 MhLj 109

Hon'ble Judges : D.G. Deshpande, J

Bench : Single Bench

Advocate : Ms. F. Sethna and Ms. F. Bharucha, instructed by Dunmorr Sett, for the Appellant; P.S. Pratap, for the Respondent

Judgement

D.G. Deshpande, J.—This notice of motion is taken out by defendant No. 1 and 4 for vacating the order of arrest dated 28-11-1998 and for permission to the defendant No. 1 to demolish the vessel M.v. "Irene P" and further directing the plaintiffs to furnish bank guarantee by way of compensation to defendant Nos. 1 and 4.

2. I heard Mr. Pratap for the defendant Nos. 1 and 4 and Ms. F. Sethna for the plaintiffs at length in support of the notice of motion and in opposition thereto respectively.

3. It was contended by Mr. Pratap that the notice of motion was liable to be allowed and the order of arrest of ship was liable to be vacated for the following reasons:

For suppression of material facts by the plaintiffs, for seeking Judge's order without incorporating therein the condition regarding giving of undertaking to give security as is required by Rule 941 of the Original Side Rules of the High

Court, for not filing affidavit in support of the Judge's order, for filing a fresh suit in this Court i.e. the present suit, even though Bhavnagar Court had returned the plaint of the plaintiffs for presentation to proper Court and not presenting the same plaint before this Court, for not joining the defendant No. 4 as a defendant in the suit in the beginning when the plaintiffs knew during the pendency of their suit in Bhavnagar Court (the plaint of which was returned subsequently by the said Court), about the interest of the defendant No. 4 in the defendant No. 1 ship. It was also contended by him that the suit of the plaintiffs was not maintainable because of cause of action, estoppel and issue estoppel and lastly because the plaintiffs did not submit to the jurisdiction of this Court but filed present suit only for the purpose of obtaining security from the defendants which was not permissible under the law.

4. On the other hand the notice of motion was strongly opposed by Ms. Sethna on various grounds. She contended that there was no suppression of any kind by the plaintiffs in the plaint, that the undertaking under Rule 941 of the Original Side Rules of the High Court could not have been given by the plaintiff because of the bar u/s 26 of the Foreign Exchange Regulation Act, that filing of affidavit along with the Judge's order was not necessary since the plaintiffs had taken out notice of motion for the similar reliefs and affidavit in support was filed along with the said notice of motion. Ms. Sethna further contended that the suit which was filed in Bhavnagar Court was before the Civil Judge (Senior Division) and even though there was an order of Bhavnagar Court for presentation of the plaint to the proper Court, the same plaint could not have been filed before this Court without making necessary amendments and changes, this Court being the High Court exercising admiralty jurisdiction and therefore there was no legal defect or lacuna in filing the present suit, that non-joinder of defendant No. 4 initially in the suit was not detrimental to the interest of the defendant No. 4 because defendant No. 4 was already knowing about the suit being filed in Bhavnagar. She also contended that the defendant Nos. 1 and 4 were not entitled to get any relief in the notice of motion because of suppression of certain facts, namely, filing of the suit by defendant Nos. 1 and 4 against other defendants in Bhavnagar and lastly it was contended by her that the defendants could not become and had not become the owner of the defendant No. 1 ship and all the documents of the defendants in that regard were false and fabricated.

5. Apart from these main submissions, the allegations and counter allegations were made by both the advocates about non-supply of documents relied upon, and not giving inspection of the documents but I am not going to consider these objections because they have no bearings on the issue involved i.e. the prayers made in the notice of motion.

6. So far as the allegations of suppression of facts by the plaintiffs and as alleged by the present defendants (present defendants means defendant No. 1 and 4) are concerned, it is necessary to consider the facts on record.

7. The present suit is filed by the plaintiffs on 6-11-1998. From paragraph 2 of

the plaint upto paragraphs 7, the plaintiff has given the details and particulars of the collision of the two vessels, namely vessel "George L" and the defendant Vessel, M.v. "Irene P", which took place on 23-4-1997 and the subsequent steps taken by the plaintiffs against the defendant vessel regarding the damage caused to the plaintiffs vessel in the said collision. In paragraph 4 the plaintiff has stated that the preliminary claim was filed by the plaintiffs against the defendants for claiming Greek Drachmas 70,000,000 before the Competent Court at Piraeus, wherein the defendants also asked for security from the plaintiffs to the extent of Greek Drachmas 68,000,000. The plaintiffs has given the particulars of order passed by One Member Court of first instance in Piraeus on 25-4-1997 wherein both the plaintiffs and the defendants were directed to give security and gave particulars about the order dated 16-5-1997 wherein the defendants were directed to maintain security in the sum of Greek Drachmas 18,000,000 and that the plaintiffs were permitted to withdraw their security. The plaintiffs in para 7 has stated about recording of their another application on 2-4-1997 seeking damages from the defendants to the extent of Greek Drachmas 107,903,208 (of which, the sum of Greek Drachmas 18,000,000 was already secured pursuant to orders of the Court).

