

encumbered, plaintiff will be able to look for satisfaction of its maritime claim against any sister ship of defendant vessel and/or sale proceeds of sister vessels, as well as any other asset belonging to the owner, Pratibha Shipping Company Limited (in Liquidation). The proposed defendants are as under :

1. Sale proceeds of m.t. Pratibha Indrayani
2. Sale proceeds of m.t. Pratibha Tapi
3. Sale proceeds of m.t. Pratibha Bheema
4. m.t. Pratibha Koyna and/or its sale proceeds
5. m.t. Pratibha Chandrabhaga and/or its sale proceeds
6. m.t. Pratibha Warna and/or its sale proceeds
7. Sale proceeds of m.t. Pratibha Cauvery
8. Pratibha Shipping Company Limited, represented by the Official Liquidator, a company incorporated under the Companies Act 1956, having its office at 1201/1202, Arcadia, 12th Floor, NCPA Road, Nariman Point, Mumbai – 400 021.

Perhaps the vessels at serial nos.4,5 and 6 may have been sold after filing of this chamber summons.

3 In normal circumstances a new party could be added under the provisions of Order 1 Rule 10 of the Code of Civil Procedure (CPC) provided the proposed defendant is a proper and necessary party. Here is the case where plaintiff is not seeking to add a third party but the assets of the owner of defendant no.1 vessel describing each assets, viz., ship as defendant and Liquidator of the owner of defendant. As this is the first time

such an application is being considered and there is nobody appearing for defendants, except through Official Liquidator, the Court appointed Mr. R.V. Narichania, senior advocate, Mr. V.K. Ramabhadran, senior advocate and Mr. Prashant S. Pratap, senior advocate, who all regularly practice in the Admiralty Court and who specialise in that field and as they were present in Court on the first date of hearing, as Amicus Curiae. Valuable contribution of Mr. R.V. Narichania, senior advocate, Mr. V.K. Ramabhadran, senior advocate and Mr. Prashant S. Pratap, senior advocate is hereby acknowledged.

4 It is plaintiff's case that :

(a) if plaintiff had a cause of action against proposed defendants and those defendants could have been added at the time the suit was filed, then plaintiff should be permitted to add those parties later as well;

(b) it is settled law that the provisions under Order 1 Rule 10 CPC speaks about judicial discretion of the Court to strike off or add the parties at any stage of the suit to settle all questions involved. The expression "*to settle all questions involved*" has to be given a liberal and wide interpretation, so as to adjudicate all the questions pertaining to the subject-matter thereof and the Court has the power to secure the said result with judicious discretion to add parties, including third parties;

(c) plaintiff is no doubt *dominus litus* and is not bound to sue every possible adverse claimant in the same suit. He may choose to implead only those persons as defendants against whom he wishes to proceed though, under Order 1 Rule 3, to avoid multiplicity of suits and needless expenses, all persons against whom the right to relief is alleged to exist may be joined as defendants;

(d) plaintiff has a cause of action against, and can array, all sister vessels under Order 1 Rule 3 of the CPC. It usually, however, chooses not to array all the sister vessels because it will be unnecessary or because they are unavailable within jurisdiction. In the present case, plaintiff similarly did not array every vessel it had a cause of action against but now circumstances makes it do that;

(e) various banks to whom the vessels have been mortgaged have filed suits against vessels belonging to Pratibha Shipping Co. Ltd. (in Liquidation). Axis Bank has filed Admiralty Suit No.77 of 2013 against m.t. Pratibha Neera. Therefore, the sale proceeds of m.t. Pratibha Neera may not be sufficient to satisfy plaintiff's claim, in view of Axis Bank's claim ranking higher in priority compared to plaintiff's claim;

(f) even though the sister vessels are not necessary parties as an effective order can be made even without them, however, they have a direct interest in the subject matter of the litigation since plaintiff can execute its decree against them as well and therefore, to that extent, the sister vessels

are proper parties. Under admiralty law, plaintiff is entitled to proceed against all vessels belonging to the owner of the offending Vessel. Though it can arrest only one in the first instance, it has a right to arrest other vessels as well in certain circumstances. The impleading of sister vessels ought to be permitted so as to protect plaintiff's said right;

(g) parties who have arrested the sister vessels sought to be impleaded by plaintiff will not be prejudiced;

