

ORDER SHEET

IA No. G.A.1 of 2023
AS 5 of 2023
IN THE HIGH COURT AT CALCUTTA
ADMIRALTY JURISDICTION
ORIGINAL SIDE
(COMMERCIAL DIVISION)

HINDUSTAN AEGIS LPG LIMITED
VS.
THE OWNERS AND PARTIES INTERESTED IN THE VESSEL MT TSM
POLLUX (IMO NO. 9266889)

BEFORE:
The Hon'ble JUSTICE ARINDAM MUKHERJEE
Date: 15th September, 2023.

Mr. K. Thaker, Ms. Tannya Baranwal, Mr. Prathamesh Kamat, Mr.
Nooruddin Dhillia, Mr. Dharmesh Chauhan, Advocates for the plaintiff.

Re : AS 5 of 2023

The Court : After hearing the plaintiff and considering the averments made in the plaint at the time of the same being presented, the plaint is admitted by dispensing with the formalities required under Section 12A of the Commercial Courts Act, 2015 and granting leave under Order II Rule 2 of the Code of Civil Procedure, 1908 subject to scrutiny by the department. The plaint has been presented and admitted with deficit court fees as urgent interim relief is contemplated by the plaintiff.

Considering the urgency of the matter, Mr. Farooque Ali, Advocate-on-Record of the plaintiff is appointed as Receiver without remuneration to collect the court fees and deposit the same by 22nd September, 2023, failing which the suit shall stand automatically dismissed without any further order and interim order, if any, passed in the aid of the final reliefs in the

suit shall also stand vacated.

Re: GA 1 of 2023

The maritime claim of the plaintiff as pleaded in the plaint and the application arises out of a damage caused to the twin marine loading unloading arms installed at Haldia Oil Jetty No.1 (in short HOJ-1) by the crane of the infringing vessel being MT TSM POLLUX (IMO NO. 9266889) flying with the Liberian flag (herein referred to as the said vessel). The plaintiff says that twin arm installed at HOJ-1 is used to handle fluid cargo at HOJ-1. The twin arm was in operational condition when the said vessel with its crane protruding out was sailing by the side of HOJ-1 hit the twin arm and had completely snapped the same from in between for which the twin arm is no more operational. The incident took place at about 9.15 a.m. on 14th September, 2023. The twin arm has broken into two parts as will be seen from the photograph annexed to the plaint and the application. The entire fluid cargo handling unit of the plaintiff at HOJ-1 has become inoperative since then which has caused not only loss of the cost for acquiring the twin arm, but also the cost for transportation and installation of the same as also loss of income. It is also the case of the plaintiff that at least one year will be consumed to procure the twin arm which is a specialised equipment of definite specification, the manufacturers whereof are limited, installing the same and make the fluid cargo handling unit operative once again.

The loss and damage alleged qualifies as a maritime claim under the provisions of Section 4 (1) (d) of the Admiralty (Jurisdictional and Settlement of Maritime Claims) Act, 2017.

Furthermore the plaintiff apprehends that the port authorities may penalise the plaintiff in case of the fluid cargo handling unit remaining inoperative for no fault of the plaintiff.

The plaintiff has produced a copy of the import purchase order dated 14th November, 2016 wherefrom it appears that to procure the twin marine loading unloading arm the plaintiff had to spend USD 506,161. It also appears from the work order issued by the plaintiff for transportation and installation of the twin arm that the plaintiff had to spend Rs.56,93,102/- on or about 17th July, 2017.

The time period between the placement of the purchase order and the work order for installation shows a difference of about 8 months. Even taking into account a reasonable time period for transportation and installation it prima facie demonstrates that a time period of about one year was consumed for procuring transporting, installing and making the unit operational. The same time is likely to take for replacing the twin arms and to make the cargo handling unit operative.

The submission of the plaintiff regarding the time required to make the damaged handling unit once again operational is, therefore, prima facie substantiated. There is also an estimate of last one year's income generated by the plaintiff from operating the fluid handling unit at HOJ-1 provided in the petition. It appears that on the annual computation of the income generated by operating installation at HOJ-1 and HOJ-2 the plaintiff has earned about Rs.1,66,87,48,914/-. By dividing the same into two, the income which the plaintiff has generated for the last year in HOJ-1 is Rs. 83,43,74,457/-. Going by such figures, the plaintiff at the least will earn

this amount for the next one year for which the plaintiff may not be able to operate fluid cargo handling unit at HOJ-1.