8. From the aforesaid facts, it appears that the plaintiffs have given particulars of the proceedings before the First Court at Piraeus upto 2-10-1997 and it is stated that the first Scheduled Court hearing date for the application of the plaintiffs filed in Piraeus was 28-4-1998, when it was adjourned to 2-3-1999.

9. However, according to the present defendants the aforesaid facts stated by the plaintiffs in the plaint were not the end of the matter and plaintiffs were guilty of suppression of material facts, which transpired before the Piraeus Court from 2-10-1997 to 6-11-1998 i.e. till the filing of the present suit. According to the defendants the Court of First Instance at Piraeus, Greek, initially ordered the defendant No. 1, to furnish security for Greek Drachmas 45 million and the plaintiffs were directed to furnish security of Greek Drachmas 35 million. However, the Court of First Instance in Piraeus after giving full hearing on merits and on the rival claims and after examining witnesses delivered judgment on 4-9-1997 holding both the vessels responsible for collision and apportioning liability between them. The said Court directed the owners of the defendant vessel to furnish security in the sum of Greek Drachmas 18 million i.e. the security of Greek Drachmas 45 million already furnished by the defendants pursuant to the interim order, was reduced from Greek Drachmas 45 million to Greek Drachmas 18 million. Therefore, according to the defendants the plaintiffs have suppressed the fact that there was order dated 4-9-1997, though it was order on merit, after recording evidence and that the said order was not appealed against by the plaintiffs.

10. Further, suppression, according to the defendants by the plaintiffs is in respect of another application filed by the plaintiffs before the said Court of First Instance an Piraeus by which the plaintiffs tried to get the security increased

from Greek Drachmas 18 million to Greek Drachmas 107 million. According to the defendants, this application for increase in the security was heard and decided by the said Court on 25-9-1998 and the claim of the plaintiffs for increase in the security was rejected. Therefore, according to the defendants there is complete suppression of the subsequent efforts of the plaintiffs for enhancement of security and its rejection by the said Court. Mr. Pratap contended that when the suit is filed in November, 1998, it was necessary and obligatory on the plaintiffs to make a mention of this important and vital fact in the plaint because according to him, had this fact been disclosed in the plaint this Court would not have ordered arrest of the vessel.

11. Admittedly, the plaint does not give any reference to this attempt of the plaintiffs for enhancement of the security or increase in the security from Greek Drachmas 18 million to Greek Drachmas 107 million and the rejection of the plaintiffs prayer in that regard at the Court of First Instance at Piraeus. The present suit is filed by the plaintiffs for getting a decree of US \$ 321,230 equivalent to Greek Drachmas 89,903,203. Mr. Pratap contended that the present suit is in respect of the plaintiffs claim of Greek Drachma 107 million and since this claim for enhancement of security was rejected by the Court of First Instance in Piraeus, the suppression of this fact by the plaintiffs has to be regarded as a deliberate and intentional suppression entitling the defendants to claim relief in the terms of the notice of motion on this ground alone. Mr. Pratap contended that the claim now made in the present suit of Greek Drachmas 89,903,203 coupled with the claim of Greek Drachmas 18 million already granted by the Court of First Instance in Piraeus is the exact claim of the plaintiffs for Greek Drachmas 107 million.

12. The objection regarding suppression of material fact was raised by Mr. Pratap for the reasons that if the Court of competent jurisdiction had already considered the claim of the plaintiff for security and ordered the defendants to furnish security of Greek Drachmas 18 million then, only on that count alone, the present suit of the plaintiffs was not maintainable because the plaintiffs could not invoke jurisdiction of two courts in two different States for the purpose of same relief. Further, according to Mr. Pratap since the Court of First Instance in Piraeus rejected the plaintiffs claim for enhancement of security from Greek Drachmas 18 millions to Greek Drachmas 107 million then also the plaintiffs were not entitled to file the suit and suppression of this material fact has resulted in wrong assumption of jurisdiction by this Court. He also contended that this suppression was fraudulent, dishonest and mala fide and there was cause of action estoppel and issue estoppel operative against the plaintiffs and no interim relief could have been granted (the allegations regarding suppression of this specific fact have been made in the affidavit in support of the present notice of motion in para 5(b) and (c)).

