OCD-1

IN THE HIGH COURT AT CALCUTTA
Admiralty Jurisdiction
ORIGINAL SIDE
(COMMERCIAL DIVISION)

AS-COM/6/2024
IA NO: GA-COM/1/2024

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 : 30th September, 2024.

Appearance:
Mr. Swatarup Banerjee, Adv.
..for the plaintiff.

Mr. K.R. Thaker, Adv.
Mr. Souvik Kundu, Adv.
…for the defendant.

The Court: The matter arises in connection with an Admiralty Suit. By an order dated September 20, 2024, immediate arrest of the Vessel MT Philippa Gladys (IMO No.9500352) was directed and a Special Officer was appointed to conduct a survey through a competent surveyor for undertaking full assessment of the condition of the cargo on board the said vessel.

Thereafter the matter has come up for consideration as to whether the interim order of arrest should be extended.

Learned counsel for the defendant/owners of the vessel opposes the prayer for extension. It is argued that there is no pleading in the plaint or the affidavit of arrest to the effect that the owners are in breach of their obligation in relation to seaworthiness of the Vessel. In Clause 7(i) of the Special Conditions of the Sale Contract, the plaintiff has expressly waived its right to impose any liability on the carrier save where the claim relates to damage to the cargo which is proven to have been caused by a breach of the carrier's obligation in relation to the seaworthiness. Although the carrier is not a party to the Sales Contract, the clause was included for the carrier's benefit and protection and flows from the Charter Party pursuant to which the owners carried the subject-cargo at the instance of the sailor/shipper. The plaintiff is bound by the undertaking and waiver of right and the owners are entitled to invoke the same.

It is argued that delay in delivery of cargo can occur due to a multitude of reasons, in the present case illness of crew and subsequent detention of the vessel in Indonesia as the vessel strayed into contiguous Indonesian waters after sailing from Port Klang in Malaysia because of inexperience of the Master and the Chief Officer. However, there is no allegation as to unseaworthiness of the vessel, in the absence of which the plaintiff is not entitled to maintain any claim for purported damage to goods simpliciter by reason of purported delay in delivery.

The plaintiff relies on a "Port Clearance" certificate issued under Article 219(1) of the Shipping Act No. 17, 2008 of Indonesia, which is described as Shipping Approval Letter in the said Act. The certificate is only issued if the vessel is seaworthy, safe and manned by competent crew and does not establish the cause of detention; on the contrary, it shows that the vessel was in seaworthy condition.

Secondly, it is argued that the claim on account of loss of interest on the sum paid to the shipper is predicated on the premise that delivery in seven days was a condition of the contract of carriage. However, there is no such term in the Bills of Lading, which evidence the contract of carriage between the parties. The sum paid to the shipper is for the cost of goods and freight. There is no delivery date stipulated in the Sales Contract. The only period stipulated is of shipment, which is June, 2024, which was subsequently amended to June 1, 2024 – July 15, 2024. It is argued that the claim is invalid and untenable as the purported date of delivery cannot be the starting point for calculating interest as admittedly the goods are raw materials which required refining before sale. There is no pleading of the time required for refining which must be excluded from the alleged period of delay in the delivery. There is no certainty and/or pleading as to when the end product would be sold.

The sum paid for purchase, it is argued, would only been recovered on the sale of the end product, and therefore, there is no specific starting date nor any specific end date without which there cannot be any claim for interest.

It is argued that the claim is remote and for indirect loss or damage not arising naturally in the usual course of things from any alleged breach on the part of the owners, nor did the parties know that such claim would arise by reason of alleged delay in delivery.

Learned counsel places reliance on an order dated March 20, 2017 made by a co-ordinate Bench of this Court in *AS 1 of 2017 [Gokul Refoils & Solvent Ltd. vs MT Balim]*.

There is no contractual or statutory provision for payment of interest on any sum by reason of alleged delay in delivery. No notice of interest under the Interest Act was given.

Learned counsel appearing for the defendant next argues that the claim on account of estimated loss in value and utility of cargo is not supported by appropriate pleadings. The pleadings disclose only an apprehension that the goods might have been damaged due to the purported prolonged storage in the vessel's holds without any proof of actual damage. Apart from a self-serving write-up prepared by the plaintiff, there is no independent technical report or empirical data from any recognized palm oil organization.

