

IN THE HIGH COURT OF SINDH AT KARACHI

Admiralty Appeal No. 02 of 2024

[M/s. TRANSFAR LOS ANGELES PTE LTD.v..... M.V. "TSS AMBER" & others]

Present: Mr. Justice Yousuf Ali Sayeed
Mr. Justice Arbab Ali Hakro

Appellant through : M/s. Mazhar Imtiaz Lari & Syed Zeeshan, Advocates.

Respondents through : M/s. Taha Alizai, Fawad Syed & Syed Raza Mamnoon, Advocates as well as for Intervener.

Date of Hearing : 04.10.2024

ORDER

ARBAB ALI HAKRO, J:- This determination circumscribes to decide three Civil Miscellaneous Applications filed in this Admiralty Appeal being CMA No.1975/2024¹, CMA No.1976/2024² and CMA No. 1977/2024³.

2. The facts as delineated in the Memorandum of Appeal reveal that the Appellant, a shipping company and owner of the vessel M.V. 'A DAISEN', chartered said vessel to Respondent No. 3 under a Time Charter dated 28.10.2024, with hire charges payable by Respondent No. 3 per the agreement. The Appellant alleges that Respondent No. 3 issued voyage instructions designating Hodeida, Port of Yemen. The Appellant, deeming the voyage hazardous amidst the Red Sea crisis, refused such instructions and subsequently terminated the Time Charter on 23.01.2024. It is further contended by the Appellant that the agent of Respondent No. 3 failed to cooperate regarding port clearance for M.V. 'A DAISEN' at Djibouti, resulting in the vessel's detention until 29.01.2024. Invoking Admiralty jurisdiction under section 3(2)(h) of the Admiralty Jurisdiction of High Courts Ordinance, 1980, the Appellant filed an Admiralty Suit against Respondent No. 2 and Respondent No. 3 for losses incurred due to the vessel's detention at Djibouti and subsequent arrest at an Indian port instigated by Respondent No. 3. Additionally, the Appellant filed CMA No. 1869/2024 under Rule 731 of the Sindh Chief Court Rules for the arrest of Vessel M.V. 'TSS AMBER' (Respondent No. 1), which was dismissed by the learned Single Judge vide Order dated 14.09.2024. Consequently, the Appellant filed the present Appeal under Section 7 of the Admiralty Jurisdiction of the High Courts Ordinance, 1980. Upon receipt of the Appeal, a learned Division

¹ filed under the prescriptions of Order I Rule 10 C.P.C by Ishtar Shipping Co. Ltd (Intervener) for impleading it as a party to the proceedings of the instant Appeal.

² Filed under Rule 743 Chapter XXXII of the Sindh Chief Court Rules by Ishtar Shipping Co. Ltd (Intervener) for the release of the Vessel/Ship.

³ Filed under Rule 743 Chapter XXXII of the Sindh Chief Court Rules by Respondent No. 1 for the release of the Vessel/Ship.

Bench of this Court, through an edict dated 21.09.2024, ordered the arrest of M.V. 'TSS AMBER'/Respondent No. 1, based on the Appellant's assertion that M.V. 'TSS AMBER'/Respondent No. 1 is beneficially owned by Respondent No. 3.

3. The Appellant, upon receipt of the notices of the CMAs under determination, filed counter-affidavits. To controvert the assertions made in CMA No. 1975/2024, which is an application by the Intervener to be impleaded as a party in the proceedings, the Appellant vigorously denied the Intervener's claim to be the owner of Respondent No. 1 Vessel. The Appellant challenged the registration certificate of Respondent No. 1 Vessel in the name of the Intervener. According to the Appellant, the registration of Respondent No. 1 Vessel was acquired by Respondent No. 2, as clearly evidenced by the website of Respondent No. 2. Therefore, Respondent No. 2 is the registered owner of the Vessel/Respondent No. 1 ("Vessel") and not the Intervener, which company was wound up on 29.04.2024. Consequently, the registration certificate annexed by the Intervener is forged and fabricated. To refute the facts enumerated in CMAs No. 1976/2024 and 1977/2024, filed by Respondent No. 1 and the Intervener for the release of the vessel, the Appellant introduced the aforementioned facts into the record and vigorously opposed the release of the vessel.

4. Mr. Taha Ali Zai, Advocate, presented the case of the Intervener as well as Respondents No. 1 and 2 at length. The crux of Mr. Zai's submissions is that the Intervener, namely Ishtar Shipping Company Ltd. ("Intervener"), is a proper and necessary party to the proceedings, as it is the vessel's registered owner, which was arrested inadvertently. He further contended that neither the Intervener nor Respondent No. 2 are parties to the Charter Agreement with the Appellant, nor do they have any hire voyage agreements or arrangements with the Appellant. Therefore, the claim and subsequent arrest of the vessel are misconceived, a fact acknowledged by the learned Single Judge in the edict, which is impugned in this Appeal. Merely relying on a printed document presented by the Appellant in its Appeal, asserting that the vessel is owned by Respondent No. 2, is misconceived and cannot be relied upon. Consequently, it is submitted that the arrest of the vessel ordered on 21.09.2024 should be annulled, and the Intervener should be made a party to the instant proceedings.

