

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
LEAVE PETITION NO. 214 OF 2018
IN
COMMERCIAL SUIT NO. 823 OF 2017

IK Marine Agencies Pvt Ltd ...Plaintiff

Versus

The National Shipping Company of Saudi Arabia ...Defendant

Mr Sanjay Jain, with Prathamesh Kamat, i/b M/s. A Mehta Laljee & Co., for the Plaintiff.

Mr Venkatesh Dhond, Senior Advocate, with Akshay Kolshe Patil, Shailesh Shukla, Pratik Pawar and Manasvi Nandu, i/b J Sagar Associates, for the Defendant.

CORAM: G.S. PATEL, J

DATED: 19th July 2018

PC:-

1. It is not possible to grant relief under Order II Rule 2 of the Code of Civil Procedure 1908. The present Suit is for damages and an injunction. Leave is sought not to file a separate Admiralty Suit but to “prosecute and continue a separate Suit”, one already filed, viz., Commercial Admiralty Suit No. 7 of 2018.

2. It is difficult to see how leave under Order II Rule 2 of the Code of Civil Procedure 1908 can be granted *post facto*. In my view, such leave must be granted before institution of the other suit. The

provisions of Order II Rule 2 are clear. They require leave to be obtained to omit to sue in respect of certain reliefs on a cause of action that accrues presently to the Plaintiff. This necessarily means that the second suit for those reliefs cannot be filed without such leave being previously granted.

3. The Petition is dismissed. No costs.

(G. S. PATEL, J)