(h) the only reason for seeking such impleading is to foreclose any argument that plaintiff cannot so execute the decree without having made the sister vessels parties to its suit and plaintiff is not seeking any declaration that it will be equal in priority to such creditors, who have arrested such sister vessels;

(i) plaintiff can get a decree against more than one vessel but can execute it against more than one vessel only if such decree remains unsatisfied. Therefore, plaintiff will be able to deal with any objection that it can execute a decree to the extent it is unsatisfied, against sister vessels only if such sister vessels were party to plaintiff's suit;

(j) plaintiff has an interest in the sister vessels and has already been permitted to intervene in suits filed against the sister vessels;

(k) the fact that the company is in liquidation is irrelevant when considering the question whether the present application ought to be allowed. Plaintiff has obtained leave to proceed with its suit.

5 Mr. Narichania in effect supported plaintiff's submissions.
Mr. Narichania submitted that :

(a) while granting an amendment, the Court does not consider the merits of the amendment though the Court may not allow useless or unnecessary amendments;

(b) as plaintiff is seeking an amendment because of an apprehension that it may not be able to recover its entire claim from the sale proceeds of defendant vessel as plaintiff's claim ranks lower in priority over the claims of the other creditors which will leave nothing in the kitty for plaintiff to recover its claim, by making other vessels and/or their sale proceeds a party to the suit, plaintiff believes it may be able to recover its claims from the other sister vessels or their sale proceeds and as the Court does not go into the merits of the amendment, the Court can allow the amendment application;

(c) even though it is true that plaintiff can only proceed to arrest one vessel and no more, one cannot lose sight of the following facts :

(i) If a decree is passed in plaintiff's favour at the time of final hearing of the suit only against defendant vessel, plaintiff may not be able to stake a claim over the sale proceeds of the other vessels as it has a judgment in rem only against defendant vessel. In the event of the sale proceeds of defendant vessel being unable to satisfy plaintiff's claim or in the event of plaintiff having a lower priority over other claimants, plaintiff

may not recover its claim.

(ii) On the other hand, in the event of plaintiff obtaining a decree against the other vessels or her sale proceeds, plaintiff may have a chance to recover its claim in full or atleast in part.

(d) One should not confuse between the right to arrest only one ship as opposed to obtaining a decree against sister ships or sale proceeds of sister ships.

(e) There is no impediment to the chamber summons for amendment being allowed subject to caveats that any decree passed against sister ships or sale proceeds of sister ships would be subject to priorities being determined in accordance with law. By this, other creditors, who have direct claims against the ship in question, will not be prejudiced.

(f) Another fact which arises for consideration is that creditors having claims against the “other ships” may be prejudiced if plaintiff is allowed to make other vessels a party to the present suit. The response to this argument is that the issue of priority is still open for determination and these creditors will not lose priority. What happens where there are no creditors against the “other ships”? In this situation would not plaintiff be prejudiced in recovering its claim from the “other ships” or their sale proceeds because it has no decree against these vessels.

Mr. Narichania submitted that therefore, there is no bar to the amendment *per se*.

6 Mr. Ramabhadran and Mr. Pratap both have submitted that the amendment application should not be allowed and their reasons are almost similar. Mr. Kamat also was of the view that the amendment as sought should not be permitted. It was submitted that even though under Order 1 Rule 10 of the CPC the Court can permit plaintiff to add parties on such terms as it may appear to the Court as just, such order being a judicial order, the Court needs to be *prima facie* convinced plaintiff has a cause of action against the party proposed to be added as a defendant. This will be the position whether in a civil suit or in an admiralty suit. It was also submitted that even in the facts and circumstances of the case, the impleadment of the sister vessels or its sale proceeds cannot be permitted.

7 Mr. Ramabhdran's submissions are as under :

(a) A Claimant in an admiralty action, until 1952, was entitled to arrest only the offending ship in respect of its maritime claim. However, the International Convention for the Unification of certain Rules relating to the Arrest of Sea-Going Ships, 1952 (Arrest Convention 1952) permitted a Claimant not only to arrest the offending ship, but also any other ship owned by the owner called 'Sister Ship'. The arrest of 'Sister Ship' did not in any way change the definition of 'Maritime Claim' inasmuch as the 'Maritime Claim' continued to be only against the offending ship. This would be clear and evident by the perusal of Article 3 (1) of the Arrest Convention, 1952.