The allegation that storage beyond the purported voyage/delivery period of seven days has caused damage is a bogey because part of the goods was stored in the vessel from June 14, 2024 and loading was finally completed on July 12, 2024, that is, almost a month thereafter. As pre-shipment storage of one month was acceptable to the plaintiff, it is for the plaintiff to plead and proof why and how cargo quality will deteriorate in two months due to delay in delivery.

The owners' letter dated August 22, 2024 does not raise any claim even after a purported delay of forty days. The plaintiff only sought confirmation that the cargo is in fit condition and temperatures are being maintained on the vessel so that the quality of cargo remains intact. No subsequent event thereafter has been alleged to make out the case of deterioration of the quality of cargo.

In the absence of any independent evidence, at the ad interim stage, the letter should be treated as an admission by the plaintiff that the cargo quality did not deteriorate even on prolonged storage if temperature was maintained on board the vessel.

There is no evidence furnished to show that temperature was not maintained on board the vessel or that the tanks were unfit for storage and the entire claim is based on surmise of deficiency in the above. The surveyor tested the heating coils, tanks, pumps and pipelines at the time of loading and found those fit.

The plaintiff never claimed in any of its e-mails that cargo quality was deteriorating due to prolonged storage.

All that the plaintiff sought was temperature logs which the seller forwarded till August 2024. The plaintiff did not raise any claim on the seller due to delay in delivery, although the shipment was the obligation of the seller as price was inclusive of freight and the vessel was arranged by the seller.

Just because the owners knew that temperature was required to be maintained in the holds, it cannot be said that they had special knowledge that the quality of goods would deteriorate if not delivered within a reasonable time. The test of special knowledge and directness, as opposed to remoteness and indirectness, of loss or damage as stipulated in Section 73 of the Contract Act is not satisfied. The plaintiff must prove its reasonably arguable best case by satisfying the ingredients of Section 73 which, according to the defendant, has not been done in the present case. The plaintiff cannot rely on presumption or adverse inference to be drawn on purported withholding of temperature logs at this stage to make out a *prima facie* case. Learned counsel cites *Shree LTC Agro Sales Ltd vs. Mediterranean Shipping Co.*, reported at *2013 SCC OnLine Bom 852*, which was an identical case of damages against carrier for perishable edible cargo of bananas.

There is no evidence, it is contended, by the defendant on quantum of damages which has been claimed at 25 per cent of the purchase price. Even in the self-serving write-up issued by the plaintiff, only financial impact of late delivery has been mentioned without quantification of 25 per cent. Increase in refining cost as alleged by the plaintiff could easily have been quantified as the plaintiff carries out refining at its own plant, by giving the basic cost of refining and the additional cost to be incurred, which are fixed costs and do not depend or vary with the price of the raw material.

Reliance is placed on *Hindustan Aegis LPG Ltd. vs. MT TSM Pollux*, reported at *2023 SCC OnLine Cal 4178* with regard to the proposition that the entire claim for security on account of reduction in quantity of refined oil is based on surmise and conjecture. In an SLP preferred by the plaintiff from the said judgment, the quantum of security was enhanced by the Supreme Court on parties agreeing to refer the disputes to arbitration. Since no leave to appeal was granted, the doctrine of merger does not apply and it cannot be said that the judgment of this Court was set aside or the ratio reversed. Learned counsel also relies on *Shree LTC Agro Sales Ltd (supra)* in such context.

No case of breach has been made out in the present case as the time of delivery was not a condition of the contract.

Learned counsel relies on *Shadiram and Sons Pvt. Ltd. vs. MV Riva Wind*, an unreported judgment on the Bombay High Court dated March 20, 2017, in such context. The allegations regarding the vessel having sailed to Indonesia and then to Port Klang instead of directly sailing to Haldia is not pleaded.

