ORDER SHEET

IA NO. GA-COM 1 of 2024
AS-COM 6 of 2024

IN THE HIGH COURT AT CALCUTTA
Admiralty Jurisdiction
ORIGINAL SIDE
(Commercial Division)

PATANJALI FOODS LIMITED
VS
THE OWNERS AND PARTIES INTERESTED IN THE VESSEL
MT PHILIPPA GLADYS (IMO No. 9500352)

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date : 20th September, 2024.

Appearance:
Mr. Swatarup Banerjee, Adv.
Mr. Rohit Mukherji, Adv.
Mr. Satyaki Mitra, Adv.
Ms. Swastika Sengupta, Adv.
...for the plaintiff

The Court: In view of the extreme urgency pleaded in paragraph 48 of the plaint to the effect that the vessel in question might sail away, thereby rendering the remedy of the suit infructuous, leave is granted to move the matter without exhausting the pre-litigation mediation process contemplated in Section 12A of the Commercial Courts Act, 2015.

It is made clear that the above leave is granted by way of abundant caution, despite such provision being strictly not applicable to admiralty suits.

The plaint is presented and the court fees have been fully paid.

Accordingly, the plaint is admitted, subject to scrutiny by the Department.

The plaintiff stakes a claim to the cargo of Crude Palm Oil lying on board the vessel MT Philippa Gladys (IMO No. – 9500352). .

On a perusal of the materials annexed to the plaint as well as the affidavit of arrest, this Court is prima facie satisfied that there was a sales contract between the plaintiff and one ECO COMMODITY PTE LIMITED in respect of 11,500.00MT of Crude Palm Oil. Pursuant to the agreement, the plaintiff duly made payments, which is borne out by the debit advice for payment dated July 19, 2024 annexed at page 93 of the plaint.

It is further seen from the document annexed at page 65 of the plaint that the cargo was loaded on the vessel abovenamed.

In terms of the contract between the plaintiff and the said ECO COMMODITY PTE LIMITED, title to the commodity shall not pass until the seller had received payment in full for the commodity in accordance with the contract, which necessarily implies that such title shall pass once the payment is made as in the present case. The “Title and Risk” clause of the agreement further provides that risk in the commodity shall pass from the seller to buyer as the commodity passes the vessel’s rail at the load port.

Learned Counsel for the plaintiff places reliance on Section 1 of the Indian Bill and Lading Act, 1856 which provides that every consignee of goods named in the bill of lading and further every endorsee of bill of lading to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement shall have transferred to and vested in him all rights of suit and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with itself.

The plaintiff has, thus, made out a strong prima facie case for grant of interim reliefs in respect of the goods of above named vessel. The present dispute falls within the ambit of “maritime claim” as defined in Section 4(1)(f) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017.

In such view of the matter, unless an urgent interim order is passed, the remedies sought in the suit may very well be rendered infructuous.

Accordingly, there shall be an immediate arrest of the vessel of MT Philippa Gladys (IMO No. – 9500352).

Further, Mr. Anubhav Sinha, a member of the Bar Library Club, is appointed as Special Officer to appoint a competent Surveyor to undertake full assessment of the condition of the cargo on board the vessel MT Philippa Gladys (IMO No. – 9500352) and to submit a report in that regard before this Court on September 23, 2024 at 10.30am, when the matter shall next be listed for hearing.

A remuneration of 3000 GMs shall be paid by the plaintiff to the Special Officer by September 23, 2024. Moreover, the cost of appointment of the Surveyor and ancillary expenses shall also be borne by the plaintiff. It is further clarified that the entire exercise of the survey as directed above shall be held on board the above named vessel.

In the event the defendant deposits the claim amount of INR 45,83,79,617.94p with the Registrar, Original Side of this Court in the meantime, the above order of arrest shall automatically stand vacated and the vessel shall be at liberty to leave the Haldia dock.

The plaintiff shall provide an undertaking in terms of Section 11(1) of the 2017 Act before the Registrar, Original Side of this Court by September 23, 2024. This order shall operate unconditionally till September 23, 2024, subject to the above undertaking being furnished. In default of filing such undertaking, this order shall stand vacated automatically on expiry of September 23, 2024.

All authorities including the Coast Guard authorities, CISF authorities, Marine Police, Haldia Dock Complex System of Syama Prasad Mookherjee Port and customs authorities shall act in terms of the above order.

The Marshall shall forthwith communicate this order to the concerned port authorities at the Haldia Dock Complex of Syama Prasad Mookerji Port, Kolkata, the customs authorities, the administration of Purba Medinipur, the Coast Guard Authorities, the Central Industrial Security Force (in short, "CISF") and the Marine Police if any, by fax message or electronic mail or by any other electronic mode of communication.

Upon payment of necessary charges by the plaintiff, the Marshall shall also serve a copy of the arrest order including a copy of the affidavit of arrest on the Master of the abovenamed vessel. The Marshall's communication shall be affixed on the mast of the vessel.

Liberty is also granted to the learned advocate-on-record for the plaintiff to make such communication.

(SABYASACHI BHATTACHARYYA, J.)

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