5. Mr. Mazhar Imtiaz Lari, learned Senior Counsel, advocated for the Appellant, basing his argument on the premise that a Guarantee Letter was issued by Respondent No. 2 in respect of the Charter Agreement. In this agreement, Respondent No. 3 was a Charter Party with the vessel M.V. 'A DAISEN' for voyage hire charges. Due to the actions of Respondent No. 2, the vessel M.V. 'A DAISEN' belonging to the Appellant was detained at two different ports, namely in India and Yemen, resulting in financial losses for the Appellant. He further contended that the vessel in question, sought to be released, is owned by Respondent No. 2, and

therefore, a learned Division Bench of this High Court ordered its arrest vide an Order dated 21.09.2024. Additionally, Mr. Lari argued that CMA No. 1975/2024, under Order I Rule 10 CPC filed for impleading Ishtar Shipping Co. Ltd., is misconceived. This is because the vessel was acquired by Respondent No. 2 upon the winding up of the Intervener on 29.04.2024, as confirmed by the website of Respondent No. 2. Thus, the vessel is currently owned by Respondent No. 2 and not by the Intervener; making the Intervener neither a necessary nor proper party to the present lis.

6. Heard and perused the record. First, we have to decide CMA No.1975, propounded by the intervener under Order I Rule 10 C.P.C., seeking to be impleaded as a Respondent in this Appeal. The intervener contends that he is the bona fide registered owner of the vessel, which was inappropriately seized, notwithstanding the absence of a dispute with the Appellant. Contrarily, the dispute lies between the Appellant and Respondent No.3. To substantiate his proprietorship, the intervener has proffered copies of the Vessel Registration Certificate, Certificate of Ownership, and a printout from the pertinent P & I Club website, corroborating the vessel's ownership by the intervener. It is a jurisprudential axiom that only those entities whose stakes are under contestation in a suit and without whose presence the matter cannot be adjudicated on merits are deemed indispensable and proper parties to the proceedings. An indispensable party ought to have been incorporated into the proceedings and in whose absence, no efficacious decree can transpire. The ambit of Order I Rule 10 C.P.C. is to eschew multiplicity of proceedings and ensure that all requisite parties are before the Court for a substantive adjudication on merits. Upon the Court's determination that an applicant seeking to become a party is indeed an indispensable party, it becomes imperative for the Court to promulgate an order mandating the inclusion of such an entity in the proceedings. The judicial discretion vested under this provision allows for the incorporation of any person as plaintiff or defendant at any juncture, including appeals. This provision aims to ensure that such inclusions are binding in all ensuing proceedings until annulled in a juridical manner. Order I, Rule 10, C.P.C., in conjunction with Section 107, C.P.C., extends to appeals, bestowing the appellate Court with the prerogative to substitute or add any entity as Appellant or respondent, provided they are indispensable and proper parties to the proceedings. Despite the plaintiffs being *Dominus litis* (masters of the suit) with a vested interest in the case's resolution, the Court may compel the inclusion of a party if their presence is pivotal for a comprehensive and effective adjudication of the matter. The general jurisprudential tenet for impleading parties posits that the plaintiff, as the master of the suit, may elect the individuals against whom they wish to litigate and cannot be coerced into litigating against an entity from whom no relief is sought. However, a proper party is one whose presence

would enable the Court to thoroughly, efficaciously, and adequately adjudicate upon all matters in dispute in the suit, notwithstanding their status as a party in favour or against whom the decree is to be rendered. Reliance is placed on 2018 MLD 866 (Engro Foods Ltd v. Province of Sindh & others (ii), 2012 CLC 1477 (Mst. Farasa Aijaz v. Messrs Qamran Construction (Pvt.) Ltd.), (ii) 2017 YLR 1579 (Aroma Travel Services (Pvt.) Ltd. v. Faisal Al Abdullah Al Faisal), (iii) 2010 YLR 1666 (Jiand Rai v. Abid Esbhani), and (iv) 2010 CLC 1622 (Shams Mohiuddin Ansari v. Messrs International Builders).

7. In light of the intervener's claim of ownership buttressed by documentary evidence, and consonant with the principles governing the inclusion of indispensable and proper parties, it is hereby adjudged that the intervener be impleaded as a Respondent in this Appeal to ensure an equitable and comprehensive resolution of the matter.