The plaintiff says that the defendant on anticipating a huge maritime claim to be foisted against her for such negligent act is in hot haste trying to take away the vessel outside the jurisdiction of Haldia Port and that of this Court.

The plaintiff says that so far as the plaintiff has been able to ascertain that by today mid night or tomorrow early morning the vessel is to leave Haldia dock. In the event the vessel leaves the Haldia Port and the jurisdiction of this Court, the suit is likely to become infructuous and the plaintiff will not be in a position to realise the huge loss caused to it by the said vessel belonging to the defendant.

The application for arrest has been allowed to be moved ex parte in view of the urgency. The plaintiff seeks arrest of the said vessel.

After hearing the plaintiff and considering the materials on record, I have no reasons to disbelieve at this stage that the twin arm has been damaged due to acts of negligence on the part of the offending vessel.

At this stage it will be a fruitless exercise to go into the aspect of negligence or contributory negligence as the offending vessel if is able to leave the Haldia Port and the jurisdiction of this Court the suit will become infructuous and the plaintiff will not be able to established its claim to realise the same. Moreover, if the defendant is able to show that the damage to the twin arm has not been caused by the said vessel then it will be able to realise compensation for any loss caused to the plaintiff's acts.

The plaintiff has been able to make out a strong prima facie case to

go to trial. The balance of convenience and inconvenience is in favour of the plaintiff and in favour of passing order as prayed for. The said vessel which, according to the plaintiff, is the offending vessel if not arrested shall cause further irreparable loss to the plaintiff. The order of arrest is also necessary to prevent multiplicity of judicial proceedings.

In the aforesaid facts and circumstances, there shall be an order directing arrest of the vessel MT TSM POLLUX (IMO NO. 9266889) along with her tackle, hull, engine, equipment, apparels, furniture and all movable lying on board.

The Marshall of this Court is directed to forthwith arrest the said vessel MT TSM POLLUX (IMO NO. 9266889) along with tackle, hull, engine, equipment, apparels, furniture and all movable lying on board.

The Marshall shall forthwith communicate the order to the concerned port authorities at Haldia and Kolkata, the customs authorities, the administration at Purba Medinipur, the Coast Guard Authorities, 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 vessel MT TSM POLLUX (IMO NO. 9266889). The Marshall's communication shall be affixed on the MAST of the vessel MT TSM POLLUX (IMO NO. 9266889).

This order will continue unconditionally till 27th September, 2023. If, in the meantime, the plaintiff files an undertaking in terms of Section 11 of

the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 to the effect that the plaintiff shall compensate the defendant vessel and or the owners and parties interested therein for any loss or damage which may be suffered by the defendant as a result of the arrest and for which the plaintiff may be found liable, by reason of the arrest having been found to be wrongful or unjustified or excessive security having been demanded by the plaintiff, the order of arrest shall continue until further orders. In the event of the plaintiff's failure to file such undertaking, this order shall stand vacated automatically on expiry of 27th September, 2023.

It is further clarified that in the event the defendant deposits an aggregate amount of USD 506,161 and Rs. 84,00,67,559/- in the suit as security with the Registrar, Original Side of this Court, this order of arrest of the vessel MT TSM POLLUX (IMO NO. 9266889) shall stand automatically vacated.

Although the plaintiff has claimed higher amount but taking an estimate from the pleadings in the plaint the aforesaid amount is being directed to put in for security to have the order of arrest vacated.

The Port Authorities at Haldia and Kolkata, the Purba Medinipur administration, the Coast Guard, the Marine Police, Haldia, Customs Authorities and CISF authorities are directed to render all assistance to the Marshall for entry inside the Haldia Dock and to any other place within the jurisdiction of the Port Authorities for the purpose of implementing this order.

The Marshall and all concerned including the Port Authorities at Haldia and Kolkata, the Purba Medinipur administration, the Marine Police,

Haldia, Customs Authorities, Coast Guard Authorities and CISF authorities shall act in terms of communication of this order to be made by the Marshall to them.

The application for arrest is made returnable on 26th September, 2023 before the appropriate Bench.

It is, however, made clear that in default of the plaintiff in putting in the deficit Court fees with 22nd September, 2023 this order shall stand automatically vacated on the suit being dismissed.

(ARINDAM MUKHERJEE, J.)

sb/pa