The claim regarding additional customs duty is also controverted by the defendant. It is predicated, according to learned counsel for the defendant, on the premise that the time of delivery was a condition of the contract of carriage whereas no such condition is stipulated in the contract or in law. Also, there is no pleading that increase in import duty was in the contemplation of parties when they entered into the contract of carriage. This claim is also wholly remote and indirect. *Shadiram*'s case is on an identical issue.

There is no proof of quantum of additional duty as well. The plaintiff was required to file a Bill of Entry for home consumption on which the import duty is assessed, which has not been furnished in the present case. No particulars as to the quantum of duty but for the Custom Notification dated September 13, 2024 have been produced.

Lastly, it is argued that an Admiralty Suit is not different from any other suit for unliquidated damages where the plaintiff has to plead and prove its claim by adducing evidence. The process of court cannot be invoked to fish out evidence by appointment of surveyor. In that regard, learned counsel places reliance on *The Owners and Parties Interested in the Vessel M.V. "Baltic Confidence" v. State Trading Corporation of India Ltd.*, reported at *AIR 2000 Cal 91*. As such, it is submitted, the Special Officer should be discharged and the report prepared by him ought not to be taken on record.

Learned counsel for the plaintiff controverts the submissions of the defendant and argues that the vessel owners do not have any right of audience, having not filed Vakalatnama and having not validly entered appearance in the proceedings. However, it is required to be noted here that this point was not specifically urged at the time of hearing and, as such, this Court does not take note of the said argument.

The next argument of the plaintiff is that it is an importer and holder of the original Bills of Lading in respect of the shipped quantity of 11,500 MT Crude Palm Oil and as such, entitled to sue the carrier under Section 1 of the Bills of Lading Act, 1856. The maritime claim relates to loss and damage to the goods belonging to the plaintiff and carried on board the defendant vessel. Thus, the plaintiff has an actionable maritime claim against the vessel and her owners under Sections 4(1)(f) and 4(1)(g) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017.

Under the Bills of Lading, the vessel was committed to travel from Port Klang in Malaysia to the Haldia Port in India directly. Admittedly, the vessel has committed breach of that obligation and has visited unauthorized, unchartered and contractually impermissible locations, giving rise to prolonged and unusual confinement of the plaintiff's goods inside the holds of the vessel which has damaged the cargo. The vessel sailed from Port Klang on July 12, 2024 and was required to call at the Haldia Port for discharge operations within seven to ten days. However, it arrived at Haldia on September 18, 2024, which is an admitted position.

This Court has power to arrest the vessel for securing the plaintiff's maritime claim under Section 5(1) of the Admiralty Act, 2017.

It is argued that if the vessel sails out of the territorial waters of India without security, the suit will be frustrated and the plaintiff will be left without remedy and the jurisdiction of this Court would be lost. Learned counsel places reliance on *Videsh Sanchar Nigam Ltd. vs. MV Kapitan Kud and ors.*, reported at *(1996) 7 SCC 127*, where it was held by the Supreme Court that the test for security in an admiralty action would be whether the plaintiff/claimant has a reasonably best arguable case. The Supreme Court reiterated that the ship is a foreign ship and if it leaves the shores of Indian territorial water, it is difficult to get hold of it since it may not return to the jurisdiction of Indian ports. The claim thereby, even if successful, would remain inexecutable or land in trouble in Private Internal Law in its enforcement.

On the above consideration, the Supreme Court imposed condition of security against release of the vessel.

The prolonged and unusual confinement of the plaintiff's cargo has resulted in loss to the plaintiff. There has been degradation of quality and specification of the cargo, which is borne out by the Technical Assessment Report at pages 111-112 of the plaint.

Secondly, delay in delivery has upset the plaintiff's timeline for production and has created gaps in the chain of manufacturing refined finished products, leading to loss of business revenue and blocking its financial investment made towards the price of goods. As such, the plaintiff has, at this stage, claimed interest on its blocking and idling financial investment made by the payment of price consideration to the foreign seller.

Thirdly, the exact amount of the shortage in quantity can only be measured after completion of discharge of the vessel to shore tanks.

As to increase in customs duty during the period of inordinate and unauthorized delay in delivery of the goods, the same is argued to be an obvious corollary of the Notification relied on by the plaintiff.