8. Now reverting to C.M.A Nos.1976 and 1977 of 2024, proffered by the intervener and Respondent No.1 respectively, seeking the release of the vessel by recalling an Order dated 21.9.2024, whereby this Court directed the arrest of the vessel until further orders. The contention of the intervener and Respondent No.1/Vessel rests on the premise that the intervener is the bonafide owner of the vessel, corroborated by the Vessel Registration Certificate, Certificate of Ownership, and ancillary documents. It is posited that the core dispute is between the Appellant and Respondent Nos.2 and 3 and not with the intervener or Respondent No.1. Furthermore, it is argued that the arrest/detention Order was procured from this Court without proper judicial assistance. Conversely, the Appellant repudiates the intervener's proprietary claim over Respondent No.1/Vessel, asserting that the vessel's registration was effectuated by Respondent No.2. The Appellant predicates this assertion on a merely printed document from a website, devoid of substantive evidence to conclusively establish Respondent No.2's ownership.

9. To expound upon the issue at hand, it is crucial to delve into the jurisprudential doctrines of "*Action in rem*" and "*Action in personam*." *Action in rem* is a legal proceeding instituted against a specific item of property, primarily within admiralty law, where the principal object of the action is the property itself rather than the individual in possession of it. Such actions resolve disputes pertinent to the ownership, possession, or claims against the property. The adjudication in an action in rem is *erga omnes*, which means "towards all" or "towards everyone", binding the entirety of the world to the status of the property. In the extant case, the arrest of the vessel epitomizes an action in rem, targeting the vessel itself to enforce a maritime claim.

10. Conversely, *Action in personam* is a judicial proceeding instituted against a specific individual, wherein the objective is to ascertain the liability of the

defendant. This type of action resolves personal claims or obligations enforceable against a particular individual. The judgment in an *action in personam* is binding solely on the parties engaged in the litigation. To elucidate the guiding principles for *actions in rem and personam*, reference is made to the case of Messrs Abdoun Oil Company⁴. It was adjudged that actions in rem can be instituted against the ship or the property on which a maritime lien is claimed. The Court is tasked with determining whether the plaintiff holds a maritime lien, a privileged claim exercised over the res (ship) and can be enforced through legal proceedings. The case accentuated that a maritime lien or privileged claim attaches to maritime property, such as a ship, cargo, or freight when the cause of action arises. It clandestinely and unconditionally travels with the property and is enforceable by an action in rem. The lien may originate from services rendered to the vessel, such as repairs, purchases, or damages incurred by the ship. In the cited case, it was claimed that the ship was purchased with funds advanced as a loan by a second party. However, the Court found that the ship was acquired well before the purported loan advance, and the produced documents did not support the second party's claim. Consequently, the second party could not assert a maritime lien over the vessel, nor could an action in rem be instituted against the ship.

11. In the present matter, the arrest of the vessel signifies an *action in rem*. The vessel was seized to enforce a maritime claim, irrespective of the involved individuals' ownership or personal liabilities. The intervener and Respondent No.1 contend that since the intervener is the true owner of the vessel, as evidenced by the Vessel Registration Certificate and Certificate of Ownership, the arrest was unwarranted and should be rescinded. The Appellant disputes this by denying the intervener's ownership and asserting that the registration was obtained by Respondent No.2 based on a printed document from a website. However, this assertion lacks substantial evidence and documentation to conclusively prove Respondent No.2's ownership.

12. Considering the doctrines of action in rem and action in personam, the documentary evidence of ownership presented by the intervener, and the insufficiency of contrary evidence from the Appellant, it is incumbent upon the Court to reassess the arrest order's validity. The intervener's ownership claim and the nature of the primary dispute indicate that maintaining the arrest may not be equitable. Relying on the case law of Messrs Abdoun Oil Company, it is evident that a maritime lien or privileged claim must be substantiated by unequivocal evidence. In the absence of such evidence from the Appellant, the claim that

⁴ Messrs Abdoun Oil Company S.A. Incorporated Under Laws of the Republic of Panama, in Greece, with their office at 43-45 portman square, London vs. M/T Abdoun Discovery" A Ship Flying Panama Flag Presently At The Port Of Port Qasim Authority, Karachi, Pakistan and another (2004 CLD 286)

Respondent No.2 owns the vessel cannot be sustained. Accordingly, it is adjudged that the arrest order dated 21.9.2024 be rescinded and the vessel be released.

13. The aforementioned reasons underlie our short Order dated 04.10.2024, whereby C.M.A No.1975/2024, filed by the Intervener under Order I Rule 10 C.P.C, was allowed along with C.M.A Nos.1976 and 1977/2024. Consequently, the Order dated 21.9.2024 was recalled, the vessel was ordered to be released, and the instant Appeal was disposed of.

JUDGE

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