

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

IN ITS COMMERCIAL DIVISION

NOTICE OF MOTION NO. 3 OF 2018

IN

COMMERCIAL SUIT NO. 196 OF 2016

MTM Yangon Pte Ltd.

.. Applicant/Org.Deft.No.3

In the matter between :

Mrs.Hemangi Vaid and Ors.

....Plaintiffs

Vs.

MTM Ship Management (India)

Private Ltd. & Ors.

...Defendants

WITH

NOTICE OF MOTION NO. 6 OF 2018

WITH

NOTICE OF MOTION NO. 7 OF 2018

IN

COMMERCIAL SUIT NO. 196 OF 2016

MTM Ship Management (India)

Private Ltd.

.. Applicant/Org.Deft.No.3

In the matter between :

Mrs.Hemangi Vaid and Ors.

....Plaintiffs

Vs.

MTM Ship Management (India)

Private Ltd. & Ors.

...Defendants

WITH

NOTICE OF MOTION NO. 8 OF 2018

IN

COMMERCIAL SUIT NO. 196 OF 2016

MTM Maritime Pte Ltd.& Anr.

.. Applicants

In the matter between :

Mrs.Hemangi Vaid and Ors.

....Plaintiffs

Vs.

MTM Ship Management (India)
Private Ltd. & Ors.

...Defendants

Mr. Nitesh Bhutekar i/b M P Chacharkar for plaintiffs.

Ms.Naira Jeejeebhoy a/w. Ms. Varsha Ramann i/b Bose and Mitra and Co.
for defendants/applicants.

CORAM : K.R.SHRIRAM, J.

DATE : 28TH FEBRUARY, 2018

PC.:

1 These notices of motion have been taken out for rejection of the
plaint under Order VII, Rule 11 of the Code of Civil Procedure, 1908 on the
ground that the plaint does not disclose any cause of action and admittedly,
as per the averments in the plaint, this Court cannot have jurisdiction.

2 Paragraph 16 contains jurisdiction clause which reads as under :

*“16. Mr. Vaid's contract of employment pursuant to which he served
on board the 6th Defendant vessel was concluded in Mumbai. The 1st to
5th Defendants carry on the business in Mumbai through the 1st
Defendant, which has its office in Mumbai. The said
omissions/commissions/failures are actionable in all the involved
nations. In view of the foregoing, this Hon'ble Court in exercise of its
Admiralty and Vice-Admiralty Jurisdiction is competent to receive,
entertain and try the present suit and save the Plaintiffs from end of
justice.”*

3 In the plaint, the cause title itself indicates that defendant nos.2 to 5
are Singapore Companies and defendant no.6 is a Singapore flagged vessel.
Though in paragraph 16, it is stated that defendant nos.1 to 5 carry on
business in Mumbai through the 1st defendant, there is no shred of evidence
or averment in the plaint to indicate the basis for making this statement. As

regards defendant No.6, the vessel is not within the jurisdiction of this Court when the plaint was lodged and as held by the Apex Court in *M.V. Elisabeth and Ors. Vs. Harwan Investment & Trading Pvt. Ltd.*¹ for an action in rem against the vessel, the vessel has to be within the jurisdiction of this Court and the Court assumes jurisdiction by passing an order of arrest of the vessel. Admittedly, the vessel was not within the jurisdiction of this Court when the plaint was lodged.

In my view, this Court, therefore, cannot exercise its jurisdiction against defendant nos.2, 3, 4, 5 and 6.

4 So far as defendant no.1 is concerned, there is an averment in the plaint at paragraph 2 that defendant no.1 is the Manning Agency and held out themselves as subsidiary/agent of the 2nd defendant, the employer of the Deceased. The employment contract is at Exh.'A' to the plaint provides that defendant no.1 has signed as agent for and on behalf of MTM Ship Management Pte. Ltd. Therefore, defendant No.1, admittedly, as agent of disclosed principal cannot be liable as provided in Section 230 of the Contract Act, 1872. This Court in *Midland Overseas Vs. M.V. "CMBT Tanna & Ors.*² has held that agents of disclosed principal are not liable.

1 1993.SCC 104

2 1999 SCC OnLine Bo.460

5 In the circumstances, the suit against defendant No.1 also cannot survive. Therefore, the suit stands dismissed as against defendant No.1 also.

6 All notices of motion stand disposed accordingly.

(K.R. SHRIRAM, J.)