Therefore, by virtue of the Arrest Convention, 1952, a Claimant could arrest not only the offending ship but any other ship owned by the same owner in order to secure his claim against the offending ship or its owner. However, the cause of action of the Claimant continues to be vested only against the offending ship and the owner and not against any other ship owned by the same owner. Therefore, where any Claimant seeks to arrest a 'Sister Ship' in order to secure its claim it is imperative that not only the 'Sister Ship' is made a party Defendant, but also its owner is made a party Defendant. The reason to implead necessarily the owner of such 'Sister Ship' in admiralty action is to ensure that Decree is passed against the owner inasmuch as the 'Sister Ship' is impleaded as Defendant only to secure plaintiff's claim. A monetary Decree cannot be passed against the 'Sister Ship' since it is impleaded only for the purpose of securing plaintiff's claim and the vessel itself is treated as a person 'or a party' in such action. As pointed hereinabove, not only no maritime claim extends to a 'Sister Ship' but even a maritime lien of a Claimant is only against the offending ship and no other ship.

(b) In England, Administration of Justice Act, 1956 was enacted repealing the earlier statutes on admiralty. The English Court of Appeal had occasion to consider whether a Claimant in admiralty action is entitled to arrest more than one ship in order to secure its claim. In the case

of *The Banco*¹ Claimant commenced the admiralty action against six ships including its owner. The offending ship was only ‘The Banco’. The owners applied to set aside the service of the writ and warrants of arrest in respect of all the vessels save ‘The Banco’ and offered to put a bail in the value of “Banco” alone in the sum of £135,000. The application of the Defendant was accepted against which the Claimant filed Appeal before the Court of Appeal. The Court scanned through the historical jurisdiction of the Courts of Admiralty and then referred to Article 1(1) which defines the ‘Maritime Claim’, Article 1(2) which defines ‘Arrest’, Article 3(1) which permits Claimant to arrest not only the offending ship, but any other ship owned by the same owner and Article 3(3) which makes it clear that if a ship is arrested in any one of the jurisdiction of the convention countries or bail or other security has been given in such jurisdiction, any subsequent arrest of the ship or of any ship in the same ownership by the same Claimant for the same Maritime Claim shall be set aside and the ship released. After referring to the provisions of Convention, the Court held that ‘only one ship of the same owner may be arrested’. The Court thereafter referred to Section 3(3) of the Administration of Justice Act, 1956 and held that the phrase ‘any other ship’ means ‘ship’ and not ‘ships’. The Court went on to hold that plaintiff, as soon as his cause of action arises, is entitled to issue a writ in rem against the offending ship and all other ships belonging to the same

1. (1971) 2 WLR 334

owner, and thereafter he could wait until he finds the one ship which he thinks more suitable to arrest and execute a warrant of arrest against her. The Judgment of Court of Appeal was delivered by Lord Denning M.R. and concurring Judgments by Megaw & Cairns, L.JJ.

(c) International Convention of Arrest of Ships, 1999 makes similar provision. Article 1 defines 'Maritime Claim', Article 3(1) permits the arrest of offending ship in respect of which the 'Maritime Claim' arose and Article 3(2) permits arrest of any other ship 'which is owned by the person who is liable for the 'Maritime Claim' and who was, when the claim arose the owner of the ship in respect of which 'Maritime Claim' arose or demise charterer, time charterer or voyage charterer of that ship'. A conjoint reading of Article 3(1) and Article 3(2) would make it clear that 'Maritime Claim' could be ascertained only against the offending ship, but any other ship could be arrested only for the purpose of securing the Claimant's claim.

(d) Article 5(1), Article 5(2) and Article 5(3) which refers to right of re-arrest and multiple arrest would make it clear a re-arrest is permitted subject to the aggregate value of the security do not exceed the value of the ship and right to arrest any other ship is permitted provided the security already provided is inadequate. Therefore, it may be possible to secure an arrest of another ship only if the owner is a 'going concern' and not when a ship owning company itself is under liquidation. As it would be

noted that under Article 5(1)(a) re-arrest is permitted subject to the condition the aggregate amount of security do not exceed the value of the ship. A perusal of Article 5(2)(a) would make it clear that a subsequent arrest is permitted only if the amount of security already provided in respect of the same claim is inadequate. This again would pre-suppose that the ship owning company is still doing business and that the same is not in liquidation.