All the above have been pleaded in the plaint and the affidavit of assets.

Learned counsel for the plaintiff next argues that once the discharged cargo reveals loss in quantity and degradation in quality and specification of the goods, the plaintiff will not have any remedy if the vessel does not remain arrested or security in lieu of release has been furnished to the satisfaction of this Court. Hence, arrest is the only permissible legal recourse to preserve the actionable right of the petitioner.

Learned counsel appearing for the petitioner next contends that a misleading reference has been made to the decision of this Court in the case of *Hindustan Aegis (supra)*, by suppressing the subsequent order of the Supreme Court passed in appeal preferred from the said order where security of Rs.25 Cr. (increased from Rs.4.79 Cr. as directed by this Court) has been awarded. The said security was directed as an interim measure even on the allegation of absence of pleadings.

Pending final assessment, leave has been granted by this Court under Order II Rule 2 of the Code of Civil Procedure in the instant matter on completion of discharge and on ascertaining quantity short landed as well as the extent of degradation, specification and quality of the cargo; hence, the plaintiff still has opportunity to amend and alter the quantum of its claim. The basis and foundation of its claim stands established, however, as on the date of institution of the suit and is actionable.

The Master of the vessel refused to provide Temperature Logs to the Special Officer appointed by this Court during his visit on September 22, 2024. The vessel owners did not provide temperature logs after August 1, 2024 despite repeated requests by the plaintiff. Thus, the condition of the cargo inside the vessel for 48 days thereafter is not known to the plaintiff. Even the temperature log submitted till August 1, 2024 shows that the heating requirement prescribed during voyage, that is, 45 degrees Celsius was not maintained throughout the journey. The financial consequence of not maintaining the temperature as per prescribed standard and the unchartered deviation in its course justify the claim in the plaint, it is submitted.

The quantity shipped on the vessel has been specifically mentioned, with qualification of 2 per cent more or less in the Sales Contract dated May 31, 2024. It has also been specified that title to the cargo has passed to the plaintiff upon payment of cargo price. Under the heading “Additional Terms and Conditions” in Clause 7 of the Sales Contract, the buyer (plaintiff) had undertaken that should the cargo arrive in damaged condition, the plaintiff would discharge the cargo and obtain security against the vessel without any delay.

Clause 7(i) of the Special Conditions is of no consequence as, nevertheless, under Clause 7(ii), the buyers can assert their claim against the vessel/carrier contrary to Clause 7(i) but with an indemnification in favour of the seller against the consequences thereof. This Clause is superseded by Clause 7 of the Additional Terms and Conditions and also by the breach and deviation of navigational course committed by the vessel/carrier, which was not permissible in the sale agreement.

The weight and quality of the product as declared by an independent surveyor nominated by the seller at Load Port constituted a paramount basis for the agreement and since the seller was not to be responsible for shortage in quantity received at the buyer's storage tank, the only recourse left with the buyer (plaintiff) has to be against the vessel by arrest under the Admiralty Act, 2017.

The Bills of Lading, it is argued, evidence the terms of contract of carriage and obligation of the vessel to deliver the goods at Haldia Port. All the Bills of Lading are "clean shipped onboard"; thus, the vessel has acknowledged that there was no damage to the cargo. Despite a general clause that the vessel would not know or certify the quantity of cargo loaded, each of the Bills of Lading specifically evidences the quantity, HS Code and specification of the cargo as surveyed at Load Port, as has been admitted and recorded by the Master on the Bills of Lading.

The heating requirement of 45 degree Celsius, it is reiterated, has not been maintained on the vessel.

The relevant e-mail messages produced by the plaintiff, it is argued, show that the plaintiff diligently enquired about his cargo, recording the anticipated loss due to delay and damage due to transit, although the vessel or the owner was ominously silent.

The Port Clearance Certificate issued by the Republic of Indonesia on September 7, 2024 discloses that the vessel left Indonesia on September 8, 2024 towards the Port of destination, named as "Port Klang" in Malaysia. This is an aberration to the Voyage Contract and entitles the vessel to be arrested for security and enforcement of maritime claim.

