

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

Colombo Drydocks Ltd,
(Presently Colombo Dockyard Ltd.)
Graving Docks,
Port of Colombo,
Colombo 15.

Plaintiff

C.A. No. 590 / 2000 F

Vs.

D.C. Colombo No. 14762/MR

1. M/s. Al Shabani Shpping Agency,
Al Hawaii Building,
P.O. Box 15376,
Dubai.
2. Segull Shipping (Pte) Ltd.
126, Sir Baron Jayatillake Mawatha,
3/2B, 3rd Floor, YMBA Building,
Colombo 1.

Defendants

AND NOW BETWEEN

Segull Shipping (Pte) Ltd.
126, Sir Baron Jayatillake Mawatha,
3/2B, 3rd Floor, YMBA Building,
Colombo 1.

2nd Defendant Appellant

Vs

Colombo Drydocks Ltd,
(Presently Colombo Dockyard Ltd.)
Graving Docks,
Port of Colombo,
Colombo 15.

Plaintiff Respondent

M/s. Al Shabani Shpping Agency,
Al Hawai Building,
P.O. Box 15376,
Dubai.

1st Defendant Respondent

BEFORE : UPALY ABEYRATHNE J.

COUNSEL : Vinodh Wickremasooriya for the 2nd Defendant
Appellant.
Ranjith Perera with E. Ariyaratne instructed by
A.J.M. Thahir for the Plaintiff Respondent

ARGUED ON : 04.04.2013

DECIDED ON : 17.07.2013

UPALY ABEYRATHNE, J.

The Plaintiff Respondent (hereinafter referred to as the Respondent) instituted the said action against the 1st and 2nd Defendants in the District Court of Colombo seeking a judgement to recover a sum of US \$ 42500 and/or Rs. 2075275/- being the rupee value thereof at the rate of Rs. 48.83 per US \$ as at 3.3.1994. The Respondent has stated that on or about 19th March 1993 the 1st Defendant requested certain repairs to be carried out on the vessel "MV Khalaf". The 2nd Defendant as agent of the 1st Defendant confirmed and requested that the said repairs be carried out by the Respondent on the vessel "MV Khalaf" for and on behalf of the 1st Defendant. Accordingly the Respondent has carried out the said repairs on the vessel "MV Khalaf" and completed on or about 29th April

1993. The Respondent further stated that repairs to the value of US \$ 85000 had been done on the vessel "MV Khalaf" and the vessel was released on a part payment of US \$ 42500 and the balance US \$ 42500 was due from the Defendants and the 2nd Defendant as the agent of the 1st Defendant and upon the guarantee bond dated 28th April 1993 was liable to pay to the Respondent the said balance sum of US \$ 42500.

The 2nd Defendant Appellant (hereinafter referred to as the Appellant) took up the position that the alleged guarantee bond dated 28th April 1993 was a letter and it cannot be construed as a guarantee to pay the said sum of US \$ 42500.

At the hearing of this appeal both parties have conceded that the entire case rest on the interpretation of the said letter dated 28.04.1993 which has been produced marked P 22 at the trial. Hence I now deal with the submission of the Appellant.

It was common ground that the Appellant has sent several letters to the Respondent giving an undertaking with regard to the repairs on the vessel "MV Khalaf" and the payments thereon.

The Appellant has sent to the Respondent a letter dated 05th April 1993 (P 10) making a guarantee as follows;

".....

And whereas the expenses on the account of the repairs done and materials supplied in regard these to and those for general services rendered and otherwise incurred and payable by the ship-owners to the repairers amounted to US \$ 85000;

And whereas the ship-owners agree to pay US \$ 425000 to the repairers settlement of about fifty percent of the said sum before departure;

And whereas the ship-owners have agreed to pay the repairers the remaining part of the said sum amount to US \$ 425000 within 30 days from the date of this guarantee;

And whereas we the undersigned as the agent of the ship-owners do hereby guarantee the above payment;

(A) The initial Payment before departure of the vessel,

(B) Balance remaining part within 30 days from the date of this guarantee.”