(e) Article 3 (3) of the 1952 Arrest Convention could be divided into three parts. ‘The first is a prohibition to arrest a ship or obtain a security for its release more than once in respect of the same maritime claim; the second provides the remedy if the prohibition is infringed; the third specifies the exception to the prohibition’.²

(f) Relying on Berlingieri on Arrest of Ships, arrest or re-arrest or multiple arrest under the 1952 Arrest Convention and 1999 Arrest Convention seem to be similar. Mr. Ramabhdran referred to the following paragraphs :

(i) If a ship has been released after security has been provided in place of arrest, but under local currency regulation money is not freely transferable; [para 12.12]

(ii) ‘A good cause’ either for maintaining or for granting a second arrest may be granted in case of ‘bankruptcy of the guarantor’, a situation where the actual amount of the claim proves to be higher than that originally estimated for which the arrest was requested and security was obtained; [para 12.14]

(iii) Arrest of the ship could be granted even after bail had been

2. Berlingieri on Arrest of Ships (5th edition) published by INFORMA under the auspices of Committee Maritime International, Para 12.04 to 12.09

provided by the owner because the Defendant had declined expressly to agree to the jurisdiction of the Court (re- 'the princengracht' [(1993) 1 LL report 41]); [para 12.15]

(iv) A ship under arrest is sailing away and therefore re-arrested in another country; [para 12.16]

(v) Granting of new arrest of the same ship or a sister ship where the ship is released from arrest without any bail or other security being provided, for e.g., in order to avoid the owner suffering relevant damages, as, for e.g. in the case of the vessel having to meet a close cancelling date; [para 12.17]

(vi) 'A good cause' for second arrest would also be made if the proceeds of the sale are distributed amongst several Claimants and the claim of the arrestor is not wholly satisfied. [para 12.21]

(g) Therefore, it may be possible to arrest another ship under various circumstances narrated hereinabove. However, it would be obvious from the various situations narrated hereinabove, the purpose of the second arrest or the multiple arrests is to obtain security towards the Claimant's claim. However, such second arrest or the multiple arrest could not extend if the ship owning company is in liquidation. Firstly, when a ship owning company is in liquidation there is no question of Claimant obtaining any security towards its claim. Secondly, once the ship owning company is in liquidation, the distribution of the assets could only be in consonance with the provisions of the Companies Act, 2013.

(h) If a Claimant has executed the warrant of arrest against the ship prior to the commencement of winding up proceedings, in such an event the liquidator's right to distribute the sale proceeds is subject to plaintiff's charge³.

3. re: Aro Co. Ltd. W.L.R. (1980) pg. 453

(i) Once the winding up proceedings had commenced, the distribution of the sale proceeds could only be in terms of Section 529/529(a) of the Indian Companies Act, 1956. In this case, the Supreme Court has elaborately dealt with the powers of the Debt Recovery Tribunal acting under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 when the company is in liquidation and also when a State Financial Corporation proposes to sell an asset under the State Financial Corporation Act when the company is in liquidation and has held that in both the cases the distribution of the assets amongst the creditors in terms of Section 529-A and Section 529 of the Companies Act. (*Rajasthan State Financial Corporation and Anr. Vs. The Official Liquidator and Anr.*⁴)

(j) The Judgment of Madras High Court in the case of *Smith India Marine Service Vs. Shanmugam Rajasekar*⁵ is directly contrary to the law laid down by the Supreme Court in *Rajasthan State Financial Corporation (Supra)*. The Madras High Court has failed to take note of the fact that even to prosecute in admiralty proceedings, leave of the Company Court is mandatory, inasmuch as the assets of the company once in liquidation belong to all the creditors. The Madras High Court has erroneously held that the Companies Act is a general law. The Companies Act in fact is a special law to the extent that the relevant provisions of the Act gets triggered once the company goes into liquidation. It is in these

4. (2005) 8 SCC 190

5. (2018) SCC Online MAD 13

circumstances the Supreme Court in the case of *Rajasthan State Financial Corporation (Supra)* has held that though the Debt Recovery Tribunal may proceed with the adjudication of claims, but the same would be subject to leave of the Company Court and the sale proceeds thereof would also be in accordance with the provisions of the Companies Act. The Apex Court has taken a similar view in regard to the powers of the State Financial Corporation under the State Financial Corporation Act, 1951.