The vessel got entangled with Indonesian authorities because of Master/crew's inexperience, which comprises abject breach and default on the part of the vessel, which is demonstrated by the e-mail of August 7, 2024 issued by the foreign seller upon having received news from the vessel owners. The legal notice issued by the plaintiff to the vessel owners records the *prima facie* case of the plaintiff, to which there is, till date, no rebuttal from the vessel's owners, even on August 22, 2024, when the plaintiff called for status and condition of the cargo.

The plaintiff has paid for the goods to the foreign seller and its money was commercially invested in the goods, being raw material for the plaintiff to manufacture merchant products and realize revenue income. The plaintiff has been deprived of the benefit of this investment and in its e-mail dated August 5, 2024, complained of the gap in the supply chain which has resulted in huge loss. The loss of interest on the investment has been calculated in respect of the goods for 59 days of delay from July 21, 2024 since the vessel had sailed from the last Port of Loading on July 12, 2024.

The second head of claim is for estimated loss in the quantity and valuation of the goods, which has been calculated for 25 per cent value of the goods and the plaintiff has reserved its right to amend the claim subject to final outcome of the laboratory analysis.

The third claim arises from enhancement in rate of import duty during the period of delay. If the cargo had been delivered on stipulated time in accordance with the contract, the plaintiff would not have been forced to pay such enhanced customs duty. The vessel could not have sailed in unchartered location and unauthorized territory indefinitely after sailing out from the last port of loading, exposing the plaintiff to unforeseen risks, for which the plaintiff is entitled to compensation for additional customs duty payable by reason of the vessel's breach by delay.

Learned counsel for petitioner also seeks to distinguish the judgments relied on by the defendant.

Heard learned counsel for the parties. The conclusions of the court are as follows:

The defendant has argued that the plaintiff has waived its rights to impose any liability on the carrier save where the claim relates to damage relating to seaworthiness. To explore the said proposition, Clause 7 of the Sales Contract dated May 31, 2024 is required to be scrutinized.

As per sub-clause (i) of Clause 7 under the Special Conditions, the buyer/plaintiff has undertaken not to make any claim or allegation or bring any proceedings against the owner of the carrying vessel or any other party acting and/or contracting as carriers of the goods specified in the contract which impose upon the carrier any liability whatsoever in connection with the goods, whether in contract or otherwise, except where the claim relates to damage to the cargo proven by the buyers to have been cause by a breach of the carrier's obligation in relation to the seaworthiness.

However, sub-clause (ii) of Clause 7 substantially dilutes the said bar by including an option of such claim or allegation being nevertheless made by the buyers against the carrier, contrary to sub-clause (i). In such a case, sub-clause (ii) provides that the buyers undertake to indemnify the sellers against all consequences thereof, including without limitation any sums paid or payable by the sellers to the carrier pursuant to any finding or settlement of liability between the sellers and the carrier, whether pursuant to the Charter Party or else in contract, bailment, tort or otherwise.

Thus, a conjoint reading of sub-clauses (i) and (ii) of Clause 7 reveals that the focal point of the indemnity is not the owner or carrier but the seller of goods. Sub-clause (ii) permits a claim to be made contrary to the bar in sub-clause (i), only providing that in such case the seller should be indemnified by the buyer. Hence, the restriction of claims for damages to seaworthiness is not so absolute as sought to be made out by the defendant.

Again, as per Section 1 of the Indian Bills of Lading Act, 1856, the property in the goods, along with the right to sue, has passed on the buyer/plaintiff.

The 'Title and Risk' clause in the Sales Contract also endorses such position of law.

In the Additional Terms and Conditions of the Sales Contract, Serial No.1 provides that sellers and owners are not responsible for any loss/shortage of cargoes incurred outside of the vessel's manifold, thus specifically implying that till the cargo is inside the hold of the vessel, the owner cannot deny its liability.

In the Bills of Lading produced by the plaintiff, there is a general clause to the effect that the quantity measurement, weight, gauge etc. are unknown to the Vessel and the Master. However, the self-same Bills of Lading clearly mention the quantity of the cargo.

