

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2020

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THE HON'BLE MR.JUSTICE M.SUNDAR

Application No.1388 of 2020
in
C.S.No.152 of 2020

Angre Port Private Ltd.,
A company registered under the
Companies Act, 1956,
represented by its Director Eshaan Lazarus
having its address at 4th Floor Bakhtawar
Nariman Point, Mumbai. .. Applicant / Plaintiff

Vs.

Owners and Parties interested in the
Vessel TUG VARAHI (IMO: 9113757)
an Indian flat tug together with her
hull, tackle, engines, gears, plant, machinery,
articles, things apparel, equipment, stores and
other paraphernalia now lying at
Adani Port, Kattupalli and represented herein
by its Master .. Respondent / Defendant

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Application filed by applicant seeking direction for the arrest of the
defendant Vessel, TUG VARAHI [IMO: 9113757] together with her
hull, engines, gears, tackles, bunkers machinery, apparel, plant, furniture,
fixtures, appurtenances and paraphernalia, plant and machinery at present
lying at Adani Port, Kattupalli or wherever she is within the territorial

waters of India until the satisfaction of the Plaintiff's claim as per particulars of claim and to pass such further order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Applicant : Mr.Prathamesh Kamat
for Mr.Rahul M.Shankhar

ORDER

Vessel 'TUG VARAHI' bearing registration number IMO: 9113757 is the eye of storm in this suit and the same shall hereinafter be referred as 'suit Vessel' for the sake of brevity, convenience and clarity.

2 Sole plaintiff in the main suit is the applicant herein and sole defendant in the main suit is the respondent herein. From hereon, parties shall be referred to by their respective ranks in the main suit for the sake of convenience and clarity.

3 This matter was mentioned yesterday by Mr.Prathamesh Kamat, learned counsel assisted by Mr.Rahul M Shankhar citing urgency by stating that the plaintiff has maritime lien over suit Vessel qua port charges, that the suit Vessel is now berthed in Adani Port, Kattupalli and

it is likely to sail away by Sunday morning (14.06.2020). The procedural process of bringing the main suit and instant application on board consumed some time and therefore, aforementioned learned counsel requested for a hearing today in the light of urgency and his request was acceded to.

4 Though a very detailed plaint has been filed and an affidavit with detailed facts have been filed in support of prayer in instant application, considering the nature of this order and the circumstances under which it is being made, this Court deems it appropriate to set out only very short facts which are imperative for appreciating this order. Suffice to say that according to plaintiff, suit Vessel is understood to be owned by one 'K P Marine Services and Engineers Consultants' (hereinafter 'KP Marine' for brevity) and this Court is informed that it is a proprietary concern and the Proprietor is one Mr.Kumar Srikanth. To be noted, ownership of suit Vessel is subject to KP Maritime completing procedural formalities pursuant to a Bombay High Court order is learned counsel's say. It is also submitted by learned counsel Mr.Kamat that Port charges which is plaintiff's claim qua suit Vessel is not just a maritime claim, but is a maritime lien. In this view of the matter, it was submitted that it is not imperative to add KP Marine as a party to this

suit. In support of this submission, learned counsel pressed into service a judgment of Hon'ble Supreme Court in *Epoch Enterrepots Vs. M.V.Won Fu* reported in *(2003) 1 SCC 305* and drew my attention to Paragraph 22 thereat for the principle that a maritime lien travels with the Vessel irrespective of the owner. Learned counsel also drew my attention to a recent judgment of Bombay High Court in *Raj Shipping Agencies Vs. Barge Madhwa and anr.*, in Chamber Summons No.66 of 2018 in Admiralty Suit No.6 of 2015 dated 19.05.2020 and drew my attention to Paragraph Nos. 11 and 12 thereat to buttress this principle.

5 Be that as it may, with regard to the plaintiffs claim, suffice to say that it is 'Port charges' for the sake of convenience and clarity. To be noted, plaintiff is a company and is a Concessionaire under a Concession Agreement with Maharashtra Maritime Board under BOO Share Transfer Scheme. 'BOO' stands for 'Build Own Operate'. It is also submitted that plaintiff is a notified Port under Indian Ports Act, 1908 providing a varied spectrum of services to Vessels.

6 As far as the suit claim is concerned, what is of significance is, learned counsel drew the attention of this Court to a 'Letter of Undertaking' dated 24.02.2020 (Plaint Document No.12) and 5 cheques given by KP Marine towards discharge of suit claim and submitted that

the cheques bounced. It is also submitted that there is a Charter Hire Agreement between KP Marine and the plaintiff by which suit Vessel was to be berthed for a period of one year between January 2019 and January 2020. This Charter Hire Agreement is plaintiff Document No.3. However, the Vessel sailed out on the basis of an order dated 08.11.2019 made by Bombay High Court in Commercial Admiralty Suit (L) No.55 of 2019. This order has been filed as Plaintiff Document No.10.