(k) Once the winding up proceedings had commenced all the properties of the company vest with the official liquidator. Therefore, there could neither be any arrest of a ship subsequent to commencement of winding up nor the sale proceeds could be made party Defendant. The Claimant in the present case would be secured to the extent of its claim if the warrant of arrest was executed prior to the date of the commencement of the liquidation proceedings. In any event, since the commencement of winding up proceedings, Plaintiff can have no right against another ship of the same company inasmuch as all the assets of the company in liquidation vest with the official liquidator.

(l) To sum-up:

- (i) There exists no cause of action to a Claimant against a sister ship, except to arrest for the purpose of security.
- (ii) Since the purpose of impleading another ship as a Defendant is only to secure plaintiff's claim, question of impleading sale proceeds does not arise since a Claimant is not entitled to obtain monetary decree against sale

proceeds of another vessel.

(iii) The question of obtaining security by arresting the second ship do not arise in a case where the company is already in liquidation.

(iv) All the properties including the ships vest with the official liquidator once the winding up proceedings had commenced and no Claimant would have a preferential claim over any vessel subsequent to the commencement of winding up, unless the Claimant is a secured creditor by way of mortgage, or the Claimant has a maritime lien like salvage. Moreover, in the present case Plaintiff has not obtained leave from the Company Court to proceed against another ship which is already under the control of the official liquidator.

(v) If the vessel cannot be arrested subsequent to the commencement of winding up proceedings, there is no question of impleading the sale proceeds of the vessel of a company which is in liquidation.

8 Mr. Pratap's submissions were also in the same lines as that of Mr. Ramabhadran. Hence, I am not reproducing the same. Mr. Pratap also added that the effect of winding up of the company will have no bearing because plaintiff would still not be entitled to arrest or proceed against other sister vessels or their sale proceeds having already obtained an order of arrest in respect of one of the sister vessels in respect of its claim.

9 I have considered the submissions of plaintiff, Mr. Narichania, Mr. Ramabhadran and Mr. Pratap. I am in agreement with Mr. Ramabhadran and Mr. Pratap for the following reasons.

10 Plaintiff has already obtained an order of arrest of *M.T. PRATHIBHA NEERA* which is a sister ship of *M.T. CHANDRABHAGA* in respect

of which plaintiff says it has a maritime claim. This chamber summons has been taken out by plaintiff to implead the owner of the vessel as well as various other sister vessels and/or their sale proceeds. Plaintiff says that although the various sister vessels are not necessary parties since an effective order can be made even without them, nevertheless they are proper parties because plaintiff also has a claim against the sister vessels and is entitled to execute decree against the sister vessels. The impleadment is therefore sought to claim a decree against the sister vessels and/or their sale proceeds. The question is whether the impleadment of the sister vessels can be allowed in the facts and circumstances of the case.

11 The starting point is of course whether plaintiff is entitled to proceed against sister vessels after having filed a Suit for arrest of one of the sister vessels *M.T. PRATIBHA NEERA* and after having obtained an order of arrest.

12 The position under the Brussels Convention, 1952 is quite clear.

Article 1 -

For the purposes of this Convention:

1. " Maritime Claim" means a claim arising out of one or more of the following:

(a) loss or damage caused by the operation of the ship;

(b) loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;

(c) salvage operations or any salvage agreement, including, if applicable, special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment;

(d) damage or threat of damage caused by the ship to the

environment, coastline or related interests; measures taken to prevent, minimize, or remove such damage; compensation for such damage; costs of reasonable measures of reinstatement of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; and damage, costs, or loss of a similar nature to those identified in this subparagraph (d);

(e) costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and costs or expenses relating to the preservation of an abandoned ship and maintenance of its crew;

(f) any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise;

(g) any agreement relating to the carriage of goods or passengers on board the ship, whether contained in a charter party or otherwise;

(h) loss of or damage to or in connection with goods (including luggage) carried on board the ship;

(i) general average;

(j) towage;

(k) pilotage;

