

SUPREME COURT OF INDIA

Bank of Sharjah

Vs.

Joplin Overseas Investment Pvt.Ltd.
(J.Chelameswar and R.K.Agrawal JJ.)

25.02.2015

JUDGMENT

CHELAMESWAR, J.

1. Permission to file T.P.(C) D. No. 2295/2015 is granted.
2. M.V. Meem, a vessel (hereinafter referred to as 'vessel') plying the flag of Panama is into lot of litigation in this country.
3. Three Admiralty Suits bearing Nos. 93, 94 and 1086/2013 came to be filed in the Bombay High Court and one Suit bearing No.18/2013 was filed in the Gujarat High Court by different plaintiffs on 14.8.2013, 7.8.2013, 5.12.2013 and 28.8.2013 respectively. In the Suits bearing Nos.93, 94 and 18/13, orders of arrest of the vessel were passed.
4. Respondent No.1, Joplin Overseas Investments Pvt. Ltd., hereinafter referred to as 'Joplin' for the sake of convenience, a Company registered under the Laws of British Virgin Islands having its office at British Virgin Islands filed two applications in Admiralty Suit No. 94 of 2013, one seeking to intervene in the suit, and the second seeking the vacation of the order of arrest granted earlier. The said applications were supported by two affidavits dated 19.8.2013. The said applications were filed by Joplin with assertions that it is "the lawful owner of the M.V. MEEM" and that the applicant "vide Memorandum of Agreement dated 27.2.2013 purchased M.V. MEEM from her then owners- Marakeb S.A., Panama of Panama".
5. It appears that the claims of the plaintiffs in the three Suits Nos. 93, 94 and 1086 of 2013 filed before the Bombay High Court came to be settled and, therefore, an application was filed for the release of the vessel on 25.2.2014. Joplin represented before the Bombay High Court that it would be filing a separate suit seeking arrest of the vessel and sought time till 3.3.2014 for filing such a suit and prayed the High Court not to release the vessel from arrest till then. The Bombay High Court

allowed the withdrawal of the Admiralty Suits pending before it and continued the arrest of the vessel till 3.3.2014 in terms of the prayer of Joplin.

6. Subsequently, the applications of Joplin came to be dismissed by an order of the Bombay High Court dated 20.12.2013. The relevant portion of the order reads as follows:-

"The learned Advocate appearing for the Intervenor-Joplin Overseas Investment Ltd., informs the Court that he does not want to represent the Intervenor-Joplin Overseas Investment Ltd., in the matter and seeks discharge. He has also informed the Court that though he has conveyed the order of this Court to the Deponent of the Affidavit Shri Sharma requiring him to remain present in Court, he has informed the Court that he cannot attend the Court due to his prior commitments.

After hearing the learned senior Advocate for the Caveator and the plaintiff in Admiralty Suit(L) No. 1086 of 2013, I am satisfied that the applicant has filed the present application on the basis of fabricated documents and has approached the Court with unclean hands. In view thereof, Mr. Ashwin Shankar, Advocate is allowed to take discharge in the matter. The Chamber Summons (L) No. 935 of 2013 and the Notice of Motion(L) No. 1642 of 2013 stand dismissed."

[emphasis supplied] An appeal no. 411 of 2014 was filed by Joplin praying that the observations made in the order dated 20.12.2013 be expunged.

7. Another Admiralty Suit No. 9 of 2014 came to be filed by Joplin on 3.3.2014 before the Gujarat High Court. However, no order of arrest of the vessel is passed till date in the said suit.

8. On 11.4.2014, another Admiralty Suit No. 13 of 2014 came to be filed before the Gujarat High Court for recovery of a certain amount by one Compass Shipping Agency. On 5.8.2014, the Bank of Sharjah filed Admiralty Suit No. 747 of 2014 in the Bombay High Court claiming to be mortgagee of the vessel in question. In the said suit, the Bank of Sharjah filed an application for the sale of the vessel. The said application was allowed by High Court on 9.9.2014. By an order dated 7.10.2014, High Court fixed the sale of the vessel by auction to take place on 30.10.2014.

9. On 28.10.2014, Compass Shipping Agency, plaintiff in Admiralty Suit No. 13 of 2014 on the file of High Court of Gujarat filed an Application (Notice of Motion(L) No. 2433 of 2014) before the Bombay High Court seeking stay of the sale of vessel on the ground that its Suit (Admiralty Suit No. 13 of 2014) was prior

in time to the Admiralty suit No. 747 of 2014. In view of the said application, the sale of the vessel was deferred.

