

(2004) 10 CAL CK 0037

Calcutta High Court

Case No: A.S. No. 25 of 1999

G. Fuel PTE Ltd.

APPELLANT

Vs

Owners and Parties interested in
the vessel M.T. "New Nanyang
No. 1."

RESPONDENT

Date of Decision: Oct. 6, 2004

Citation: (2005) 1 CHN 62 : 108 CWN 49

Hon'ble Judges: Ashim Kumar Banerjee, J

Bench: Single Bench

Advocate: Ratnanko Banerjee and Reetobrata Mitra, for the Appellant; Tilok Bose, for the Respondent

Judgement

Ashim Kumar Banerjee, J.

The plaintiff supplied gas oil to M.V. Yang Pu at the instance of M/s. Hainan Nayan Shipping Industrial, Pte. Ltd.. The said sale was confirmed by a fax communication dated 27th July, 1999. The supply was made on 14th August, 1999. As the money was not forthcoming, despite reminders, plaintiff filed the suit in this Court on 12th November, 1999 inter alia for arrest of a vessel M.T. "New Nanyang No. 1" on the ground that the supply was made at the instance of M/s. Hainan Nayan Shipping Industrial Pte. Ltd. who was the owner of the vessel M.T. "New Nanyang No. 1" on the relevant date being the date of institution of the suit. The vessel got arrested at the instance of the plaintiff on the said date being 12th November, 1999.

2. On 18th November, 1999 the vessel was released by furnishing of a security of Rs. 15.00 lacs at the instance of Power Steamship Co. Ltd. claiming to be the owner of the vessel M.T. "New Nanyang No. 1".

3. The said Power Steamship Co. Ltd. filed written statement contending that the said vessel did not belong to Hainan on the relevant date and it belonged to the Power Steamship Co. Ltd. which had no nexus with M.V. Yang Pu for which the

present suit could be instituted and the vessel M.T. "New Nanyang No. 1" could be arrested.

4. The following issues were settled :

"1. Is the plaintiff entitled to claim the sum of US\$ 34,393.53 at the exchange rate of Rs. 43.60 or any other rate ?

2. Is the plaintiff entitled to claim interest @20% per annum or at any other rate ?

3. Is the suit against the vessel M.T. "New Nanyang No. 1" maintainable in respect of supplies made to vessel M.V. Yang Pu ?

4. Is the cause of action of plaintiff in the instant suit maintainable in Admiralty Jurisdiction ?

5. To what other relief is the plaintiff entitled to ?"

5. On behalf of the plaintiff one Mr. Go Soon Siew deposed. On behalf of the defendant one Mr. Wang Wai Kwok deposed. The plaintiff proved the supply as well as the invoices. In cross-examination the plaintiff's witness contended that the change of ownership of the vessel was not known to them on the date of arrest. They later on came to know that there was a change of ownership. He denied that when the claim arose M.T. "New Nanyang No. 1" was not the sister of M.V. Yang Pu.

6. The defendant's witness contended that there was an agreement for change of ownership. The sale contract was entered into on September 1, 1999. He proved the original sale contract in Chinese language as well as English translation thereof. He, however, could not prove the fax message sent to the plaintiff's lawyer which was kept as "marked for identification". He contended that he did not know about any ship called M.V. Yang Pu. He contended that he took part in the negotiation and witnessed the execution of the contract.

7. From the documents exhibited by the parties though their witness the following sequence of events are not disputed:

Supply was made to Yang Pu at the instance of Hainan.

The invoices were raised on Hainan.

At least on September 1, 1998 M.T. "New Nanyang No. 1" was a sister of Yang Pu as would appear from the defendant's disclosure being a certificate dated June 5, 1998 valid till 1st September, 1998 pertaining to the seaworthiness of the vessel M.V. Yang Pu.

The vessel M.T. "New Nanyang No. 1" was sold to M/s. Power Steamship Limited on 15th December, 1999.

The Power Steamship Limited was incorporated in November 25, 1999 (Question No. 8) as would appear from the evidence of the defendant's witness.

Sale contract was entered into by Hainan with Golden Specific Ring International Limited whereas Deed of Sale was executed in favour of Power Steamship Company Ltd.

