

(2011) 09 CAL CK 0009
Calcutta High Court
Case No: C.P. No. 568 of 2010

Copenship Singapore Pte. Ltd.

APPELLANT

Vs

Prime Impex Ltd.

RESPONDENT

Date of Decision: Sept. 6, 2011

Acts Referred:

- Evidence Act, 1872 - Section 114, 35, 57
- Stamp Act, 1899 - Section 18, 3, 33, 35

Citation: (2011) 167 CompCas 431 : (2011) 110 SCL 577

Hon'ble Judges: I.P. Mukerji, J

Bench: Single Bench

Advocate: Rishad Medora and Ms. Sarda Hariharan, for the Appellant; Kaushik Chowdhury, for the Respondent

Judgement

I. P. Mukerji J.

1. This is a winding up application, coming up for admission. It is made by a company incorporated in Singapore. Their claim is against an Indian company against which an order of winding up is claimed.

2. The claim arises out of two charter parties dated September 29, 2009. The petitioning creditor entered into these agreements as the owner of vessels. The Indian company was the charterer. It appears that the petitioning creditor became entitled to demurrage. The parties agreed on June 8, 2010, to an amount of US\$ 6,00,000 (and miscellaneous bank charges). The amount was to be paid by the company in two instalments, one of US\$ 3,00,000 was to be paid by June 30, 2010 and the other of US\$ 3,00,000 by July 30, 2010.

3. Some payments were made by the company. But they were in default with respect to the rest, i.e., US\$ 3,00,000.

4. All these facts were pointed out and the above amount claimed in the statutory notice of the petitioning creditor dated September 28, 2010, which is annexure O to the petition. Interest was also claimed.
5. This was replied to by the company by their e-mail dated October 4, 2010. The factual position was entirely admitted.
6. In the affidavit-in-op position there is no departure from this state of affairs. The allegations in the petition are just denied.
7. A technical point was sought to be raised during arguments. It was said by Mr. Chowdhury, learned counsel for the company that the power of attorney executed before a notary public of Singapore and dated November 30, 2010, is not stamped in India. He says that the power of attorney was required to be stamped u/s 3(c) read with section 18 of the Indian Stamp Act, 1899. Since it was not properly stamped, the court should impound it u/s 33 of the Act. Therefore, the winding up petition filed on the basis of such power of attorney was not admissible u/s 35 of the said Act.
8. Learned counsel for the petitioning creditor has produced a photocopy of the original power of attorney before me. It does appear from the endorsement on the right side of the first page of the power that stamp duty of Rs. 100 was paid on December 9, 2010. The endorsement recognises it as stamp duty received by the State of Maharashtra. The payment is authenticated by a seal and the emblem of India.
9. Therefore, I have to take judicial notice of such endorsement, seal and emblem u/s 57 of the Indian Evidence Act, 1872. Moreover, there is a presumption of regularity of the Government actions unless the contrary is proved (see section 35 read with section 114 of the Indian Evidence Act, 1872). No evidence to rebut the presumption is on record.
10. I have no reason to believe that the power of attorney is unstamped or deficiently stamped.
11. Accordingly, the company has no defence whatsoever to the claim of the petitioning creditor.
12. I am able to hold in a summary way that the company is indebted to the petitioning creditor for a sum of US\$ 300,000 in its Indian rupee equivalent at the rate of conversion on the date of this judgment and order. Furthermore, since the transaction out of which this debt arises was commercial, the petitioning creditor will be entitled to interest at 12 per cent, per annum simple interest from September 28, 2010, being the date of the statutory notice till payment.
13. The winding up application is admitted.

14. Publication in the Official Gazette is dispensed with. This application is to be advertised once in The Hindu and once in Anandabazar Patrika within 4 weeks from the date of this order.

15. List this application five weeks hence.

16. Urgent certified photocopy of this judgment/order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

Later

17. The court: Learned counsel for the company prays for stay of operation of this judgment and order. After considering the submission, let no advertisement be published for a period of two weeks from date.