

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION
IN ITS COMMERCIAL DIVISION**

**CHAMBER SUMMONS NO.2 OF 2015
IN
COMMERCIAL SUIT NO.14 OF 2012**

PSL LimitedApplicant/Intervener

IN THE MATTER BETWEEN :

The Board of Trustees of the Port of MumbaiPlaintiff

Vs.

M.V. MSC Chitra and Ors.Defendants

Mr. Ajay Fernandes a/w. Ms. Sneha Pandey i/b. Motiwalla and Co. for plaintiff.

Ms. Lavina Chatur Kripalani for applicant/intervener.

Mr. Hari Wadhwana i/b. Ashwini Sinha for defendant no.2.

Mr. Sagun Sudhir i/b. Bose and Mitra and Co. for defendant no.5.

CORAM : K.R.SHRIRAM, J.

DATE : 7th JUNE, 2017

PC.:

1 This chamber summons is taken out by applicant to intervene in the suit and to be added as defendant no.6 as party interested in defendant no.3, viz., sale proceeds of m.v. Khalijia-3 lying with the Prothonotary & Senior Master. The applicant claims to be owner of cargo that was on board the vessel m.v. Khalijia-3 which suffered damage in a collision off the coast of Mumbai with defendant no.1 - m.v. MSC Chitra. It is the case of applicant that in the collision, the cargo that was owned by applicant and which was on board m.v. Khalijia-3 suffered damage. It is the case of applicant that they have filed admiralty suit no.46 of 2010 for damage to cargo, indemnity for salvage liability,

claims for discharge and delivery costs, etc. which is still pending.

2 Plaintiff is opposing the chamber summons on the ground that the entire sale proceeds which is lying with the Prothonotary and Senior Master has been invested only to satisfy the claim of plaintiff and plaintiff's claim ranks in higher priority than applicant and hence applicant should not be allowed to intervene.

3 The other defendants have no objection if this application is allowed and in fact, have not even filed a reply to the chamber summons.

4 Rule 949 of the Bombay High Court (O.S) Rules 1980 reads as under :

“R.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.”

5 Under Rule 949 any person who has interest in property or money that represents the proceeds of sale of the vessel but who is not the defendant to the suit may with the leave of the Judge intervene in the suit.

In fact, the judgment of this court in the matter of m.v. Bos Angler & Ors. which is annexed at Exhibit-3 of the affidavit in reply, in paragraph 8 actually provides as under :

“It must be remembered that the above suit is an admiralty suit. Parties having an interest in the subject matter of the suit which is Defendant No.1 ship or its sale proceeds, would be allowed to intervene in the suit on their application for intervention. They would be made party defendants in this suit. Defendant Nos.3 to 9 have intervened and have been brought on record as party defendants after the initial suit was filed against defendant Nos.1 and 2”.

6 Moreover, just because the amount of sale proceeds has been directed to be invested by the Prothonotary and Senior Master as security for the amount claimed by the Port does not mean that nobody else can intervene in the suit.

7 Moreover, the application that is taken out today is only for leave to intervene in the suit and to be impleaded as defendant and it is not to decide the priorities. Therefore, the stand of plaintiff that they rank in higher priority than applicant and therefore, applicant should not be allowed to intervene is misplaced.

8 In the circumstances, chamber summons is allowed and disposed of in terms of prayer clause - (a).

9 Plaintiff to amend the cause title to add applicant as defendant no.6 and serve a copy of the plaint within two weeks from today. The counsel for applicant who is to be added as defendant no.6 on instructions,

waives service of the writ of summons. Written statement to be filed and copy served within two weeks of receiving copy of the amended plaint.

10 Suit to be listed for additional issues on 11th July, 2017.

(K.R. SHRIRAM, J.)