8. On a careful analysis of the written statement it appears that the defendant Power Steamship Co. Ltd. claimed ownership of the vessel on the basis of the contract for sale entered into on 1st September, 1999. On that date the agreement was entered into between the Golden Specific and the Hainan. Power Steamship Co. Ltd. was not even born on that date. Power Steamship Co. Ltd. was incorporated on 25th November, 1999 and the deed of sale was executed on 15th December, 1999. Hence, on the date of arrest the vessel still belonged to Hainan. Even if it is held that sale was concluded by virtue of the said contract then it was Golden Specific and not Power Steamship Co. Ltd. owner on the date of arrest. The relationship between the Golden Specific and Power Steamship was not disclosed either in the written statement or in the evidence save and except the witness said that these are group companies.

9. Paragraph 2 of the written statement being relevant herein is quoted below :

"With reference to the allegations contained in paragraph 2 of the plaint, it is denied that Hainan Nayan Shipping Industrial Pte. Ltd. is the owner of the vessel M.T. "New Nanyang No. 1" as alleged or at all. This defendant states that prior to the institution of the instant suit the vessel M.T. "New Nanyang No. 1" had been sold by Hainan Nayan Shipping Industrial Pte. Ltd. the erstwhile owner and the latter ceased to be the legal and/or beneficial owner of the said vessel. This defendant further states that Power Steamship Ltd., a company incorporated under the appropriate laws of Hongkong and carrying on business at Room No. 20825 29/F, China Resources Building, 26, Chartered Road, Hongkong is the present owner of the vessel."

10. Even on perusal of the said paragraph it would appear that the Power Steamship Co. Ltd. claimed ownership of the vessel. No reliance was placed on the sale contract entered into by and between Hainan and Golden Specific. It was also not claimed in the written statement that M.V. Yang Pu did not belong to Hainan on the date of arrest. In paragraph 3 of the written statement it was contended that Power Steamship had no privity of contract with the plaintiff for supply of gas oil to M.V. Yang Pu.

11. In short, the defendant's case in the written statement was that supply to M.V. Yang Pu at the instance of Hainan would not entail the plaintiff to sue M.T. "New Nanyang No. 1" as the ownership had changed in between.

12. From the analysis of evidence as discussed hereinbefore it would appear that on the relevant date being the date of arrest the ownership did not change. On that day the present defendant being Power Steamship Co. Ltd. was not even born. Hence, the contention that Power Steamship was the owner of the vessel M.T. "New Nanyang No. 1", was without any basis.

13. Assuming Golden Specific was the owner on the relevant date and Power Steamship Ltd. derived title from Golden Specific the case of the defendant cannot stand in view of the fact that the sale contract was merely an agreement for sale and no title passed on September 1, 1999. An English translation of the said sale contract was relied on. On perusal of the said contract it would appear that the Hainan agreed to sale the said vessel to Golden Specific. Hence, on the basis of the said agreement no title passed. Hence, I hold Hainan was the owner of the M.T. "New Nanyang No. 1" on the date of arrest.

14. The defendant itself disclosed document to show M.V. Yang Pu was owned by Hainan as on September 1, 1998. No evidence had been laid to the contrary.

15. Mr. Tilok Bose, learned Counsel appearing for the defendant, tried to contend that the certificate of sea worthiness was valid upto 1st September, 1998. As such the said certificate did not conclusively prove that as on the date of arrest M.V. Yang Pu was owned by Hainan. I would have accepted Mr. Bose's submission on that score had there been an attempt to make out such case through written statement or through witness. It is true that the plaintiff came to this Court for arrest of M.T. "New Nanyang No. 1" on the basis of a contract for supply of gas oil at the instance of Hainan. The defendant itself made the thing easier by producing the document to show that M. V. Yang Pu was also owned by Hainan. Hence, the present suit praying for arrest of sister vessel is maintainable as per the global convention for arrest.

16. The law relating to admiralty jurisdiction has not yet taken a proper shape in our country. The global arrest convention was accepted by various countries. However, India is not a signatory to the same, even then the Apex Court in the case of M. V. Elizabeth, reported in 1993, Supplementary 2, SCC page 433 held that such convention should be made applicable in case of Indian admiralty litigation. In a recent decision in the case of [Liverpool and London S.P. and I Asson. Ltd. Vs. M.V. Sea Success I and Another](#), the Apex Court made the present convention applicable in Indian admiralty litigation.