13. Ms. Sethna for the plaintiffs tried to refute the allegations of suppression. However, whether the plaint contents a particular fact or not has to be

ascertained from the plaint and not from the other extraneous matters or circumstances. Admittedly, in the plaint there is no mention or reference regarding the aforesaid facts and particularly regarding the rejection of the plaintiffs prayer by the Court of First Instance in Piraeus at Greek, for enhancement of the security from Greek Drachmas 18 million to Greek Drachmas 107 million on 25-9-1998. There is also no mention by the plaintiffs that the order of furnishing security of Greek Drachmas 18 million was passed after full hearing on merits and after examination of witnesses or parties. Whether this omission of material fact amounts to suppression deliberate, intentional fraudulent and mala fide will have to be considered after consideration of all the submissions made by the advocate for the plaintiffs and the defendants.

14. The second strong objection raised by Mr. Pratap is regarding noncompliance to High Court Rule 941, which is a part of rule regarding admiralty jurisdiction from the Original Side Rules. This Rule 941 lays down that if the suit is in rem, an application for arrest of the property..... shall be made to the Judge in chamber and shall be supported by affidavit. The rule further lays down a party applying under this rule shall give an undertaking in writing, or through his advocate, to pay such sum by way of damages as the Court may award as compensation in the event of a party affected sustaining prejudice by such order. It was therefore contended by Mr. Pratap that in the Judge's order that was sought and obtained by the plaintiffs for arresting the vessel; no such undertaking was given by the plaintiff nor any affidavit in support thereof was filed and it is according to him is a deliberate and intentional omission or lapse on the part of the plaintiffs and the order of arrest was liable to be vacated on this ground alone.

15. As against this, it was contended by Ms. Sethna u/s 26 of the Foreign Exchange Regulation Act, 1973 there was a restriction on persons resident in India associating themselves with or participating in concerns outside India and as such the constituted attorney of the plaintiffs could not have given such undertaking. She also relied upon some letter of advice given by the defendants advocate, wherein the defendants advocate had expressed similar doubts as to whether such an undertaking could be given by the plaintiff in reach of provisions of section 27 of the Foreign Exchange Regulation Act, 1973.

16. On the other hand it was contended by Mr. Pratap that the undertaking that was required under the Rules of the Original Side High Court, was to be given by the party applying for arrest of the vessel and that the objection raised by Ms. Sethna has no force. I find considerable force in this argument because 2nd part of Rule 941 lays down as "A party applying under this rule shall give an undertaking in writing, or through his Advocate, to pay such sum by way of damages as the Court may award as compensation."

17. It will therefore be clear that it was the plaintiffs in the present suit who was applying and who has applied for arrest of the vessel and as such it was the plaintiff who was required to give undertaking. What is prohibited by Section 26

of the Foreign Exchange Regulation Act, 1973 is as under:

"Except with the general or special permission of the Central Government or the Reserve Bank, no person resident in India shall give a guarantee in respect of any debt or other obligation or liability-

(i) of a person resident in India, and due or owing to a person resident outside India, or

(ii) of a person resident outside India."

The wordings of the section 26 will not attract a party who files a suit under admiralty jurisdiction of this Court and who applies under Rule 941 of the High Court Original Side Rules for arrest of the vessel, because what is prohibited by section 26 is that a person resident in India and due or owing to a person or resident out of India. The plaintiff is a foreign company, not resident in India, nor it comes under Clause (ii) of a person resident outside India, because Rule 941 does not accept the undertaking to be given by the constituted attorney. The undertaking has to be given by the party applying for arrest and the party in the suit is the plaintiff. Therefore, the objection of Ms. Sethna that plaintiff could not give undertaking because of section 26 of the Foreign Exchange Regulation Act, 1973, has no legal basis and the same cannot be accepted.