10. Bank of Sharjah (plaintiff in Suit No. 747 of 2014) filed an application No.622/14 in the suit of Compass Shipping Agency (Admiralty Suit No. 13 of 2014) seeking to intervene therein to settle the claim of Compass Shipping Agency to secure the release of the vessel[1].

11. Number of other applications came to be filed by various parties in the above-mentioned suits, the details of which may not be necessary for the purpose of present litigation.

12. It is, in the background of the above-mentioned litigation, these four matters came to be filed in this Court.

(i) Transfer Petition(Civil) No. 1880 of 2014 is filed by the Bank of Sharjah seeking the transfer of Admiralty Suit No. 9 of 2014 on the file of the Gujarat High Court to the Bombay High Court.

(ii) Transfer Petition(C) D No. 2295 of 2015 is filed by Joplin seeking transfer of Admiralty Suit No. 747 of 2014 from Bombay High Court to Gujarat High Court.

(iii) Two SLP(C) Nos. 36706 of 2014 and 991 of 2015 are filed by the owner of the vessel.

13. The two special leave petitions mentioned above are filed aggrieved by a common order dated 12.12.2014 of the Gujarat High Court passed in Original Jurisdiction Appeals No.73, 74 and 75 of 2014. Those appeals arose out of the Admiralty Suit Nos. 13 of 2014 and 18 of 2013. Two applications were filed by the defendants in the said suits praying that, the said suits be disposed of in terms of a settlement arrived at between the parties pursuant to the settlement of the claims of the respective plaintiffs of the said suit. By an order dated 9.12.2014, a learned Single Judge of the Gujarat High Court declined the prayer on the ground that Admiralty Suit Nos. 13 of 2014 and 18 of 2013 are inter-linked with Admiralty Suit No. 9 of 2014 (Joplin's suit) and in view of the pendency of Transfer Petition(C) No. 1880 of 2014 and an interim order of this Court dated 8.12.2014 staying all further proceedings in the Admiralty Suit No. 9 of 2014, the other two Admiralty Suit Nos. 13 of 2014 and 18 of 2013 could not be disposed of. The operative portion of the two orders is as follows:-

"All the three suits including the present suit are interlinked and interconnected with Admiralty Suit No. 09 of 2014.

In view of the order passed by the Hon'ble Supreme Court in the Transfer Petition as above and the matters being interconnected, and when the Hon'ble Supreme Court is seized with the case, propriety requires that in the facts and circumstances of the case, no orders are passed."

"The present Admiralty Suit No. 18 of 2013 is interlinked and interconnected with Admiralty Suit No. 09 of 2014 and both are ordered to be heard together. The claim of the respective plaintiffs are against the same vessel-M.V. Meem. As noted above, suit along with other connected matters being listed together, order dated 03rd March, 2014 mentioned above passed in Admiralty Suit No. 09 of 2014 had a reference to order passed in the present suit.

In view of the order passed by the Hon'ble Supreme Court in the transfer petition as above and the matters being interconnected, and when the Hon'ble Supreme Court is seized with the case, propriety requires that in the facts and circumstances of the case, no further orders are passed."

14. Aggrieved by the said orders, appeals were preferred by the Bank of Sharjah which came to be disposed of by an order dated 12.12.2014 without granting any relief to the appellants therein. The operative portion of the order reads as follows:-

"Under the circumstances, no case is made out for interference to the impugned order passed by the learned Single Judge. However, it is observed that the present order shall not prevent any party to move for clarification in Transfer Petition (Civil) No. 38523/14, which is pending before the Apex Court."

15. Hence the two special leave petitions.

16. IA No. 3 of 2015 is filed by the Bank of Sharjah with the prayer as follows:-

"The Applicant/petitioner most respectfully prays that this Hon'ble Court may be pleased to:

(a) pass an appropriate order directing the sale of the Respondent No. 2 vessel i.e. M.V. Meem by auction/other means on such terms and conditions as this Hon'ble Court may deem fit; and

(b) pass such other and/or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

17. It is averred in the IA that the said IA is necessitated in view of the developments that took place during the pendency of the four matters before this Court. The development being that the vessel collided with another vessel, namely Oriental Explorer on 2.2.2015 at around 2.00 p.m. resulting in extensive damage

being caused to the hulls and navigation equipments, engine and generator, etc. and the members of the crew of the vessel have evacuated the vessel.