(l) goods, materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance;

(m) construction, reconstruction, repair, converting or equipping of the ship;

(n) port, canal, dock, harbour and other waterway dues and charges;

(o) wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf;

(p) disbursements incurred on behalf of the ship or its owners;

(q) insurance premiums (including mutual insurance calls) in respect of the ship, payable by or on behalf of the shipowner or demise charterer;

(r) any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer;

(s) any dispute as to ownership or possession of the ship;

(t) any dispute between co-owners of the ship as to the employment or earnings of the ship;

(u) a mortgage or a " hypothèque" or a charge of the same nature on

the ship;

(v) any dispute arising out of a contract for the sale of the ship.

2. "Arrest" means any detention or restriction on removal of a ship by order of a Court to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment or other enforceable instrument.

Article 3

Exercise of right of arrest

1. Arrest is permissible of any ship in respect of which a maritime claim is asserted if:

(a) the person who owned the ship at the time when the maritime claim arose is liable for the claim and is owner of the ship when the arrest is effected; or

(b) the demise charterer of the ship at the time when the maritime claim arose is liable for the claim and is demise charterer or owner of the ship when the arrest is effected; or

(c) the claim is based upon a mortgage or a "hypothèque" or a charge of the same nature on the ship; or

(d) the claim relates to the ownership or possession of the ship; or

(e) the claim is against the owner, demise charterer, manager or operator of the ship and is secured by a maritime lien which is granted or arises under the law of the State where the arrest is applied for.

2. Arrest is also permissible of any other ship or ships which, when the arrest is effected, is or are owned by the person who is liable for the maritime claim and who was, when the claim arose:

(a) owner of the ship in respect of which the maritime claim arose; or

(b) demise charterer, time charterer or voyage charterer of that ship. This provision does not apply to claims in respect of ownership or possession of a ship.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this article, the arrest of a ship which is not owned by the person liable for the claim shall be permissible only if, under the law of the State where the arrest is applied for, a judgment in respect of that claim can be enforced against that ship by judicial or forced sale of that ship.

Article 5

Right of rearrest and multiple arrest

"5(1) Where in any State a ship has already been arrested and released or security in respect of that ship has already been provided to secure a maritime claim, that ship shall not thereafter be re-arrested or arrested in respect of the same maritime claim unless:

(a) the nature or amount of the security in respect of that ship already provided in respect of the same claim is inadequate, on condition that the aggregate amount of security may not exceed the value of the ship; or

(b) the person who has already provided the security is not, or is unlikely to be, able to fulfil some or all of that person's obligations; or

(c) the ship arrested or the security previously provided was released either:

(i) upon the application or with the consent of the claimant acting on reasonable grounds, or

(ii) because the claimant could not by taking reasonable steps prevent the release.

5(2) Any other ship which would otherwise be subject to arrest in respect of the same maritime claim shall not be arrested unless:

(a) the nature or amount of the security already provided in respect of the same claim is inadequate; or

(b) the provisions of paragraph 1(b) or (c) of this article are applicable.

5(3) 'Release' for the purpose of this article shall not include any unlawful release or escape from arrest."

13 As provided in Article 3 plaintiff can arrest either a particular ship in respect of which the maritime claim arose or any other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship.

14 Thus plaintiff can either arrest the particular ship or a sister ship. Plaintiff cannot arrest both ships or multiple ships. This has been so held in the judgment of the English Court of Appeal in the case of *The Banco (Supra)* whilst interpreting the provisions of the Administration of Justice Act, 1956 which was enacted to give effect to the 1952 Brussels Arrest Convention. The English Court of Appeal said "*That Convention makes it*

clear that only one ship of the same owner may be arrested” – per Lord Denning M.R. at page 340F. Lord Denning, at page 340 H - 341 A, further observed :

Section 3 (4) is the important one for our purpose. It says, so far as material, that in the case of any claim (inter alia) for damage done by a ship, the Admiralty jurisdiction

“may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action in rem against – (a) that ship, if at the time when the action is brought it is beneficially owned as respects all the shares therein by that person; or (b) any other ship which, at the time the action is brought, is beneficially owned as aforesaid.”

