

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA

In the matter of an application for Restitutio in
Integrum and/or Revision in terms of Article 138
of the Constitution.

SPS Marine (Pvt) Ltd
A-503, Arenja Towers CHS,
Sector 11, CBD Belapur,
Navi Mumbai-400614,
Maharashtra, India.

Petitioner

CA/RII 24/22

HC Colombo CHC 01/2020

Vs.

1. Mushtaq Ahmed Ishaq Kapade - Master
2. K.B. Udayakumar - Chief Officer
3. Ajay Kumar - 2nd Officer
4. Anurag Kumar - 3rd Officer
5. Uday Dattatraya Adhikari - C/E
6. Dinesh Pandey - 2E
7. Premkumar Karuppanam, E - 3E
8. Arun Kumar Subramaniam - 4E
9. Anoop Madhusoodhanan P -E/Off
10. Diwkar Chauhan - Fitter
11. Sahil - AB
12. Shyam Sunder Padey - AB

13. Eswara Moorthy M.P - AB
14. Vinod Kumar Chauhan - Dr/Ratin
15. Shashi Kumar - Dr/Ratin
16. Selvan Paul Simon – Dr/ Ratin
17. Rajesh Kumar – Motor Man
18. Yadav Pradip Kumar Indrajith - Motor Man
19. Mohammad Safeek Ansari – Cook

All on board the MV “Sai Arambh” (IMO No. 9115456) at the Port of Colombo.

20. MV “Sai Arambh” (IMO No. 9115456) at the Port of Colombo.

21. M/S. Anton Engineering,

No. 08, Rathina Sabapathy Street,
Washermenpet,
Chennai-600021,

Agent:

Mr. Ponnaiya Soodalei Muththu Ravi
Chandra,
NO:111, Parakrama Mawatha,
Peliyagoda.

22. M/S Sonar Shipping and Management Services Ltd,

Mr. Bisso Tarek,
Icadiye Mahallesi,
Imam Galip SK, 43/2B Block,
K:I:D:934674

Uskudar/Istanbul, Turkiye

Agent,

Mr. Ethige Josheph Nevil Krishantha De
Silva,

No. 118 A, National Housing Scheme,
Hekiththa, Wattala.

23. M/s. Oasis Global Marine Services L.L.C.

Mr. Abdelaziz Ylldirim,
P.O. Box 52746,
UAE.

Agent:

Mr. Zakariya Bawa Mohideen Abdul
Rahuman,
31/A, 2nd Chapel Lane,
Wellawatta.

24. M/S. Alpha Metallum DMCC,

Unit No. AU-18-L Gold Tower,
Jumeirah Lakes Towers,
UAE.

Agent:

M/s Bevin Clide Mack,
No. 29/C/16, Rukmalgama,
Kottawa.

25. A.W. Seneviratne,

Marshal of the High Court, Colombo.

26. Shyam Murlidhar Manjrekar

Ex-Chief Engineer MV “Sai Arambh”

27. Premier Shipping (Pvt) Ltd

39A-10th Lane,
Colombo 03

28. Colombo Dockyard PLC,

P.O. Box 906, Graving Docks,
Port of Colombo,
Colombo 15.

29. Capt. Ashok Kumar Dudhanth Mishra
Ex-Master MV “Sai Arambh”

Respondents

Before: D.N. Samarakoon, J.
B. Sasi Mahendran, J.

Counsel: Eraj de Silva with Daminda Wijerathne and Zul Luthuff for the Petitioner
Instructed by Dimuthu Kuruppuarachchi.

Sehan Soyza, SC for the 25th Respondent

Vinodh Wickremasooriya with Damayanthi Francis for the 1st-19th, 26th -29th
Respondents

Argued On : 16.12.2022

Decided On : 16.12.2022

JUDGMENT

The instant application of the Petitioner (SPS Marine (Pvt) Ltd) made in terms of Article 138 of the Constitution seeks to invoke this Court’s revisionary and/or restitutionary jurisdiction to set aside or revise the Order of the learned Judge of the High Court of Colombo, exercising its admiralty jurisdiction, in Case bearing No. REM 1/20 dated 24th November

2022 (“Z1”), in which the learned Judge had allowed the Vessel to be sold to a bidder who bid at a lesser value than the appraised value; and to direct the learned Judge to direct a fresh auction be conducted of the Vessel MV “Sai Arambh” and/ or to allow the Petitioner or its nominee to purchase the Vessel at a sum of United States Dollars Eight Hundred and Fifty Thousand.

The facts of the case, in brief, are as follows.

An action was filed by the 1st to 19th Respondents, the master and crew of the Vessel MV “Sai Arambh”, in the High Court of Colombo to arrest the said Vessel for unpaid wages and other claims. The Vessel was arrested on the 29th of January 2020. The Petitioner sought to intervene by Petition dated 6th February 2020, which was allowed. The 1st to 19th Respondents sought for the Vessel to be appraised and for it to be sold by way of public auction. The Petitioner objected to the same. The learned High Court Judge by Order dated 3rd December 2021 ordered appraisalment to be carried out. The Vessel was appraised at a sum of United States Dollars One Million Two Hundred and Twenty Four Thousand Three Hundred and Fifty Five, by an independent expert (“X6”). The learned Judge by Order dated 2nd March 2022 ordered the Vessel to be auctioned.