18. The next objection that was raised by Mr. Pratap was that the plaintiffs has filed a Regular Suit No. 611 of 1998 before the Civil Judge (Senior Division), Bhavnagar, for the same relief, but the Bhavnagar Court ultimately i.e. on 12-10-1998 passed an order holding that it has no jurisdiction to entertain and try the suit and consequently the plaint was returned to the plaintiffs for presentation before the Court having jurisdiction. Mr. Pratap contended that after this order of the Bhavnagar Court, it was obligatory on the plaintiffs to present the same plaint before this Court and it was not open to the plaintiffs to file a fresh suit. He also further contended that from this order of the Bhavnagar Court it was clear that Bhavnagar Court had taken note of the right of the defendant No. 4 as a purchaser of the ship i.e. defendant No. 1 and as such it was obligatory on the plaintiffs, if at all the plaintiffs wanted to file the same plaint to add the defendant No. 4 as defendant or when the plaintiffs chose to file a separate and fresh plaint before this Court to join the defendant No. 4 in the suit from the initial stage but according to Mr. Pratap the same plaint i.e. the plaint returned by the Bhavnagar Court was not presented by the plaintiffs before this Court to avoid joining of defendant No. 4 from the first stage, and this according to Mr. Pratap is a mala fide act on the part of the plaintiffs resorted with a view to obtain ex parte order against the interest of the defendant No. 4.

19. As against this, Ms. Sethna for the plaintiff relied upon the provisions of Order VII, Rule 13 of the C.P.C. Order VII, Rule 13 reads as under;

"13. Where rejection of plaint does not preclude presentation of fresh plaint.---
The rejection of the plaint on any of the grounds hereinbefore mentioned shall

not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action."

She therefore contended that after the Bhavnagar Court has rejected the plaintiffs' plaint by its order dated 12-10-1998, no illegality was committed by the plaintiffs in not presenting the same plaint in respect of the same cause of action.

20. I am unable to agree to the submissions made by Ms. Sethna. This submission was made by Ms. Sethna firstly because this is not a case where Bhavnagar Court rejected the plaint under Order VII, Rule 11 and secondly because the Order of the Bhavnagar Court about the return of the plaint is under Order VII, Rule 10 of the C.P.C. Order VII, Rule 10 reads as under:-

10 Return of Plaint.---(1) Subject to the provisions of Rule 10-A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

(Explanation- For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.)

(2) Procedure on returning plaint- On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it."

Rule 11 of Order VII provides for rejection of the plaint in the following cases, namely, where it does not disclose the cause of action where relief claimed is under valued or where the suit is barred by limitation. This order of rejection of plaint is totally different from order of return of the plaint which is done under Order VII, Rule 10 C.P.C. The order of the Bhavnagar Court will show that after the plaintiffs filed the Suit No. 611 of 1998 before that Court and the defendants appeared and raised objection to jurisdiction and thereafter the said objection to jurisdiction was decided as preliminary issue and consequently order of the return of the plaint was passed preceded by finding that Bhavnagar Court has no jurisdiction to try and entertain the suit and ad-interim order was also vacated. It is therefore clear that the Bhavnagar Court returned the plaint by resorting to the provisions of Order VII, Rule 10. If this was so it was not only improper but it was also illegal because Order VII, Rule 10-A makes special provision about the procedure to be followed by the Court ordering return of the plaint. This procedure is very elaborate and it provides where, in any suit, after the appearance of the defendants, the Court is of opinion that the plaint should be returned, it has to intimate its decision to the plaintiffs. After receiving such an intimation, three options have been given to the plaintiff under Order VII, Rule 10(2) to make applications under any of the options. Sub-rule (3) of Rule 10-A further provides that if such an application is made by the plaintiffs and the plaint is returned on the ground that the Court has no jurisdiction then the Court can fix the date for appearance of parties in the Court in which the plaint is

proposed to be presented and give to the plaintiff and the defendant notice of such date for appearance. Further provisions of Rule 10-A are about the contingencies where notice of the date of appearance is given.

21. All these provisions of Rule 10-A of Order VII will clearly show that the order of return of the plaint has to be followed by the mandatory procedure of Rule 10-A. This will also make it clear that the plaintiff has no option to file a fresh suit in that eventuality i.e. when the plaint is returned under Rule 10 of Order VII and particularly on the ground of jurisdiction. The submission made by Ms. Sethna that the plaintiffs was entitled to file a fresh suit under Rule 13 of Order VII cannot therefore be accepted.