Again, the Bills of Lading contain a clause near the bottom to the effect that other than the ship owner or demise charterer, no person or legal entity shall be deemed to be liable with respect to the shipment as carrier, bailee or otherwise in contract or any tort.

Thus, by specific implication, the carrier/ship owner has liability with regard to the cargo. The Sales Contract dated May 31, 2024, on the other hand, also contains specifications of the cargo on the very first page. Hence, the defendant cannot feign ignorance of the exact quality and quantity of the cargo in order to avoid liability.

From another perspective, "seaworthiness" is a broad concept, including within its purview all shades of fitness of a vessel to set sail over waters (International waters, in the present case).

It is an admitted position, as *prima facie* evident from the communications between the parties, that due to the fault of the Master and Crew of the vessel and their inexperience, the vessel strayed into unchartered waters.

The seaworthiness of a vessel is not confined to its physical fitness alone but also takes within its fold the efficiency and minimum credentials of its crew to ply it properly, because without its Master and crew, a vessel would merely be a rudderless zombie. Hence, the ineptitude and inexperience of the Master and crew casts liability of negligence on the owner for having manned the vessel with such unworthy people. Misadventures on unchartered waters for around two months, much beyond the normally expected time of delivery of cargo, is inexcusable. Moreover, there were several unplanned stoppages, as borne out by the materials on record.

The vessel also violated maritime law of Indonesia which is evidenced by the Port Clearance certificate issued to the vessel by the Indonesian authorities, where it was not supposed to travel during the carriage-in-question at all. The violation of the law and the inefficiency of the crew including its Master added to the unseaworthiness of the vessel as a whole. A "vessel" is not comprised of the physical chassis alone but also includes within its connotation the pliability and fitness of the vessel, under the guidance of the crew, to travel properly over waters (troubled or untroubled), adhering to Maritime Law as well as the contract with the consignee. In the present case, the admitted lack of experience of the Master and unpreparedness of the crew, the unplanned stoppages and the expedition of the vessel into unchartered waters, which took a seven-day journey to about two months, is itself sufficient indication of the unseaworthiness of the vessel; hence, justifying the claim for damages of the plaintiff.

The Bills of Lading clearly indicate the designated ports where the vessel was to stop in transit, which schedule was squarely violated by it.

The plaintiff has run a case of damages for the delay which is *prima facie* justified by the pleadings and materials before the court. The sale consideration/price was paid by the buyer/plaintiff for the cargo taking into account a period of about seven days of transit. The investment was made by the plaintiff on such calculations. If the cargo was delivered on time, the plaintiff could very well have refined the crude palm oil and sold it in the market much earlier. Such process of manufacture was delayed by about one and a half months, which constituted blockage of the sale-price unnecessarily during the period of delay. Since the said blockage can be directly traced to the unexplained and unchartered delay occasioned by the vessel, it is evident that the plaintiff is entitled to make the first claim, which is *prima facie* maintainable.

The plaintiff, at page 109 of the affidavit of arrest, has disclosed a Satellite map which clearly denotes the average time taken for transport of the cargo from the Port of Klang, Malaysia to the Haldia Dock Complex, thus *prima facie* substantiating its claim of the travel time, being under normal circumstances around seven days. In its letter dated August 22, 2024 to the owners, the plaintiff clearly indicated that the cargo was expected to reach the Haldia Port, that is, the Port of discharge within seven days from the date of setting sail, that is, July 12, 2024.

The said communication refers to several other e-mails and also records that there were unplanned halts and replacement of crew and that the Master and crew of the vessel were detained by the Indonesian authorities due to unauthorized entry into Indonesian waters. It is also recorded in the said communication that the plaintiff was given to understand that the owners would arrive at a settlement with the Customs/Port Authorities within a week and obtain necessary clearances for the release of the vessel. The inexperience of the Master and the crew were also highlighted.

The plaintiff clearly requested to know the exact status of the cargo and confirmation that it is in fit condition and temperatures were being maintained on the vessel so that the quality of the cargo remained intact. There is nothing on record to indicate that any specific reply was given thereto or that the allegations made in the said communication were controverted. All the ingredients of the present claim were mentioned therein, seeking an immediate response which never came. Conspicuously, it was clearly indicated that unless temperatures were maintained on the vessel, the quality of cargo would deteriorate.

