

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL (L) NO. 357 OF 2016
IN
CHAMBER SUMMONS NO. 1128 OF 2014
IN
ADMIRALITY SUIT NO. 77 OF 2013
AND
NOTICE OF MOTION (L) NO. 2836 OF 2016**

Axis Bank Ltd. .. Appellant/Applicant
V/s.
M.T. Pratibha Koyna and ors. .. Respondents.

Mr. Nimay Dave a/w. Mr. Mayur Bhoawani & Ms Prangana Barua
i/b M/s Manilal Kher Ambalal & Co. for the Appellant/Applicant.
Mr. Bimal Rajasekhar a/w. Riticha Sahay for Respondent No.9.
Mr. Rohan Lavkumar for Respondent No.4 (Official Liquidator)

**CORAM: DR. MANJULA CHELLUR, C.J.
AND M.S.SONAK, J.**

DATE : 05 OCTOBER 2016.

PC.

1] The challenge in this appeal is against the order dated 14 September 2016 in allowing the interverner to come on record in terms of Rule 949 of Bombay High Court (Original Side) Rules, which reads as under:-

949 Interveners – (1) *Where property against which a suit in rem is brought is under arrest or money representing the proceeds of sale of that property is in Court, a person who has interest in that property or money but who is not a defendant to the suit may, with the leave of the Judge, intervene in the suit.*

(2) An application for the grant of leave under this rule may be made ex-parte by affidavit showing the interest of the applicant in the property against which the suit is brought or in the money in Court.

(3) A person to whom leave is granted to intervene in a suit shall file an appearance in person or a Vakalatnama therein within the period specified in the order granting leave. On filing such appearance or Vakalatnama, the intervener shall be treated as if he were a defendant in the suit.

(4) The Judge may order that a person to whom he grants leave to intervene in a suit, shall, within such period as may be specified in the order, serve on every other party to the suit such pleading as may be so specified.”

2] Apparently, the suit is between the financier and the owner of the vessels to whom the plaintiff had lend money. The intervener, one who seems to have supplied bunkers to the vessel, which is known as Pratibha Bheema.

3] The appellant's counsel argues that an intervener can come where only the suit is brought is under arrest or money representing the proceeds of sale of that property is in court and not otherwise and in the present suit that situation has not yet come.

4] In this case, apparently, vessel in question came to be sold in response to various orders of this Court for a sum of Rs.53,75,00,000/-. The plaintiff is seeking a decree against the sale proceeds of this vessel along with the sale proceeds of other

vessels as well. Therefore, the argument of the appellant's counsel that only if the facts and circumstances in terms of Rule 949 of Bombay High Court (Original Side) Rules are in existence, such intervention can be allowed, in fact do exist in this case.

5] According to the appellant, since the intervener has already initiated recovery proceedings for the above said money and which is at the stage of final arguments, therefore, there was no need to allow him to come on record especially in light of the fact that Chamber Summons No. 1128 of 2014 was filed in the year 2014 and was not sought to be heard and decided. In light of benefit of the provision in terms of Rule 949, which accommodates the intervener to come on record, we are of opinion that except that some time may be consumed for necessary amendment, since the application is allowed and no other prejudice would be caused to the appellant. On the other hand, this may facilitate all claimants to know where they stand as claimant and also probability of their preference of priority. However, in the suit, who will have priority claim against the vessel cannot be decided and the same has to be considered before the Official Liquidator, in accordance with procedure contemplated once they establish that they are entitled for certain amount against the vessel. In that view of the matter, we decline to intervene and accordingly the appeal is dismissed.

6] At the request of learned counsel for the appellant, 15 days' time is granted to carry out the amendment from today and serve amended copy to other side accordingly.

7] In view of disposal of main appeal, the notice of motion does not survive and the same is disposed of accordingly.

(CHIEF JUSTICE)

(M.S.SONAK, J.)