7 This Court has carefully considered the submissions.

8 From the submissions and more particularly Plaintiff Document No.12 being Letter of Undertaking dated 22.02.2020, it comes to light that plaintiff has made out a prima facie case qua Maritime Lien over suit Vessel. With regard to balance of convenience, it is submitted that if the Vessel sails away tomorrow or if it is beached/broken, plaintiff will be left high and dry with regard to the suit claim. On instructions, Mr.Prathamesh Kamat, learned counsel submitted that there is every reason for the plaintiff to believe that no essentials or perishable goods/cargo are on Board inter-alia suit Vessel as it is a Tug. This is an added determinant with regard to balance of convenience.

9 With regard to irreparable legal injury, if suit Vessel sails away or if it is beached, the suit itself will become infructuous as the suit

is essentially for arrest / sale of suit Vessel and for appropriating sale proceeds towards suit claim which according to plaintiff is a maritime lien.

10 Therefore, in the light of Plaint Document No.12, this Court is of the *prima facie* view that plaintiff has made out a *prima facie* case besides balance of convenience and irreparable legal injury which are essential determinants for an interim order.

11 There shall be an ad-interim *ex parte* order of arrest of suit Vessel as prayed for.

12 For the purpose of clarity, I am to say that there shall be an order of arrest of Vessel 'TUG VARAHI (IMO: 9113757)' as prayed for pending disposal of the main suit.

13 Plaintiff's counsel is at liberty to communicate this order to all concerned in Adani Port, Kattupalli for the purpose of giving effect to this order.

14 This Court has been informed by the Registry that a Bailiff is available for effecting this order of arrest forthwith.

15 Owing to the prevailing Covid-19 situation, production of soft copy or hard copy downloaded from official website of this Court will suffice to give effect to this order qua Adani Port or any other

person/entity concerned.

16 Notice to Respondent returnable by 26.06.2020. Private notice is permitted. Plaintiff counsel is permitted to take out private notice through electronic modes of communications such as electronic mail, Whatsapp, subject to filing proof of service demonstrating service on the noticee.

List on 26.06.2020.

13.06.2020

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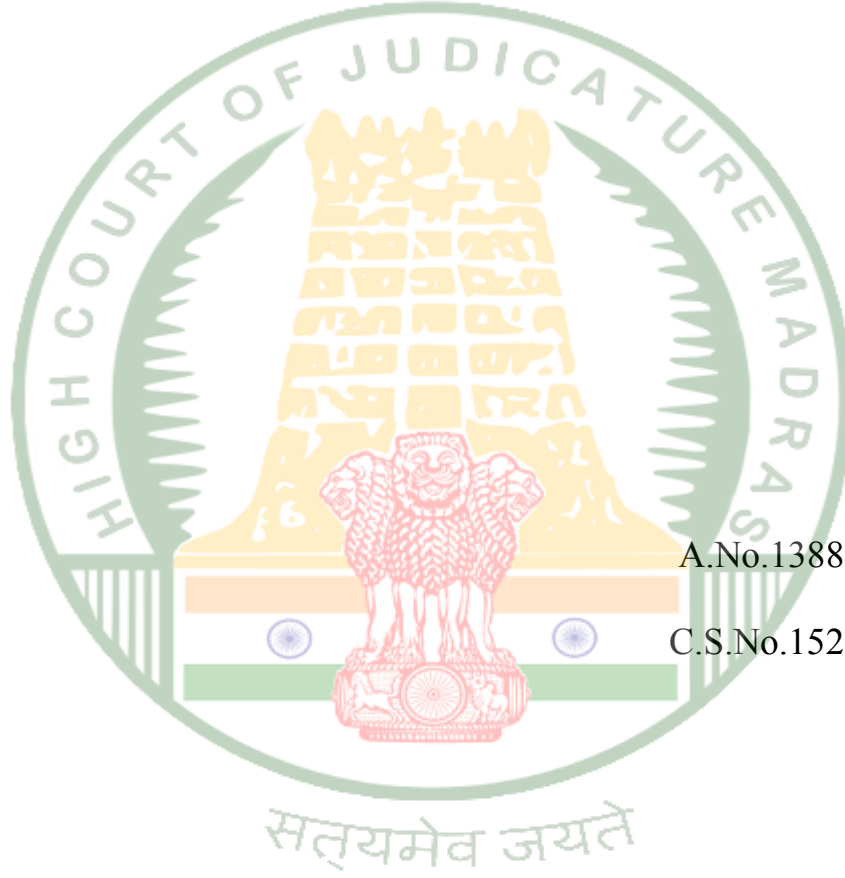
Note : Issue arrest warrant and order copy forthwith.



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M.SUNDAR, J.

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