Hence, the defendant cannot feign ignorance on account of having knowledge regarding the apprehended deterioration in case temperature was not maintained and also due to the delay beyond the expected seven days.

Thus, there are sufficient ingredients in the materials annexed to the plaint and the affidavit of arrest to justify the claim of estimated loss of value and utility of the cargo. The technical assessment on crude palm oil storage for a longer period done internally by the plaintiff, annexed at pages 107 and 108 of the affidavit of asset, in the absence of anything to the contrary coming on record as yet, has to be taken as sacrosanct, since till date there is no opposition/written statement by the defendant. The said technical assessment *prima facie* substantiates the claims of the plaintiff regarding the refining process costing higher in view of Oxidative Degradation, Hydrolysis and contaminants and sedimentation as a result of delay.

At this juncture, there is nothing to controvert the same and the claim of the plaintiff on such count is justified.

Another aspect of the matter is that the temperature charts were disclosed to the plaintiff only till August 1, 2024. The suppression of subsequent temperature charts is a sufficient premise for drawing adverse inference, even at the *prima facie* stage, in respect of the owners having not complied with the temperature criteria agreed between the parties. Even from the available temperature records, it is seen that the 45-degree Celsius yardstick was not maintained all through. Unless the survey as directed by this Court is completed, it is not possible for the plaintiff to finally quantify the claim, which is quite understandable. However, the rudiments of the cause of action for the claims are sufficiently available in the pleadings and the materials on record.

The letter dated August 22, 2024 issued by the plaintiff does not anywhere waive its claims but rather creates the basis for the same, highlighting the repeated lack of reply from the end of the defendants.

Moving on to the additional customs duty claim, the plaintiff has produced a Notification of the Customs Authorities which goes on to show that the customs duty rates were enhanced after the expected time of delivery of the product (crude palm oil).

The specious plea that the same was not known to the parties at the relevant juncture is untenable. If the products were delivered within the estimated time, as also repeatedly reiterated by the letters of the plaintiff, the plaintiff would never be exposed to the additional customs duties at all. The claim of damages on account of additional customs duties, thus, is directly relatable to the breach on the part of the defendant in occasioning inordinate delay of more than a month in delivering the cargo due to inefficiency of its crew and the adventures of the vessel to unchartered waters beyond the contract. Hence, the arguments of remoteness of the said claim cannot be accepted, at least at the *prima facie* stage.

It is well-settled and has been reiterated time and again, *inter alia* in *MV Kapitan Kud (supra)*, that the test for security in an Admiralty Suit would be whether the plaintiff has the reasonably best arguable case. The expression "reasonably best arguable case" takes the standard of proof at the ad interim stage to a much lower notch than an ordinary test of *prima facie* case as in a regular civil suit/injunction, the rationale being that unlike domestic disputes, if a ship sets sail beyond the territorial waters of the country, Indian courts can no longer assume jurisdiction and the plaintiff would be rendered remediless even if it ultimately succeeds in the suit.

Seen from such perspective, the pleadings in the plaint and the affidavit of arrest and the materials annexed thereto are taken to be sacrosanct for the purpose of consideration at this stage and the reasonably best case which can be made out on the basis of the same by the plaintiff would be considered by the court in granting arrest of a vessel. The plaintiff, as per the above discussions, has fully satisfied the said standard in the present case and is, thus, entitled to continuance of the arrest as directed previously.

Insofar as the judgments cited by the defendant are concerned, the Division Bench of this Court in *Hindustan Aegis LPG Ltd. (supra)* held that there was not an iota of pleading to support the case made out therein. The facts of the case were entirely different, where damages were to be proved with regard to the consequences of the damage caused to one of the twin arms of the Port. As opposed to the same, in the present case, the delay occasioned by the defendant in delivering the product is virtually admitted and there are sufficient materials to indicate the ingredients of the claim for damages.