17. Paragraphs 42 and 49 being relevant herein are quoted below :

"42. The advancement in law would be evident from the 1999 Arrest Convention whereby significant changes to the law relating to in rem claims and arrest have been made. Pursuant to Article 14 of the 1999 Arrest Convention, such changes would come into force six months after ratification by the tenth State.

49. In the aforementioned judgment, this Court referred to a large number of decisions for the purpose of interpreting the Constitutional provisions in the light of the international treaties and conventions."

18. I have considered the Global Arrest Convention of 1952 as well as 1999. It appears to me that law relating to the subject specially for arrest of a ship on account of maritime claim was being expanded by the signatory to the conventions.

In a regular commercial transaction the parties to the transactions are sued. However, in case of a maritime claim the vessel to which the transactions relate to is liable for arrest irrespective of the ownership.

19. The convention however has given a further right to a claimant to arrest a sister ship meaning a ship owned by a owner who is also owning the vessel to whom the claim relates. As Apex Court observed in the case of *Sea Success - 1* (supra) Court of Law is to honour such convention and not to ignore the same in absence of a proper domestic law on the subject. Article 3 clause 2 of the 1999 Convention clearly provides that arrest is also permissible on another ship which, when the arrest is effected, is owned by the person liable for the maritime claim or was liable for the claim when it arose.

20. Coming back to the instant case Hainan ordered for supply to M.V. Yang Pu. Supply was not disputed. The ownership of the vessel of M.V. Yang Pu at least upto 1st September, 1998 was with Hainan. There was no contrary evidence as to change of ownership. No issue was raised thereon. It was proved to the effect that on the date of arrest M.T. "New Nanyang No. 1" was owned by Hainan. Hence, following the Arrest Convention I have no hesitation to hold that on the date of arrest M.T. "New Nanyang No. 1" was the sister of M.V. Yang Pu.

21. Assuming M.V. Yang Pu did not belong to the owner of the vessel M.T. "New Nanyang No. 1" on the date of arrest, on a careful reading of the convention and the article referred to above I find Hainan was the person responsible for the maritime claim. Sub-Article 2 provides for arrest of a vessel belonged to a person, when the claim arose, owner, demised charterer, time charterer or voyage charterer to that ship to which the claim pertains. On a plain reading of the said article it appears to me that the signatories to the said convention wanted to rope in all persons who had something to do legally with the ship to which the maritime claim arose.

22. Following the Apex Court decision in *M.V. Sea Success - I* (supra), I intend to give a liberal construction of Article 3(2) of the Convention 1999 which is almost similar to the Article 3 of the earlier convention being the convention of 1952 to rope in Hainan as it was proved before me that at the instance of Hainan supply was made.

23. Any person supplying necessities to a foreign vessel was assured by the convention that in case the maritime claim was not paid he would be entitled to arrest the ship. Supply was made to Yang Pu, the plaintiff was entitled to arrest Yang Pu. The convention also empowers plaintiff to arrest a sister ship being the ship owned by the person for whom the claim arose. Hainan was the owner of M.T. "New Nanyang No. 1". Hence, the plaintiff was justified in approaching this Court for arrest of M.T. "New Nanyang No. 1". Hence I answer the issue Nos. 3 & 4 in the affirmative by holding that the present suit initiated by the plaintiff for enforcing their maritime claim, as against the vessel M.T. "New Nanyang No. 1" was maintainable.

24. The plaintiff had been able to discharge their onus in proving their claim before this Court.

25. The parties also relied upon following decisions, I, however, do not feel those necessary to be discussed.

1993, Vol- II, Calcutta High Court Notes, page 208;

1988, Vol-II, Lyods Law Report, page 411 (The EVPO AGNIC)

1982, Vol-I, Lyods Law Report, page 225 (The Span Terza)

26. There would be a decree in favour of the plaintiff for US\$ 34,393.53 on the exchange rate of 1 US\$ = Rs. 43.60. The said decretal sum would carry interest @ 6% per annum on and from 14th August, 1999 until payment.

27. The Registrar, High Court, Original Side is directed to encash the fixed deposit to the said extent and pay the amount to the plaintiff.

28. There would be, however, an order of stay of the operation of this judgment and order till 15th October, 2004.

29. Urgent xerox certified copy would be given to the parties, if applied for.