22. The order of Bhavnagar Court particularly para 13 shows that the defendant No. 1 had brought it to the notice of the Bhavnagar Court that the defendant No. 1 has entered into a Memorandum of Agreement with one Mountain Shipping Ltd., of Gibraltar on 16-9-1998 to sell the vessel m.v. "Irene P" who then resold the vessel to Jai Bharat Steel Company, Bhavnagar, for demolition purpose and the vessel has arrived in Alang, Bhavnagar, on or about 23-9-1998 and the delivery was accepted on 4-10-1998. My attention was drawn on particular order of the Bhavnagar Court by Mr. Pratap in order to show filing of the fresh suit i.e. filing fresh plaint before this Court by the plaintiff (without submitting the plaint returned by Bhavnagar Court along with the order of the Bhavnagar Court) was a deliberate, intentional and mala fide act on the part of the plaintiffs because the plaintiffs wanted to obtain an ex parte order by not joining M/s Jai Bharat Steel Company as a defendant.

23. As against this, submissions of Ms. Sethna that because the plaint was required to be filed in the High Court, some changes were required to be made in the plaint and therefore the plaint returned by the Bhavnagar Court could not be presented before this Court, is not at all acceptable. The provisions of C.P.C. i.e. Order VII, Rule 10, 10-A and 13 are absolutely clear. No choice is given to the plaintiff when the plaint is returned under Order VII, Rule 10 or 10-A but to file the returned plaint before the proper Court. Needless to say that if such a returned plaint is to be filed before proper Court, the plaintiff will also have to file the order of that Court which returned the plaint and considering this legal aspect, the submissions of Ms. Sethna and explanation given by her cannot at all be accepted. It is prima facie clear that filing of the fresh plaint and not filing of the returned plaint and not filing the copy of the Bhavnagar Court order was done by the plaintiffs with a mala fide intention of getting orders behind the back of the defendant No. 4 and by keeping the defendant No. 4 in dark about the filing of the suit.

24. It is pertinent to note that in the plaint of the present suit, the plaintiffs has in para 8 given facts about filing of the suit before the Bhavnagar Court but nothing has been stated regarding the order dated 12-10-1998 of the Bhavnagar Court about returning of the plaint for presentation to proper Court. What the plaintiffs have stated that the ex parte ad interim order was vacated on an

application of the defendant No. 1 strictly on the grounds of jurisdiction i.e. the Court at Bhavnagar do not possess admiralty jurisdiction so as to detain the defendant No. 1 vessel. This cannot be considered as a true statement of fact by the plaintiffs because Bhavnagar Court not only vacated the injunction but before doing that it ordered the return of the plaint for presentation before the proper Court or before the Court having jurisdiction.

25. From the point so far considered it can therefore be said that the plaintiffs are guilty of suppression of material and vital facts in not disclosing in the plaint about the order of the Bhavnagar Court about return of the plaint. The plaintiffs are also guilty of not resorting to provisions of Rule 10-A of C.P.C. under Order VII. The plaintiffs are also guilty of suppressing from this Court the order of the Bhavnagar Court about return of the plaint (at the time when the present suit was filed and ad-interim order was obtained). The plaintiffs are also further guilty of deliberately avoiding to join defendant No, 4 in the suit when the ad interim order was obtained against the vessel defendant No 1. Further, the plaintiffs are guilty of deliberately avoiding to give undertaking as is required under Rule 941 of the Original Side High Court Rules from procuring the Judge's order from this Court and therefore on these ground, the order of arrest of the vessel is liable to be vacated and quashed. The plaintiffs are also guilty of suppression of material facts regarding proceedings at the Court of First Instance in Piraeus, Greek, as referred in earlier part of the judgment.

26. No other submissions made by the plaintiffs or the defendants are required to be considered. However, since, I have taken note of those submissions, it will be better to deal with those submissions made by Mr. Pratap and Ms. Sethna respectively.

27. It was further contended by Mr. Pratap that as per para 11 of the plaint the suit was filed by the plaintiffs for "limited purpose of securing the claim in the aforesaid Greek proceedings, and the decretal reliefs as prayed for are in order to enable the security granted by this Court to the plaintiffs to respond to any judgment/decreed made and pronounced in the said Greek proceedings. It is therefore respectfully prayed that filing of the present suit being for security alone, should ought not to constitute submission deemed or otherwise, to the jurisdiction of this Court for determination on merits of claim-matters herein.

28. Mr. Pratap took strong objection to the manner in which, and the purpose for which the suit was filed and he contended no suit could be filed for the purpose of obtaining security without surrendering to the jurisdiction of this Court. In my opinion, this question is required to be left untouched for determination at the time of the trial, wherein the plaintiffs will have to satisfy that he can merely file a suit for the purpose of security or for securing same claim which is pending before Greek Court and that he can do so without submitting to the jurisdiction of this Court.

