

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

**NOTICE OF MOTION NO.667 OF 2017
WITH
CHAMBER SUMMONS NO.737 OF 2017
WITH
NOTICE OF MOTION (L) NO.749 OF 2017
WITH
NOTICE OF MOTION NO.755 OF 2017
WITH
NOTICE OF MOTION NO.757 OF 2017
WITH
NOTICE OF MOTION NO.1110 OF 2017
WITH
NOTICE OF MOTION NO.1254 OF 2017
WITH
NOTICE OF MOTION NO.1324 OF 2017
IN
ADMIRALTY SUIT NO.41 OF 2015**

DVB Group Merchant Bank (Asia) Limited Plaintiff

Vs.

m.v. Malaviya Twenty Three & Ors. Defendants

Mr. Rahul Narichania, senior advocate a/w. Ms. Pratiksha Avhad and Ms. Pooja Kapadia i/b. M/s. Mulla and Mulla and CBC for plaintiff.
Ms. Kajol Solanki i/b. Divya Shah Associates for defendant no.7.
Ms. Surabhi Agarwal for Official Liquidator.
Mr. Bimal Rajsekhar i/b. Mr. Ashwin Shanker for intervener/applicant in NMS/667/2017, NMSL/749/2017 and NMS/1254/2017.
Mr. Kunal S. Gaikwad for applicant in CHS/737/2017.
Mr. Mahendhar Aithe, Company Prosecutor for Official Liquidator present.

CORAM : K.R.SHRIRAM, J.

DATE : 8th JUNE, 2018

P.C.:

NOTICE OF MOTION NO.667 OF 2017

1 Mr. Rajsekhar, counsel for applicant seeks leave to withdraw this notice of motion with liberty to file a fresh notice of motion at the

appropriate stage.

2 Notice of motion stands dismissed as withdrawn with the liberty to file fresh notice of motion at the appropriate stage. Whether such notice of motion will be maintainable or not will be considered at that stage.

NOTICE OF MOTION (L) NO.749 OF 2017

1 None for applicant.

2 Therefore, notice of motion stands dismissed.

3 For completion of record, the Registry to take on file affidavit in reply being filed by plaintiff.

NOTICE OF MOTION NO.755 OF 2017

1 Mr. Narichania, senior counsel for applicant seeks leave to withdraw this notice of motion.

2 Notice of motion stands dismissed as withdrawn.

NOTICE OF MOTION NO.757 OF 2017

1 Stand over to 6th July 2018.

2 Affidavit in reply to be filed and copy served by 28th June 2018.
Rejoinder, if any to be filed and copy served by 3rd July 2018.

NOTICE OF MOTION NO.1110 OF 2017

1 Mr. Narichania, senior counsel for applicant seeks leave to

withdraw this notice of motion.

2 Notice of motion stands dismissed as withdrawn.

NOTICE OF MOTION NO.1254 OF 2017

1 This application is taken out by a crew member who has filed an admiralty suit no.28 of 2017 claiming a sum of Rs.9,13,290/- with interest at 18% p.a. plus cost and poundage. The application is taken out under Rule 949 of the Bombay High Court (Original Side) Rules. Rule 949 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 Sub rule (1) of Rule 949 provides for a person who has interest in the property against which a suit in rem is brought is under arrest, but who is not a defendant in the said suit may, with leave of the Judge, intervene in the suit. It is settled law that a crew member, who has a claim

against the vessel for unpaid wages, is certainly entitled to intervene in the suit filed by a mortgagee bank.

3 Therefore, application is allowed and accordingly disposed in terms of prayer clause – (a).

4 Plaintiff to amend the plaint and serve a copy of the amended plaint upon the advocate, through whom this notice of motion has been filed, within two weeks from today.

5 Written statement to be filed and copy served within four weeks of receiving copy of the amended plaint.

6 Mr. Rajsekhar states that he has instructions to waive service of writ of summons. Service of writ of summons waived.

NOTICE OF MOTION NO.1324 OF 2017

1 Mr. Narichania, senior counsel for applicant seeks leave to withdraw this notice of motion.

2 Notice of motion stands dismissed as withdrawn.

CHAMBER SUMMONS NO.737 OF 2017

1 Mr. Narichania, senior counsel for plaintiff states that in view of the order passed by this Court in notice of motion no.1254 of 2017, this chamber summons be allowed in terms of prayer clauses – (a), (b) and (c), without prejudice to plaintiff's rights to contest the claim of defendants.

Mr. Narichania further states that so far as prayer clause – (d) is concerned, that cannot be granted by this Court in this chamber summons and applicants will have to file a separate suit or lodge their claim with Official Liquidator, as advised. I am in agreement with Mr. Narichania.

2 Therefore, chamber summons is allowed and accordingly disposed in terms of prayer clauses – (a), (b) and (c). So far as prayer clause – (d) is concerned, plaintiff may take out individual proceedings or lodge their claim with Official Liquidator and the same will be considered in accordance with law.

3 Plaintiff to amend the plaint and serve copy of the amended plaint upon the advocate, through whom this chamber summons has been filed, within two weeks from today.

4 Written statement to be filed and copy served within four weeks of receiving copy of the amended plaint.

5 Mr. Rajasekhar states that he has instructions to waive service of writ of summons. Service of writ of summons waived.

GENERAL

1 Ms. Solanki, counsel for defendant no.7 states that defendant no.7 is no longer concerned in the matter and should be dropped from the array of defendants.

2 Mr. Narichania states that he will take instructions whether that can be done.

3 Suit be listed for directions on 22nd June 2018.

(K.R. SHRIRAM, J.)