18. It is argued by Mr. Arvind Datar and Mr. C.A. Sundaram, learned senior counsel appearing for the Bank of Sharjah and for the vessel respectively that it is common prayer in all the pending suits in the two High Courts mentioned above that the vessel be sold and the claim of each of the plaintiffs be settled. Therefore, in view of the precarious condition of the vessel, none of the plaintiffs including Joplin can object to the sale of the vessel. Secondly, the learned senior counsel submitted that in view of the fact that an order of sale of the vessel is already passed by the Bombay High Court and having regard to the fact that the Bombay High Court has better infrastructure for conducting the sale in view of the long history of the admiralty jurisdiction of the Bombay High Court, it is in the fitness of things and in the interest of all the parties that the sale of the vessel be conducted by the Bombay High Court pursuant to its Order dated 9.9.2014.

19. On the other hand, Mr. Kapil Sibal, learned senior counsel appearing for Joplin submitted that the suit of the petitioner is much later than the suit of Joplin and the claim of the petitioner bank as the mortgagee of the ship is registered with the authorities of Panama only subsequent to the filing of the suit of Joplin in the Gujarat High Court, and therefore, the sale of the vessel cannot be ordered without adjudicating the respective claims of all the concerned parties.

20. We do not propose to go into the merits of the respective claims of various parties nor the hierarchical superiority of the claims of these various parties as the admiralty suits are still pending.

21. In the background of the above-mentioned litigation, one thing is clear that all the suits must be heard together by one High Court. The question is - which High Court is required to hear the matter. Though in the normal course, the Gujarat High Court should have been the appropriate High Court to hear all the suits in view of the fact that the vessel has always been positioned in the territorial waters of India abutting the State of Gujarat and within the area of a Port over which the Gujarat High Court has territorial jurisdiction. But there were various orders of arrest passed by the Bombay High Court prior to the filing of Admiralty Suit No.9 of 2014 by Joplin in the Gujarat High Court and in view of the fact that Joplin filed a caveat before the Bombay High Court and took advantage of the orders of arrest passed by the Bombay High Court without raising any objection to the jurisdiction of the Bombay High Court, and in view of the fact that the conduct of Joplin before the Bombay High Court is found to be less than wholesome, we deem it

appropriate to transfer all the Admiralty Suits pending in the Gujarat High Court with regard to the vessel in question to the Bombay High Court.

22. We also deem it appropriate to request the Bombay High Court to dispose of the suits within four weeks from the date of the receipt of the records from the Gujarat High Court. We also deem it appropriate to direct the Registry of the Gujarat High Court to transfer the records of the above-mentioned Admiralty Suits within 10 days from the receipt of this order.

23. The only other question which is required to be examined by us is whether the sale of the vessel is required to proceed during the pendency of the suits. The learned senior counsel appearing for Joplin argued that effecting the sale even prior to the adjudication of the respective rights of petitioner bank and Joplin would adversely affect the rights of Joplin.

24. Even according to the pleadings and material available on record, Joplin appears to be only a holder of the agreement for purchase of the vessel in question, though admittedly Joplin paid part of the consideration of sale. But there is a dispute as to the exact amount paid by Joplin towards the sale consideration of the vessel.

25. We do not propose to examine the hierarchy of the claims of the petitioner and Joplin as the same is required to be done by the High Court in the Admiralty Suits pending. But, having regard to the precarious condition of the vessel, though such assertion is being disputed by Joplin, the assertion of the petitioner bank appears to be having some basis in view of the contents of the letter dated 2.2.2015[2] of the Gujarat Maritime Board, we deem it appropriate to direct the sale of the vessel by the Bombay High Court pursuant to the order dated 9.9.2014. The proceeds of such sale shall be held by the Bombay High Court and the same be disbursed in accordance with law after the adjudication of all the suits pursuant to this order.

26. In view of the above, both the transfer petitions and the two special leave petitions stand disposed of.

[1] 2. Bank of Sharjah which has mortgaged over Defendant Vessel has shown willingness to put security of the Suit Claim and also deposited Demand Draft of Rs.52,10,000/- with the Registry.

3. Marakeb, SA, Panama, Owner of Opponent No. 2 Vessel has no objection if the Security tendered by the Bank of Sharjah as mortgagee is accepted and paid over to the Opponent No.1/Original Plaintiff in full and final settlement of the Plaintiff's claim against the Vessel and her owner Vessel/her.

4. Hence appropriate orders for release of Opponent No.2 Vessel forthwith and disposal of the Suit are required to be passed. [2] "The subject vessel is currently lying at Lat 21 43 N Lon 072 20.6 E position which is just 1 cable away from shallow patch. You are instructed to immediately shift the vessel to avoid any untoward incidents/grounding of vessel. Also clarify the action taken by master of MY MEEM when MV ORIENTAL Explorer came in contact with her on 02/02/15 at around 0206 Hrs."