29. As against all the submissions of Mr. Pratap, it was contended by Ms. Sethna

that defendant Nos. 1 and 4 are also guilty of suppression of facts regarding filing of the two suits in the Bhavnagar Court against the defendant Nos. 2 and 3. In my opinion, filing of those suits by the defendant Nos. 1 and 4 against the defendant Nos. 2 and 3 is of no consequence, because they are event subsequent to the obtaining of order for arrest of the vessel by the plaintiffs in the present suit, nor the filing of those suits affects the right of the defendant Nos. 1 and 4 to contest the present suit and apply for vacating the impugned order of arrest of the vessel.

30. Lastly, so far as the claim of the defendant Nos. 1 and 4 as purchaser of the defendant vessel is concerned, defendant No. 4 has even when the matter was pending before the Bhavnagar Court brought it to the notice of the said Court as referred to in para 13 of the said judgment that Mountain Shipping Ltd. of Gibraltar has sold the vessel to M/s jai Bharat Steel Company- defendant No. 4 for demolition purposes and the vessel has arrived in Alang, Bhavnagar, on or about 23-9-1998 and the delivery was accepted latest on 4-10-1998.

31. As against this, it is pertinent to note that even though the Bhavnagar Court passed an order for return of the plaint on 12-10-1998 and even though the plaintiffs had learnt by that time that M/s Jai Bharat Steel Company has purchased the defendant No. 1 vessel for demolition and the vessel has arrived in Alang, Bhavnagar the plaintiffs not only did not present the plaint to this Court immediately but filed a fresh suit in the form of the present suit only on 6-11-1998. This delay of three weeks i.e. more than 25 days on the part of the plaintiffs in filing the present suit after the Bhavnagar Court's order dated 12-10-1998 makes serious inroad in the bona fide claim and contention of the plaintiffs. To the contrary the note taken by the Bhavnagar Court of the right of the defendant No. 4 in the vessel m.v. "Irene P" at the time of its order coupled with the documents of physical delivery certificate, the bill of sale, free encumbrance certificate and other documents and order of the arrest of the vessel of defendant No. 4 even though the defendant No. 4 was not a party, prima facie support the case of the defendants about their having become the owner of the vessel m.v. "Irene P".

32. Since the factual aspects raised by both the parties are themselves sufficient to decide the fate of the notice of motion, and since I have repeatedly hold that the plaintiffs are guilty of suppression of facts on many counts, the precedents cited by both the advocates are not required to be gone into.

33. For all these reasons, the notice of motion is required to be allowed by granting prayer (a). So far as prayer (b) is concerned, it is for the direction to the plaintiffs to furnish bank guarantee to compensate the damages caused to the defendant No. 4. Admittedly, the plaintiffs are guilty of suppression of many counts and of material facts and are also guilty of not furnishing undertaking and obtaining Judge's order without furnishing undertaking or without making a mention thereof in the Judge's order as a result of which obtaining the arrest order and subsequent order restraining the defendants from demolishing the

vessel, the plaintiffs have prima facie caused huge loss to the defendant Nos. 1 and 4 therefore, prayer (b) is required to be allowed and in my opinion ordering the plaintiffs to furnish bank guarantee of US Dollars 75,000 would be appropriate in the circumstances of the case. Hence, I pass the following order :

ORDER

34. Prayer (a) of the Notice of Motion allowed and made absolute.

35. So far as prayer (b) of the Notice of Motion is concerned, the plaintiff is directed to furnish bank guarantee of a Nationalised Bank in favour of the Prothonotary & Senior Master, High Court, Bombay, in the sum of 75,000 US Dollars as a security in respect of damages towards compensation to defendant Nos. 1 and 4 within four weeks from today. The bank guarantee to be kept alive by the plaintiff till the suit is disposed of.

36. After this order was pronounced, the learned Counsel for the plaintiff prayed for staying operation of this order. Considering the issues involved, the operation of this order i.e. in terms of prayer Clause (a) of the notice of motion is stayed on plaintiffs furnishing security as per prayer Clause (b) of the notice of motion within two weeks from today. It is clarified that within two weeks the defendant Nos. 1 and 4 will not take any action.

37. Notice of Motion disposed of.

38. Sheriff to act upon ordinary copy of this order duly authenticated by the Court Associate.

39. Certified copy expedited.