Insofar as *Shree LTC Agro Sales Ltd (supra)* is concerned, the facts of the said case are also different from the present case. The degradation and damage to cargo in the present case, as apprehended by the plaintiff, are directly relatable to the variation in temperature which is borne out by the available temperature logs as well as can be inferred from the withholding of subsequent temperature logs by the owners after August 1, 2024.

In *Shree LTC Agro Sales Ltd (supra)*, it was only observed that even assuming the test of reasonably best arguable case, the security cannot be excessive in nature. In the present case, however, the security claimed by the plaintiff is not exorbitant or disproportionate with the apprehended damage to the cargo, for which ingredients *in prasaenti* are available on the records.

In *M.V. "Baltic Confidence" (supra)*, a Division Bench of this Court held that the court has no inherent power to appoint the Commissioner to seize documents under Order XXVI Rule 9 of the Code of Civil Procedure. In the present case, no documents have been directed to be seized. Although a Surveyor has been appointed through a Special Officer, the same is merely to provide fuller body to the rudiments of the plaint claim, sufficient basis of which, however, is already disclosed in the plaint. The reports filed by the Surveyors in the reported case were held to be inconsistent which could not justify by itself appointment of a receiver for assessing the damages. In the present case, however, since the shipper loses liability as per contract between the parties after the cargo is unloaded, unless a survey is done while the cargo is on board, the entire suit would be rendered infructuous. Also, in the said report, Surveyors had been appointed, only after which the Court felt that their reports were inconsistent. Here, the matter is only at the inchoate stage of appointment of Surveyors and their report(s) has/have not yet come on record. Thus, the facts of the present case are completely distinguishable from *M.V. "Baltic Confidence" (supra).*

In *Shadiram and Sons Pvt. Ltd. (supra)*, it was held that the plaintiff needs to lead necessary evidence for establishing the claim of loss. However, in the present case, the inordinate delay of more than about one and a half months after the time expected in normal course of events is a distinguishing factor. In the instant case, the nature of the cargo was on special notice to the vessel owners as well. The requirement to maintain the temperature logs at 45 degree Celsius, which was not complied with, was also known to the owners. However, the same was not adhered to by the defendant.

Insofar as the customs duty is concerned, in the present case, although the Notification in lieu of customs duty came subsequent to the contract between the parties, the payability of customs duty itself is common knowledge and was definitely known to the defendant. Even if the Notification of enhancement was not within the knowledge of any of the parties at the time of executing the contract, the same arose due to no fault of the plaintiff, after the expected period of delivery was long over. Thus, the plaintiff has been exposed to additional payment in lieu of customs duty solely due to the delay caused by the defendants, due to no fault of the plaintiff. If the cargo was delivered in time instead of the vessel roaming about in unchartered waters and ports, the extra burden of enhanced customs duty would not be payable by the plaintiff at all. Hence, the connection between the claim of damage and the breach on the part of the defendant is direct and the defendant cannot shirk liability for the same.

In view of the above, this Court of the opinion that the order of arrest of the vessel as passed on September 20, 2024 was fully justified and there is no reason why the said order should be vacated at this stage. Accordingly, the interim order dated September 20, 2024 is extended till the disposal of GA-COM 1 of 2024 on the same terms as stipulated therein.

The defendant shall file its affidavit-in-opposition to the affidavit of asset within November 15, 2024. Reply if any shall be filed by November 22, 2024. The matter shall be listed for hearing on November 29, 2024.

The learned Special Officer shall file his report in a sealed envelope within a week and circulate copies of the same to the parties.

The defendant shall file its written statement within the statutory time-limit.

(SABYASACHI BHATTACHARYYA, J.)

Later

At this juncture, learned counsel for the defendant prays for being permitted to put in the security amount as directed in the order dated September 20, 2024 by way of bank guarantee, alternatively by cash. Such leave is granted. The department is permitted to put in the security by way of bank guarantee or cash without prejudice to the defendant's rights and contentions in the suit or further proceedings in the suit.

Needless to say, upon such bank guarantee being furnished or cash being deposited, an intimation shall be given to that effect by the defendant to the plaintiff as well as to the Marshall and the latter shall act on the same and take necessary steps for release of the vessel.

(SABYASACHI BHATTACHARYYA, J.)