In witness whereof

Mohamed Sameem

Siripala Gamage

Signed the instrument on this

Th day of April 1993.

Thereafter the Appellant has sent to the Respondent a letter dated 28.04.1993 making a guarantee as follows;

“.....

AND WHEREAS the expenses on account of the repairs amounted to US \$ 85000;

AND WHEREAS the ship-owners agree to pay US \$ 22000 to the repairers in settlement of about 25.88% of the said sum before the departure of the vessel from Colombo;

AND WHEREAS the ship-owners have agreed to pay the repairers the remaining part of the said sum amounting to US \$ 63000 within 30 days from the date of invoices as follows;

(a) A sum of US \$ 20500 within 14 days from date of this guarantee,

(b) The balance sum of US \$ 42500 within 30 days from the date of this agreement,

AND WHEREAS we the undersigned as the agents of the ship-owners do hereby guarantee on behalf of the ship-owners the above payment;

(a) The initial payment before departure of the vessel.

(b) The said first part payment of the said remaining part within 14 days from the date of this guarantee.

(c) The said final part of the said remaining payment within 30 days from the date of this guarantee.

In Witness Whereof

For and On Behalf of

Seagull Shipping (PVT) Limited,

As Agent for M/s Al Shabani Shipping Agencies, Dubai, U.A.E.”

Thereafter the Appellant has sent to the Respondent another letter dated 1st June 1993 (P 24) giving a guarantee as follows;

“.....

MV “KHALAF”

This note refers to the guarantee we have placed with you on 28th April 1993 in respect of the cost of repairs effected to the subject vessel at your Docks.

The balance of final part of payment amounting to US \$ 42500 remain unsettled to date because of hard pressed financial funding due mainly to vessel being kept idle due to unfavourable weather conditions that prevailed making its substance commercially unviable.

Under the circumstances we request you to consider allow us a convenient period of a further month within which period we guarantee you full and final settlement of balance payment.

Thanking you.

Yours faithfully

Seagull Shipping (PVT) Ltd.

The Appellant has not led any evidence to establish his position. The case has been closed leading the evidence of a witness of the Respondent with documents produced marked P 1 to P 31. On a consideration of the evidence led by the Respondent and the said letters sent by the Appellant to the Respondent namely P 10, P 22 and P 24, I am of the view that the Seagull Shipping (PVT) Ltd, the Appellant, was the agent of the Al Shabani Shipping Agencies, Dubai, U.A.E and was duly authorized to make the acknowledgement contained in P 22.

In the case of Ceylease Financial Services Ltd vs. Sriyalatha and Another [2006] 2 Sri L.R. 169 it was contended by the Plaintiff Appellant that the guarantee and indemnity sought to marked was not a bond. The Supreme Court held that "In considering the document in question what is necessary would be to look to the substance of it in order to identify whether that would come within the meaning of a bond.

It is apparent that a bond which is an instrument under seal whereby one person binds himself to another for the payment of a specified sum of money either

immediately or at a fixed future date could include a guarantee bond and or an indemnity bond.”

In the said circumstances I hold that P 22 is a guarantee bond given to the Respondent to secure the payment of US \$ 85000 being the costs of repairs done to the vessel “MV Khalaf” and thereby the Appellant is liable to pay to the Respondent a sum of US \$ 42500 being the remaining part of the full payment of said sum of US \$ 85000. Hence the Respondent is entitled to a decree in the said sum of US \$ 42500 with interest as prayed for in the plaint.

In the aforesaid circumstances I find no reason to interfere with the said judgment of the learned Additional District Judge of Colombo dated 28.07.2000. Therefore I dismiss the instant appeal of the Appellant with costs.

Appeal dismissed.

Judge of the Court of Appeal