

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE-ADMIRALTY JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ADMIRALTY SUIT NO. 792 OF 2017**

WITH

NOTICE OF MOTION NO. 363 OF 2018

National Bank of Greece SA

...Plaintiff

V/s.

MV Theoxenia, (IMO No.9142980)

...Defendant

WITH

NOTICE OF MOTION (L) NO. 392 OF 2018

Granada Energy General Trading LLC

...Applicant/Intervener

IN THE MATTER BETWEEN

National Bank of Greece SA

...Plaintiff

V/s.

MV Theoxenia, (IMO No.9142980)

...Defendant

Mr. Arjun Mital a/w. Ms. Mitali Chakravarty I/b. Bose & Mitra & Co.
for Plaintiff.

Mr. Anil Vishnu a/w. Ms. Shweta Sadanandan I/b. Ashwin Shanker for
Intervener in NMCDL/392/2018.

Mr. Vishal Sheth a/w. Ms. Sanjana Chandrashekhar I/b. Bimal
Rajasekhar for Caveators in Caveat No.2/2018 in COMAS/792/2017.

CORAM : S.C. GUPTE, J.

DATE : 07 MARCH, 2018.

P.C. :-

1. The commercial admiralty suit is filed by the Plaintiff in respect of dues under a loan agreement. The Plaintiff claims to be a mortgagee of the First Defendant Vessel. The vessel was arrested in the present suit on 9 October 2017. There is neither appearance entered by the owner of the vessel nor security furnished for release of the vessel. The vessel has already been sold by an order passed by this Court on 22 January 2018 and the sale proceeds are currently held by the admiralty registrar. The suit is, accordingly, placed before this Court for exparte decree.

2. The Plaintiff tenders originals of the documents on which the suit claim is based. These documents include the Loan Agreement, Drawdown Notice demanding payment thereunder, Certificate of Registration of the Mortgage in the Public Registry of Ownership Titles and Encumbrances of Vessels of the Panama Maritime Authority and Mortgage Certificate issued by the Authority, demand notices and notice of termination of the loan agreement issued to the borrowers and the various orders passed by this Court and the High Court of Madras concerning the suit vessel. The documents are marked in

evidence as Exhibits P-1 to P-14. At the request of learned counsel for the Plaintiff, the Plaintiff is permitted to substitute the originals of the documents taken on record by submitting true copies certified by the advocates of the Plaintiff. Office to return the originals against such certified true copies. The certified true copies shall be kept on record as exhibits by denoting the same exhibit numbers as their originals and adding letter 'A' thereto.

3. Based on the documentary evidence referred to above, the Plaintiff has made out its case for recovery of the loan amount as claimed in prayer clause A.

4. The suit is accordingly decreed in terms of prayer clause A.

5. Notice of Motion No. 363 of 2018 is taken out by the Plaintiff under Rule 951 of the Bombay High Court, Original Side Rules for inviting claims for deciding priority. There is no opposition to the notice of motion. Notice of motion is made absolute in terms of prayer clause (a).

6. Learned counsel appearing for the Government of Andhra Pradesh Port Department, who has filed a claim before the sheriff of Mumbai against the sale proceeds of the vessel in pursuance of the order dated 22 January 2018 referred to above, presses for allowing his claim to be disbursed upfront. The claim is for port dues and

anchorage fees and GST component thereon. Learned counsel submits that since these dues have anyway first priority and must be disbursed in full before further disbursement is considered upon claims received in pursuance of the notice under Rule 951 and since the sale proceeds held by the admiralty registrar amount to over 3.1 million USD, the port dues may be disbursed in full even pending determination of priority of claims in pursuance of the notice issued under Rule 951 and claims, if any, received in response thereto. No one has objection to the prayer.

7. Accordingly, the admiralty registrar is directed to remit a sum of Rs. 32,95,740/- to the Port Officer, Kakinada by making direct payment into the account referred to in the letter addressed by the Government of Andhra Pradesh Port Department to the sheriff of Mumbai on 12 February 2018. The balance amount of sale proceeds shall be held by the admiralty registrar to the credit of the suit so as to abide by further orders that may be passed by this Court.

8. Notice of Motion No. 363 of 2018 is disposed of.

9. Notice of Motion (L) No. 392 of 2018 is taken out by an intervener third party, who has a claim against the sale proceeds and is a plaintiff in Admiralty Suit No. 29 of 2017. This suit has already been decreed by an order dated 15 January 2018. The intervener

must now participate in the proceedings for determination of priority of claims in response to the notice under Rule 951 ordered above. Accordingly, the Applicant-Intervener does not press the notice of motion. He will have liberty to raise his contentions in the proceedings for determination of priorities. Notice of Motion No. 392 of 2018 is accordingly disposed of as not pressed.

10. In view of the order passed above, learned counsel for Government of Andhra Pradesh Port Department states that his client does not press Caveat No. 2 of 2018 filed in the present commercial admiralty suit. Caveat is disposed of as not pressed.

(S.C. GUPTE, J.)