

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

Present :

Hon'ble Justice Moushumi Bhattacharya

I.A. GA No. 7 of 2023

in

A.S 5 of 2022

Grasim Industries Ltd. and Anr.

vs.

The Owners and Parties Interested in
the Vessel M V Marintrust – 01, (IMO 9783174) & Ors.

For the Plaintiff : Mr. K.R. Thaker, Adv.
Mr. Soumik Kundu, Adv.

For the Defendant No. 1/
Applicant : Mr. Jishnu Chowdhury, Adv.
Mr. Soumyadip Saha, Adv.
Mr. Dwip Raj Basu, Adv.
Mr. Anubhav Sinha, Adv.
Mr. Nikhil Kr. Roy, Adv.
Mr. Abhijit Sarkar, Adv.

For the Intervener : Mr. Pourush Bandopadhyay, Adv.
Mr. Anirban Ghosh, Adv.

For the Kolkata Port Trust : Mr. Tilak Kr. Bose, Sr. Adv.
Mr. Pranit Bag, Adv.
Mr. Aditya Sarkar, Adv.

Last heard on : 23.02.2024

Delivered on : 26.02.2024.

Moushumi Bhattacharya, J.

1. This is an application filed by Marintrust Limited, a body formed and constituted under the appropriate laws of Republic of Bangladesh and having its office at Dhaka, who claims to be the Owner of the vessel M.V. Marintrust - 01, which is presently lying within the admiralty jurisdiction of this Court at Syama Prasad Mookerjee Port, Kolkata. The vessel was arrested in an admiralty suit instituted by the plaintiff nos. 1 and 2 for compensation on account of damages suffered by the plaintiffs.

2. The brief facts which led to the Order of Arrest are as follows. The vessel while at its berth in the Kolkata Port had capsized/listed on 23.03.2022 and the containers loaded in the vessel supplied and submerged in the water. The vessel was brought to an upright condition on 15.09.2022 and the cargo was recovered thereafter. The plaintiffs obtained an Order of Arrest on 29.9.2022 from a Co-ordinate Bench. The Co-ordinate Bench also passed an order dated 28.6.2023 for sale of the vessel on applications made by the plaintiffs for sale and appointment of Receiver. Joint Special Officers were appointed for conducting the sale and were also directed to file reports of the bids along with valuations of the vessel on the date as published in the advertisement / notice of sale. The Division Bench refused to interfere with the order directing the sale of the vessel the orders of the Division Bench including of 30.6.2023, 5.7.2023 and 18.7.2023 are part of the records.

3. The Owner of the vessel/defendant no. 1 now seeks an appointment of a Surveyor over the goods contained in the containers and for a direction on the Surveyor to report on the quantum of damage caused to the goods.

4. The basis of the relief sought, as articulated by learned counsel appearing for the Owner, is that the plaintiff's claim for loss and damages must be mitigated and re-assessed in light of the subsequent salvage of the containers. The plaintiffs and the Port Authorities are represented and learned counsel resist the prayer for appointment of Surveyor without first taking care of attending complications. The primary difficulty, as argued on behalf of the Port, is that the vessel has been lying in a dilapidated condition in the premises of the Port from 29.9.2203 without any attempt made on the part of the Owners to pay the port charges and other incidental charges.

5. Learned counsel appearing for the plaintiffs also argues in favour of immediate sale of vessel and offers suggestions for resolution of the logistics before any steps are taken for removing containers from the precincts of the Port.

6. The submissions made on behalf of the parties highlight the following issues which are required to be considered before passing any orders on the present application.

7. The claim of the Owner is only on the vessel and not on the goods inside the containers. Likewise, the claim of the Port is also limited to the vessel. The claim of the plaintiffs is on account of the loss

of goods stored only in some of the containers and not the goods stored in the 165 containers which are presently lying in the Port premises.

i) Hence, only the plaintiffs can identify the containers in which their goods are stored.

ii) Since all the goods are Customs duty paid goods and meant for export, the salvaged goods/containers cannot be removed without the consent/no objection of the Customs Authorities.

iii) The Port does not own a Customs Bonded Warehouse hence any storage charges which may be incurred on the goods being removed to the Customs Bonded Warehouse must be paid by the applicant/Owner. Since the plaintiffs are the Owners only of some of the goods in the containers, all the containers cannot be de-stuffed without notice to the other Owners of the goods.

iv) De-stuffing of containers from the Port premises to the Customs Bonded Warehouse can only be done after protecting the possessory lien of the Port.

v) The defendant vessel Owner is a foreigner. Hence an Indian entity with substantial security at its disposal is required to give an undertaking/guarantee to the satisfaction of the Customs Bonded Warehouse.

vi) The Report of the Joint Special Officer dated 19.02.2024 reflects that the reservation price for sale of the vessel was fixed at Rs. 21.47 crores which led to frustration of the auction.

vii) Most important, the vessel is an abandoned vessel with no crew members on board. The vessel continuing to be in that position

may cause risk to adjoining vessels inside the Dock premises. Therefore, there is an immediate need for sale of the vessel.

8. Taking all the practical difficulties/logistic issues, this Court deems it fit to pass the following directions.

a) The plaintiffs shall identify the containers storing their cargo upon notice to the defendant no. 1/Owner of the vessel and in the presence of the latter.

b) The defendant no. 1/Owner of the vessel shall arrange for a Customs Bonded Warehouse for the purpose of storing the containers and shall bear the cost for the same.

c) The defendant no. 1/Owner of the vessel shall obtain necessary permission from the Customs to shift the containers from the Port to the Customs Bonded Warehouse for storage of the containers.

d) After the plaintiffs identify the containers storing their goods, the containers shall be de-stuffed in the presence of the plaintiffs and upon prior notice to the plaintiffs.

e) After de-stuffing and survey, the goods in the containers shall be sold in the presence of the parties.

f) All costs and expenses including port charges, transportation of the containers from the Port to the Customs Bonded Warehouse, the warehouse charges are to be borne by the Owners of the vessel/defendant no. 1.

g) The prior lien of the Port shall be preserved as a first charge when the goods are sold.

h) The Joint Special Officers shall conduct a fresh auction for the vessel in conformity with the order of sale dated 28.6.2023 and appoint a fresh valuer who will reflect a more realistic value of the vessel.

i) The defendant no. 1/Owner shall give an undertaking/guarantee to the satisfaction of the Customs Bonded Warehouse that the entity is willing to bear all costs and charges for removing of the containers from the Port area and will continue to pay the accrued charges of the Customs Bonded Warehouse.

9. The prayer for appointment of Surveyor is allowed. The defendant no. 1/Owner shall appoint an accredited Surveyor subject to fulfillment of the above directions. The Surveyor shall assess the quantum of goods in the containers and the damage caused to the goods if any, as well as an assessment of approximate damage at the time when the containers were salvaged. The Surveyor will also file a Report indicating the aforesaid as well as approximate price of the goods as on date.

10. GA 7 of 2023 is accordingly allowed and disposed of in terms of the above.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)

