

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL CHAMBER SUMMONS NO.547 OF 2018
IN
COMMERCIAL ADMIRALTY SUIT NO.36 OF 2018**

Kolkata Port TrustApplicant/Intervener

IN THE MATTER BETWEEN :

IDBI Bank LimitedPlaintiff

Vs.

m.v. Malaviya Thirty Three & Ors.Defendants

Mr. Akshay Kolse-Patil a/w. Mr. Naishadh Bhatia and Ms. Prachi Shah i/b. Crawford Bayley and Co. for plaintiff.

Mr. Vishal Muglikar a/w. Ms. Suzan M. Vakil and Ms. Mahafrin R. Mehta i/b. M/s. Mulla and Mulla and CBC for applicant/intervener.

CORAM : K.R.SHRIRAM, J.

DATE : 13th JUNE, 2018

P.C.:

1 At the outset, Mr. Kolse-Patil, counsel for plaintiff states that here is an applicant who has not even filed a suit and if applicant has no intention of filing a suit, applicant should not be allowed to intervene in plaintiff's suit.

2 Mr. Muglikar, counsel for applicant states that he has no instructions regarding the same but at the same time, as an officer of the Court, states that if applicant has any intention to recover the money, he will assume that applicant will be filing a suit as applicant cannot recover any money in the suit filed by plaintiff.

3 Mr. Kolse-Patil states that without prejudice to plaintiff's rights and contentions, if applicant is going to file a suit, the Court may allow the application but applicant should be given a cut off date to file a suit. Mr. Kolse-Patil further states that if applicant has no intentions of filing a suit, applicant cannot be just permitted to intervene in plaintiff's suit and cross examine plaintiff's witnesses. I agree with Mr. Kolse-Patil.

4 Therefore, without prejudice to plaintiff's rights and contentions, applicant is allowed to intervene in this suit and plaintiff is directed to amend the plaint to show applicant as defendant no.9. It is made clear that the amendment to be carried out within two weeks from 12th July 2018.

5 Applicant to file a suit in this Court on or before 11th July 2018 and no extension will be granted. If the suit is not so lodged, then this order allowing plaintiff to amend the plaint will stand revoked without further reference to this Court.

6 In the event applicant files a suit and applicant is added as defendant no.9, then Mr. Muglikar states that writ of summons need not be served on applicant and it will be deemed waived.

7 So far as prayer clause – (b) is concerned, there is no need to pass such order since applicant may file, if advised after filing the suit, a

caveat against the release of the sale proceeds as provided in the Bombay High Court (O.S.) Rules.

8 Application accordingly stands disposed.

(K.R. SHRIRAM, J.)