The important word in that subsection is the word “or.” It is used to express an alternative as in the phrase “one or the other”. It means that the Admiralty jurisdiction in rem may be invoked either against the offending ship or against any other ship in the same ownership, but not against both. This is the natural meaning of the word “or” in this context. It is the meaning which carries into effect the International Convention. It is the meaning which high authority we ought to give to it.

15 The position under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, which came into force on 1st April, 2018, may also be noted. Section 5 of the said Act makes it clear that the High Court may order arrest of any vessel in respect of a maritime claim if the person who owned vessel is liable for the claim and is the owner of the vessel when arrested. This means the particular vessel in question. Section 5(2) provides that the High Court may also order arrest of any other vessel in lieu of the vessel against which a maritime claim has been made. Thus, under this Act too, plaintiff can arrest either the particular vessel or a sister vessel. Only one vessel can be arrested and not multiple vessels. This act has

been noticed by the Apex Court in *Chrisomar Corporation vs. MJR Steels Pvt. Ltd.*⁶

16 Considering the position under the Brussels Convention 1952, as explained by the English Court of Appeal in the case of *The Banco (Supra)* and also under the position under the Admiralty Act, 2017 it is clear that it is not open to plaintiff to arrest more than one vessel in respect of its claim. plaintiff has already arrested the vessel *MT PRATIBHA NEERA*. Consequently, plaintiff is not entitled to arrest any of the other sister vessels. The purpose of impleadment is only to assert a claim against the sister vessels and seek a decree against the vessels and/or the sale proceeds. Consequently, if the relief of arrest of the sister ship cannot be granted then the sister ship or its sale proceeds cannot be proceeded against and a decree granted. Hence no question arises of impleadment of the sister vessels.

17 The position under the 1999 Geneva Arrest Convention may also be considered since this Convention is considered to be a part of our national law as observed by the Apex court in the case of *Chrisomar Corporation (Supra)*. Article 5 of this Convention (quoted above) refers to the right of the re-arrest and multiple arrest.

18 Even considering and applying Article 5(2), it is not open to plaintiff to arrest more than one ship in respect of the same maritime claim unless the security provided in respect of the claim is inadequate or the

6. AIR 2017 SC 5530

person who has already provided security is not or is unlikely to be able to fulfill some or all of the person's obligations. It is clear from this that arrest of another ship or multiple ships is permissible only if the amount of security already provided is inadequate. In the present case, no security has been provided. When no security is provided, it is open for plaintiff to apply for sale of the vessel and proceed against sale proceeds. Inadequate security can only mean security for plaintiff's claim not all claims against the vessel and security can be only upto the maximum value of the vessel. Hence no multiple arrest can be sought even under the provisions of Article 5 of the 1999 Convention.

Assuming the sale proceeds are insufficient to satisfy plaintiff's claim for whatever reason (eg other priority claims, insufficient sale proceeds etc.), it is open to plaintiff to execute the decree for the unsatisfied portion against other assets of the owner including the other ships of the fleet, then belonging to them. – see *M.V. Elizabeth*⁷. Also see *The Banco (Supra)* at page 343 B per Lord Denning, M.R.

19 But in no case can plaintiff seek multiple arrest on the ground that the ship arrested is heavily encumbered by priority charges/claims and therefore the security is inadequate. If this was permitted a Claimant could at the outset arrest multiple ships of the same owner on the ground that each ship is mortgaged and therefore to obtain adequate security he should

7. 1993 Supp(2) SCC 433 at 459 paragraph 45

be permitted to arrest the entire fleet. This is what plaintiff, in effect, is seeking to do in the present case by this Chamber Summons.

20 Thus even applying provision of 1999 Geneva Arrest Convention, in the facts of the present case, plaintiff is not entitled to multiple arrest or to proceed against multiple ships. Multiple arrest is not permissible under the 1952 Convention and the new Admiralty Act, 2017. If multiple arrest is not permissible then plaintiff cannot implead other sister ships or their sale proceeds and seek a decree against them. Hence plaintiff is not entitled to implead the various sister vessels with a view to obtaining an order of arrest in respect of the said vessels or a decree against their sale proceeds.

