

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMMERCIAL ADMIRALTY SUIT (L) NO.11 OF 2020

Monjasa DMCC .. Applicant/Plaintiff
Vs.
MV Karnika (IMO 8521220) .. Defendant

ALONG WITH

TEMPORARY CASE NO. LD-VC-JS-COMAS NO.15 OF 2020
Integr8 Fuels India Pvt. Ltd. ...Plaintiff
V/s
M.V. Karnika & Ors. ...Defendants

Mr. Shyam Kapadia a/w Naishadh Bhatia i/b. M/s. Crawford Bayley & Co.
for the plaintiff.

Ms. S. Priya a/w Mr. Abhimanyu Singh for the defendant.

Mr. Sinha i/b. HP Law for the Caveator.

Mr. Deepak Motiwala for Bombay Port Trust.

CORAM : A. K. MENON, J.

DATED : 2ND JUNE, 2020

(THROUGH VIDEO CONFERENCING)

P.C. :

1. This is an application moved on behalf of the Vessel "M.V. Karnika" in view of the Cyclone which is expected to impact coastal Maharashtra. She is presently currently lying at Y1/Y/2 Anchorage, Port of Mumbai, having been subjected to an order of arrest dated 17th March,

2020. It is submitted by Ms. Priya Learned Counsel on behalf of the applicant vide her application in the form of a praecipe that the vessel is a 14 decked passenger Cruise Ship and has about 63 crew members aboard. As per the meteorological reports assessed by the Indian Meteorological Department (IMD), the Cyclone is fast approaching and the projected trajectory of the cyclone path indicates that it might cover the area of Mumbai region and other ports of Maharashtra while heading north towards Gujarat coast.

2. The IMD report of 1st June, 2020 also indicates the path of cyclone as moving across Maharashtra towards Gujarat. That being the case, the application made today is on the basis that considering the sheer size of the vessel she may be impacted by the cyclonic weather and may be damaged and run aground and probably cause immense damage to other vessels resulting M.V.Karnika also taking in water with disastrous consequences. This application is therefore seeking to permission the vessel go out of Mumbai temporarily to safer waters, probably beyond territorial waters while under arrest and return after the cyclone has passed.
3. Ms. Priya on behalf of the applicant states that the owners will file and undertaking to bring back the vessel into port as aforesaid. Mr. Motiwala on behalf of the Mumbai Port Trust is equally I not more anxious that M.V.Karnika moves to safer waters. He too has filed an application on behalf of the Port Trust. He supports the case made out by Ms. Priya on the basis that the vessel poses a serious threat several others in the port.
4. On a query from the court Mr. Motiwala submits that it is extremely risky to bring the vessel into berth because once alongside, the strong

currents driven by the weather will in all likelihood damage the berth and property of the port and other vessels. He therefore is opposed to any such proposal. Since he is aware of the dimensions of the vessel, I am inclined to accept Mr.Motiwala's submission. I understand that any number of tugs will not be able to control M.V.Karnika at the present location.

5. Mr. Kapadia and Mr. Sinha appearing for the plaintiffs and Caveators also agree to the course of action to move her to safer waters on such conditions the court may impose. Mr.Sinha submits that apart from the plaintiffs, who have claimed that there are several caveators who also seek to secure, along with the two plaintiffs, claims collectively worth about Rs.30 crores inclusive of the suit claims.
6. The learned counsel for the plaintiffs have no objection if the aforesaid vessel is permitted to sail out to safer waters subject to condition as suggested. In view of the consent of the plaintiffs' Advocate and subject to the following conditions, which Ms. Priya on behalf of the owners undertakes to comply with, I am of the view that MV Karnika and her crew and others must not be imperiled and must be permitted to leave for safer waters, as may be suggested by the Port Trust in consultation with the Master of the vessel so as to avoid the path of the cyclone.
7. Ms. Priya on a query from the court confirms on instructions that the vessel is stocked with requisite bunker to make the onward journey and come back to port. Accordingly by consent the temporary relocation is permitted on the following conditions while under arrest ;
 - (i) The Master of the Vessel Capt. Egil Aune, the Chief Officer/Staff Captain Ronald D'Souza and the Chief

Engineer Neagu Dumipru shall surrender their passports by handing over the same to the pilot nominated by the Port Trust and as confirmed by Mr. Motiwala viz Captain Abbas Ali Diwan, who will board the ship in order to ensure safe pilotage out of the harbour and upon collecting the said passports, the same will be handed over promptly by the pilot to the Dy. Conservator Capt. Babatosh Chand who will retain these in safe custody. In addition, the list of documents of board the vessel, which are statutorily required to be maintained including the Certificate of Registry, Class Certificate, shall also be handed over to the pilot along with passports of the three officers, to be retained by the Dy. Conservator till the vessel returns to port after safe passage.

- (ii) The applicants through their Advocate will apply formally for the vessel to leave Mumbai as aforesaid.
- (iii) The owner of the vessel M/s. Jalesh Cruises Mauritius .Ltd. will provide an undertaking to ensure that the vessel be brought back to port and to secure the claims of the plaintiffs and caveators as aforesaid. An undertaking has already been transmitted via email to the registry of the court by Ms. Priya and the same is accepted as an undertaking of the owners and the Vessel through her Master.
- (iv) In that view of the matter, the Port Trust shall ensure that M.V.Karnika leaves its jurisdiction at the earliest and without awaiting a signed copy of this order.

- (v) At the request of Mr. Kapadia and Mr. Sinha, the statement of learned counsel for the applicant Ms. Priya that the vessel has sufficient bunker to ensure safe passage and return to the port and that the vessel will not suffer for want of bunker is accepted as an undertaking to this court on behalf the owners, its President and CEO Mr. Jurgen Bailom, Master of the vessel, her Captain of Staff and Chief Officer named above. It is accordingly ordered.
- (vi) It is clarified that the Certificate of Registry of the vessel, Class Certificate and the other documents required to be maintained shall be deemed to be retained aboard in the interregnum and this order shall not in any manner prejudicially affect the insurance cover of the vessel.
- (vii) The undertaking given by Mr. Jurgen Bailom the President of the Owners to return to Mumbai port, is treated as an undertaking to this court personally by Mr. Bailom and on behalf of the Master and Chief Officer/Staff Captain and the Chief Engineer. The undertaking is accepted as an undertaking till compliance of this order and return of the vessel to the port as aforesaid.
- (viii) All counsel assure the court that by virtue of this order being passed on this Video Conference in the virtual presence of plaintiffs Advocates and Mr. Motiwalla, he will instruct the Port Trust to take all steps necessary to

ensure that the vessel departs against handing over the passports of the Master, Chief Officer, Chief Engineer Certificate of Registry and other documents to the pilot. The application for the required permission to leave port shall be made and shall be accepted upon the application being made.

- (ix) All parties to act forthwith without awaiting a signed copy of this order. Meanwhile, a copy of this order digitally signed by the Personal Secretary of the court will be transmitted to all the Advocates by email at the earliest.

(A. K. MENON, J.)