Against this Order the Petitioner filed a leave to appeal application (bearing No. LTA/004/22) before this Court to set aside the same (That is to quash the Order of the learned Judge ordering an auction to be conducted). On the 4th of April 2022 (“Y3”), this Court permitted for the said auction to be postponed subject to the Petitioner abiding by the conditions laid out therein, as this Court was informed that the Petitioner was willing to furnish a Bank Guarantee to secure the 1st to 19th Respondents’ claim, and the expenses of the Marshal and Ports Authority. These Conditions as set out in the Order (“Y3”) are as follows:

1. Parties will have to take another valuation of the Vessel by an independent valuer who should be nominated by the Marshal, Plaintiff-Respondents [1st to 19th Respondents] and the 2nd Defendant-Petitioner [the Petitioner] to be tendered to the Admiralty Court within one week from today, on or before 10th of April 2022.

2. The 2nd Defendant-Petitioner should undertake to the necessary repairs of the impugned Vessel such as water leakages and other repairs immediately under the direction and supervision of the Marshal.
3. The 2nd Defendant Petitioner should submit an insurance policy of USD 50 Million on or before 10th of April 2022 as a cover to compensate for the damage and salvage operation in an eventuality.
4. The 2nd Defendant-Petitioner should settle all expenses of Marshall's Account and all dues to the Sri Lanka Ports Authority pertaining to the services provided for the impugned Vessel during the period of arrest."

Thereafter, on the 3rd of October 2022 this Court ordered the Vessel to be auctioned for the reason that the Petitioner had failed to fulfil the aforementioned conditions. This Court was also concerned about the environmental hazard that this Vessel posed.

Accordingly, the auction was held on the 18th of November 2022. The Marshal was directed to cause the Vessel to be sold by public auction to the highest bidder under the appraised value (i.e., United States Dollars One Million Two Hundred and Twenty Four Thousand Three Hundred and Fifty Five).

According to "Z1" (Journal Entry dated 24th November 2022) the Marshal has informed the learned High Court Judge that the 22nd Respondent (M/S Sonar Shipping and Management Services) was the highest bidder at that auction. The amount bid was United States Dollars Eight Hundred and Ten Thousand. The Marshal had sought advice from the Court on the next steps. Accordingly, the learned Judge has allowed the highest bidder to be awarded. The relevant Journal Entry dated the same reads:

"නියෝගය

i. ගොනු කරන්න

ii. ඉදිරිපත් වී ඇති වැඩිම ලංසුව පිළිගැනීමට නිදේශ කරමි.

ඒ සම්බන්ධව මාසල්ට දැනුම් දෙන්න."

The main argument of the Petitioner is that, inter alia,

- a. The auction was held on the basis that the Vessel would not be sold below the appraised value
- b. The learned High Court Judge erred in law by not giving the Petitioner an opportunity of being heard prior to the Order “Z1” being made
- c. The Order is contrary to the principles of natural justice
- d. The learned Judge has failed to appreciate that the purpose of an auction is to obtain the best value for the Vessel
- e. The said Order defeats the objective of obtaining the best value for the Vessel

Thus, the Petitioner prayed for the reliefs alluded to above, and the following interim reliefs in the meantime. These interim reliefs include:

- i. “Staying the effect of the Order of the Learned High Court Judge dated 24th November 2022 annexed marked Z1;
- ii. Preventing any further steps be taken in respect the auction of the vessel MV “Sai Arambh” held on the 18th November 2022:”

When this matter was argued today (the 16th of December) the learned State Counsel appearing for the Marshal drew our attention to **Rules 124 to 126 of the High Court (Admiralty Jurisdiction) Rules 1991 (Extraordinary Gazette 672/7 dated 24th July 1991)**. These Rules, set out for the purpose of convenience read:

“124. The Judge may, either before or after final judgment, order any property under the arrest of the Court to be appraised or to be sold **with or without appraisalment**, and either by public auction or by private contract.

125. If the property is deteriorating in value, the Judge may order it to be sold forthwith.

126. If the property to be sold is of small value, the Judge may if he thinks fit, order it to be sold without a commission of sale being issued.” [emphasis added]

Thereby, Rule 124 provides for sale with or without appraisalment.

In the instant case, the auction was held with appraisal. The bids should have commenced from the baseline amount of the appraised value. However, it is strange to note that despite the auction being conducted at the appraised rate, the learned Judge had permitted a bid that was under that baseline value.

We are of the view, when the Marshal informed the learned High Court Judge that there was no bidder for above that baseline value, the learned Judge should have cancelled the said auction and ordered for another auction to be conducted without the appraisal. The learned Judge had permitted the Vessel to be sold to the highest bidder, which is less than the appraised value.

Thus, it appears that the learned Judge has erred, and accordingly we revise the said impugned Order made on the 24th of November 2022 (“Z1”). Considering that there is a dispute concerning the appraised value, we direct the learned Judge to order the auction to be conducted under Rule 124 of the aforesaid Rules without the appraised value. We are of the view that this would then attract more favorable bids. We further direct that the Marshal to complete the auction within one month’s time from date of the direction of the learned High Court Judge.

Considering the current state of the Vessel, which may pose a danger, We direct the Petitioner to furnish a bank guarantee of a sum of United States Dollars Twenty Five million.

It is regrettable to note that the Harbour Master who was present in Court informed us that it would take at least two months for the auction to be completed, even though the previous auction was conducted within a period of less than two months when the Court of Appeal made its aforesaid Order on 3rd October 2022.

This application is allowed.

D. N. Samarakoon, J.

JUDGE OF THE COURT OF APPEAL

B. Sasi Mahendran, J.

JUDGE OF THE COURT OF APPEAL