21 To say that plaintiff is only seeking impleadment and not arrest is *akin* to, as submitted by Mr. Pratap, missing the wood for the trees. Impleadment of the ships is with a view to arrest and this is made quite clear as plaintiff seeks a decree against all parties it seeks to implead. It also goes without saying that if you cannot arrest multiple ships you cannot seek a decree against multiple ships or the sale proceeds of multiple ships. Plaintiff, however, says that it is seeking only impleadment at this stage and the Court can decide at trial whether to grant a decree against multiple ship or their sale proceeds. This too is not correct because even for impleading a party by amending the Plaint, plaintiff has to demonstrate that the party sought to be impleaded is a necessary or proper party. Admittedly the

proposed parties are not necessary parties. The proposed parties are also not proper parties since as a matter of law plaintiff is not entitled to claim against multiple ships or their sale proceeds after having obtained an order of arrest of one ship already. Under Order 1 Rule 10, at any stage of the proceedings, a party could be added as defendant. However, such defendant could be added only when Court finds that the presence of the proposed defendant is to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit. Admittedly there is no question which requires to be settled by the addition of the proposed party. Plaintiff would have to satisfy, that plaintiff has *prima facie* a cause sustainable in law against the proposed defendant. Proposed defendant is not the offending ship and therefore, plaintiff has no cause of action against proposed defendant. Proposed defendant is being added only for the purpose of seeking decree. Plaintiff cannot obtain decree against proposed defendant. There is no reason to add the proposed parties and prolong the trial and put them to inconvenience cost and expense. Order allowing or rejecting such application is a judicial order and therefore Court is entitled to be satisfied as to why proposed defendant is sought to be roped in and that would not mean Court is adjudicating on the rights of plaintiff on merits.

22 Plaintiff relies on Order 1 Rule 3 and says he could have joined all ships as defendants to the Suit at the outset. That is true. However,

plaintiff did not. Had plaintiff joined all sister ships as Defendants and arrested one of the ships as plaintiff has done by arresting *M.T. PRATIBHA NEERA*, the Court would have thereafter struck out the rest of the ships by exercising its power under Order 1 Rule 10(2). Thus what the Court have done then, the Court certainly has the power to do now by not allowing joinder.

23 I have not considered the effect of the order of winding up of the company and appointment of official liquidator or *Smith India Marine Service (Supra)* as submitted by Mr. Ramabhadran and whether this would have any bearing on plaintiffs application because even assuming that there was no order of winding up, plaintiff would still not be entitled to arrest or proceed against other sister vessels and/or their sale proceeds having already obtained an order of arrest in respect of one of the sister vessels in respect of its claim. However, there is merit in the submission of Mr. V.K. Ramabhadran that leave under Section 446 of the Companies Act is necessary before impleadment can be allowed since the purpose of impleadment is to seek a decree. If a Suit cannot be commenced or proceeded with unless leave is obtained of the Company Court under Section 446 of the Companies Act, then it is equally necessary that such leave be obtained before seeking to implead sister ships or their sale proceeds in the present Suit for the purpose of obtaining a decree. The judgment of the English Court in *In re Aro Co. Ltd.* supports this position.

Leave was necessary even though proceedings were filed before the order of winding up.

24 This of course does not preclude plaintiff from laying claim to the sale proceeds of the other vessels or other assets of the owners of *M.T. PRATIBHA NEERA* in execution of any decree that plaintiff may obtain against the owners if plaintiff is unable to satisfy its decretal claim from the vessel *M.T. PRATIBHA NEERA* and / or its sale proceeds. Of course now that the owner of defendant is in liquidation, plaintiff may lodge its claim for the shortfall with Official Liquidator of the company.

 In respect of the unsatisfied portion of the decretal amount, plaintiff along with other unsecured creditors would rank *pari-pasu*. In law, once the company is in liquidation, only such claimants would have charge over the vessel who has executed warrant of arrest prior to the date of admitting of winding up petition. Therefore, the submission that plaintiff would not be able to stake its claim against sale proceeds of other defendant is fallacious. Plaintiff cannot obtain decree against sister ship of the offending vessel at all. Question of other creditors being prejudiced or not do not arise in as much as that has no bearing on the additional defendant being impleaded. Once the company goes into liquidation, all the properties of the company including various vessels become the “properties available to all” other than such claimant who has executed warrant of arrest against any vessel prior to commencement of liquidation proceedings.

25 Chamber summons accordingly stands dismissed. No order as to cost.

(K.R. SHRIRAM, J.)