

Dhanappa
I. Koshti

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

**COMMERCIAL CHAMBER SUMMONS NO.773 OF 2018
IN
COMMERCIAL ADMIRALTY SUIT NO.840 OF 2017**

Capt. Gavin Sequeira & Ors.

... Applicants

IN THE MATTER BETWEEN :

Capt. Gavin Sequeira & Ors.

... Plaintiffs

Vs.

Sale Proceeds of m.v. Malaviya 23 & Ors.

... Defendants

Mr. Nimay Dave i/by Bose & Mitra & Co., for the Applicants/Plaintiffs.

Mr. Prathmesh Kamat a/w Ms. Sapna Rachure & Mr. Aditya Pimple for
the Official Liquidator.

Mr. Pabitra Dutta for crew members.

CORAM: B.P. COLABAWALLA J.

(Through Video Conference)

DATE : 7TH OCTOBER, 2020

P.C.:

1. The above Chamber Summons has been filed by the Applicants seeking to implead M/s. Gard P. & I. (Bermuda) Limited through their agents in Singapore M/s. Gard (Singapore) Pte. Ltd. as a Co-Plaintiff in the above Admiralty Suit as well as for amendments in the Plaint as per Schedule 'A' attached to the Chamber Summons.

2. Totally there are 37 Applicants. Out of these, the first thirty-six are the Plaintiffs in the above Suit. Applicant No.37 is seeking to be joined as co-Plaintiff No.37 in the above Suit. The reason for the Applicant to be joined as Plaintiff No.37 is that it is the Erstwhile Protection and Indemnity (P & I) Insurers of the vessel m.v. Malaviya 36, who *inter alia* provide the third party marine liability insurance relating to risks inherent in industrial ship operations. On 8th February, 2017, the said Applicant agreed to provide third party liability insurance for the vessel Malaviya 36 to respond the cargo claims, pollution claims, wreck removal, dock damage, etc., by entering the vessel in the P&I Club and issued a Certificate of Entry evidencing the contract of insurance naming GOL Offshore as the assured. It is the case of the Applicant No.37 that pursuant to this insurance, it has made payment to the crew of the said vessel, namely, Plaintiff Nos.1 to 36, as contemplated under the Maritime Labour Convention 2006 (as amended). It is, therefore, the case of the Applicant No.37 that it is a necessary party to the present Suit and, therefore, be joined as a co-Plaintiff.

3. After hearing the learned counsel for the parties and perusing the Chamber Summons as well as the affidavit in support thereof, I think that Applicant No.37 ought to be joined as a co-Plaintiff in the above Admiralty Suit as Plaintiff No.37. It can hardly be disputed

that considering that Applicant No.37 has claimed to have paid the dues of the crew members (viz., Applicant / Plaintiff Nos. 1 to 36) as mentioned above, they would have a maritime claim. Of course, they would have to prove their claim in the Suit. I, therefore, think that they would have to be necessarily joined as Plaintiff No.37.

4. Considering the above observations, the Chamber Summons is allowed in terms of prayer clauses (a), (b) and (c), which read thus :-

- “(a) That this Hon’ble Court be pleased to implead M/s. Gard P. & I. (Bermuda) Limited through their agents in Singapore M/s. Gard (Singapore) Pte. Ltd. as Co-Plaintiff in the instant Admiralty Suit.*
- (b) That the Plaintiffs be permitted to amend the Plaint as per the Schedule ‘A’ attached hereto.*
- (c) That Consequential amendment be allowed to be carried out.”*

5. The amendment shall be carried out within a period of two weeks from today and the amended copy of the Plaint shall be served on all the Defendants within a period of two weeks thereafter. Needless to clarify that the time to file the Written Statement on behalf of the Defendants shall only start after the amended Plaint is served on the Defendants.

6. It is made clear that all contentions of all parties are expressly kept open and by allowing this Chamber Summons nothing is deemed to be admitted by any party herein.

7. The Chamber Summons is accordingly disposed of.
8. No order as to costs.
9. This order shall be digitally signed by the Private Secretary/
Personal Assistant of this Court. All concerned shall act on production
by fax or e-mail of a digitally signed copy of this order.

(B. P. COLABAWALLA, J.)