

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

**INTERIM APPLICATION NO.1802 OF 2021  
IN  
COMMERCIAL ADMIRALTY SUIT NO.12 OF 2014**

Saraswat Co-operative Bank Limited .. Applicant/ Plaintiff  
v/s.

M. T. Pratibha Bheema IMO 9000558 & Ors. .. Defendants

**AND  
INTERIM APPLICATION NO.99 OF 2022  
IN  
ADMIRALTY SUIT NO.72 OF 2014**

State of Goa through Captain of Ports .. Applicant/ Plaintiff  
v/s.

Sale Proceeds of the Vessel

M. T. Pratibha Bheema & Ors. .. Defendants

And

Saraswat Co-operative Bank Limited & Anr. .. Respondents

**WITH  
INTERIM APPLICATION (L) NO.10755 OF 2021  
INTERIM APPLICATION (L) NO.10462 OF 2021  
IN**

**COMPANY PETITION NO.128 OF 2013**

Cygnus Petroleum FZE .. Applicant  
v/s.

Man Diesel and Turbo

Branch of Man Diesel & Turbo Se, Germany & Anr. .. Respondents

Mr. Rahul Narichania, Senior Advocate, a/w Shyamali Gadre & Harshita Bhanushali i/b. Little & Co. for the plaintiff.

Mr. Amrut M. Vernekar for the applicant in IA/99/2022.

Mr. Nitesh Bhutekar a/w Gargi Warunjikar for the applicant in IAL/10462/2021.

**CORAM : A. K. MENON, J.**

**DATED : 14TH JUNE, 2022.**

**P.C. ,**

1. At the outset, Mr. Narichania states that the cause title requires to be amended inasmuch as M/s. Cygnus Petroleum FZE, one of the claimants in Company Petition no.128 of 2013 had not been impleaded. Accordingly, leave is granted to carry out the amendment to the IA. Re-verification is dispensed with since the aforesaid respondent has already filed an affidavit in reply to the IA.
2. The application seeks reliefs in terms of determination of priorities in respect of payments to be made out of the sale proceeds lying deposited with the Prothonotary and Senior Master pursuant to the decree dated 2<sup>nd</sup> March, 2020. The application also seeks an order directing the expenses incurred by the applicant towards publication to be treated as Sheriff's expenses. A companion IA no.99 of 2022 is also listed. However, since the relief sought is for

similar, they are taken up together.

3. The applicant in IA no.1802 of 2021 is a co-operative bank and holds a decree against the vessel in Commercial Admiralty Suit no.12 of 2014, passed on 2<sup>nd</sup> March, 2020 in a sum of Rs.136.15 crores i.e. Rs.112.66 crores plus interest of 23.49 crores.
4. Mr. Narichania appearing in support today submits that they are secured creditors being the mortgagees in respect of the vessel in question and that they have claim which ranks highest in priority after the plaintiff in Admiralty Suit no.72 of 2014 which is the State of Goa through Captain of Ports. Mr. Narichania submits that although his decree is in a sum of Rs.136.15 crores, he will have to seek the balance of the amount lying deposited with the Prothonotary and Senior Master after the dues of the plaintiff-decree holder in Admiralty Suit no.72 of 2014 are satisfied.
5. Mr. Vernekar appearing for the plaintiff in Admiralty Suit no.72 of 2014 submits that as far as his clients are concerned, they are presently holding a decree in a sum of Rs.31,69,737.61 which includes the principal sum and interest as on date of decree. Mr. Vernekar submits that the applicant is restricting its claim to the

aforesaid sum. In view thereof, it is submitted that the sale proceeds of the port ranking higher than that of the applicant bank by virtue of the provisions of Section 9 of the Admiralty Jurisdiction and Settlement of Claims Act, 2017, dues of the port may be paid first.

6. As far as the applicant bank is concerned, it ranks in next in priority being the mortgagee and by virtue of Section 10(1)(b). In view thereof and the registry having informed that there is no Caveat filed, it will be appropriate that both the IAs are disposed.
7. The factual aspects have been set out in the application. Cygnus Petroleum FZE–respondent no.5 had also filed its own Suit bearing No.30 of 2013 which has been decreed. They claim to have supplies bunkers to the Vessel and are said to be entitled to a sum of USD 2,620,677.76 and costs of the suit. Respondent has also filed the above two IAs in a Company Petition they have filed. The IAs seek payment of decretal dues and an amendment.
8. In view of the fact that the decretal dues of the bank in Commercial Admiralty Suit no.12 of 2014 far exceeds the sale proceeds, there is no occasion to grant any relief to Cygnus

Petroleum FZE. Accordingly, I pass the following order;

(i) IA no.99 of 2022 in Admiralty Suit no.72 of 2014 and IA no.1802 of 2021 in Commercial Admiralty Suit no.12 of 2014 are allowed in terms of the following;

(a) Prothonotary and Senior Master shall pay a sum of Rs. 31,69,737.61 in the first instance to State of Goa through Captain of Ports, the applicant in IA no.99 of 2022.

(b) Balance, if any, shall be paid over with accrued interest to Saraswat Co-operative Bank Limited, the applicants in IA no.1802 of 2021 in Commercial Admiralty Suit no.12 of 2014.

(ii) IA no.10462 of 2021 is disposed as infructuous. Liberty is granted to file a claim before the Liquidator.

(iii) In view of the disposal of IA no.10462 of 2021, IA no.10755 of 2021 which seeks amendment to the aforesaid IA also stands disposed.

**(A. K. MENON, J.)**