

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION NO.2544 OF 2022
IN
COMM. ADMIRALTY SUIT NO.42 OF 2021**

Carnival PLC	...	Applicant
<i>and</i>		
The Board of Trustees of the Port of Mumbai	...	Plaintiff
<i>Versus</i>		
Sale Proceeds of Vessel M.V.Karnika and Ors.	...	Defendants

Mr. Prashant S. Pratap, Senior Advocate with Mr. Nishaan Shetty, Ms. Shaina Pratap i/by Mr. Kaushik S. Krishnaswamy, for Applicant.
Mr. Ajai Fernandes with Ms. Sneha Pandey i/by Motiwala and Co., for Plaintiff.

CORAM: N.J.JAMADAR, J.

DATE: 2nd AUGUST, 2022

P.C.:

1. By virtue of this Application under Rule 1086 of the Bombay High Court Original Side Rules, 1980, the Applicant seeks directions to the Plaintiff in Commercial Admiralty Suit No.42 of 2021 to implead the Applicant as party Defendant to the Suit.
2. The substance of the Application can be stated as under :
 - (a) M.V.Karnika – Defendant No.1 Vessel was arrested by an order dated 30th September, 2020 passed by this Court. Pursuant to the subsequent orders dated 7th October, 2020 and 20th October, 2020 passed in Comm. Admiralty Suit (L)

No.3579 of 2020, M.V.Karnika came to be sold and the sale proceeds aggregating to USD 11,650,00.00 have been deposited with the Prothonotary and Senior Master, High Court, Bombay.

(b) The Board of Trustees of the Port of Mumbai, an authority constituted under the Major Port Trust Act, 1963, have instituted Commercial Admiralty Suit No.42 of 2021 to recover the statutory dues which M.V.Karnika owes to the Port Trust.

(c) The Applicant – Intervener claims to be a mortgagee of M.V.Karnika. The Applicant claims to have advanced a sum of USD 12,000,000.00 to the owners of M.V.Karnika on the security of the said Vessel under the first Mortgage Deed dated 12th March, 2019 registered with the Registry of the Common Wealth of Bahamas. The Applicant has already instituted Commercial Admiralty Suit No.33 of 2021 against the sale proceeds of the Vessel M.V.Karnika and its erstwhile registered owner M/s. Jalesh Cruises Mauritius Ltd., for recovery of the outstanding amount along with interest and costs.

(d) The Applicant asserts that the claim in the instant suit to the tune of Rs.53,18,24,380.82 along with interest @ 15% p.a. from 1st July, 2021 is arbitrary and/or erroneous, excessive and the claim for port dues and other charges is not in accordance with the governing rules and regulations. In any event, the Plaintiff cannot claim priority over the claim of the Applicant, which constitutes a maritime

claim under Section 4(1)(c) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, and ranks higher in priority of other maritime claims except maritime liens. Hence, the Applicant be permitted to intervene in the Suit.

3. The Plaintiff has resisted the Application by filing an Affidavit in Reply. At the outset, the Plaintiff contends that the application has been preferred with an oblique motive to defeat and/or delay the legitimate claim of the creditors against the sale proceeds of M.V.Karnika. The claim of the Applicant that it is a mortgagee of the Vessel M.V.Karnika is stated to be fraudulent. According to the Plaintiff, the alleged mortgage has not been reflected in the books of account of the second defendant, the erstwhile registered owner of M.V.Karnika. Neither the inspection of the original mortgage deed has been offered. Nor the requisitions have been responded to. Therefore, the very claim of the Applicant that it is the mortgagee of the said vessel, is wholly untenable. The Plaintiff has also assailed the tenability of Comm. Admiralty Suit No.33 of 2021 on the ground of territorial jurisdiction as well as on the merits of the claim. The impleadment of the applicant as a party Defendant to this Suit, according to the Plaintiff, would unnecessarily delay and obstruct the claim of the Plaintiff who has a maritime lien. Thus, the Plaintiff has prayed for dismissal of the application.

4. I have heard Mr. Pratap, learned Senior Advocate appearing for the Applicant and Mr. Fernandes, learned Counsel appearing for the Plaintiff. With the

assistance of the learned Counsel for the parties, I have perused the material on record including a copy of the plaint in Comm. Admiralty Suit No.33 of 2021 instituted by the Applicant against Defendant Nos.1 and 2 herein.

5. The thrust of the challenge to the locus of the application mounted on behalf of the Plaintiff was that there is no material to lend credence to the claim of the Applicant that it is the mortgagee of the Vessel M.V.Karnika. It was urged on behalf of the Plaintiff that despite requisitions, copies of the original mortgage deed have not been furnished. A bare perusal of the plaint in Comm. Admiralty Suit No.33 of 2021 indicates that the substratum of the claim of the Plaintiff - the Applicant herein is that it has a first mortgage over M.V.Karnika. The Applicant seeks a decree for realization of the mortgage money. Copy of the mortgage registration form is annexed to the said plaint. It appears that the mortgage is registered with Common Wealth of Bahamas. It would, therefore, be rather difficult to accede to the submission on behalf of the Plaintiff that there is no prima facie material to show that the Applicant has a direct interest in the sale proceeds of M.V.Karnika. The fact that the Plaintiff has instituted a suit to enforce its stated claim cannot be lost sight of. At this juncture and in this proceeding, it would be impermissible to delve deep into the veracity of the Applicant's claim that it is a mortgagee of the Vessel M.V.Karnika.

6. It would be contextually relevant to extract the Rules 1086 and 1087 of the of the Admiralty Rules, which read thus :

“1086. Interveners.-

(a) Where a ship against which a suit in rem is brought is under arrest or money representing the proceeds of sale of that ship is in court, a person who has interest in that ship or money but who is not defendant to the suit may, with the leave of the Judge, intervene in the suit.

(b) An application for grant of leave under this rule may be made ex-parte by an affidavit showing the interest of the applicant in the ship against which the suit is brought or in the money held in court.

(c) A person to whom leave is granted to intervene shall thereupon become a party to the suit and shall file an appearance in person or by vakalatnama within the period specified in the order granting leave. On filing such appearance or vakalatnama, the intervener shall be treated as if he were a defendant in the suit.

(d) The Judge may order that a person to whom he grants leave to intervene in a suit, shall, within such period as may be specified in the order, serve on every other party to the suit such pleading as may be specified.

1087. Order for sale of ship and determination of priority of claims.-

(a) Where in a suit in rem the ship proceeded against is sold and the sale proceeds are paid into court, any party who has obtained or obtains a decree or judgment against such ship or proceeds of sale may apply to the court by interim application for an order determining the order of priority of claims against the proceeds of sale of such ship.”

7. In Interim Application No.895 of 2021 in Comm. Admiralty Suit No.11 of 2021, where the Plaintiff herein had sought impleadment, I had an occasion to consider the import of the aforesaid Rules. It was, inter alia, observed as under :

“15. Sub-clause (a) of Rule 1086 provides that where an action in rem is

brought against a ship, which is under arrest, or the sale proceeds of the ship, (which is in deposit with the Court), a person, who has interest in that ship or sale proceeds may intervene in the suit, with the leave of the Judge, if he is not party defendant to the suit. On a plain reading, four postulates emerges. One, an action in rem must have been brought against the vessel. Two, the vessel must be either under arrest or, post its sale, the Court holds seisin over the sale proceeds of the ship. Three, the person who seeks to intervene must have an interest in the said vessel or its sale proceeds. From the point of view of the intervener, what has to be established is the existence of an interest in the vessel or the sale proceeds. Four, it is in the discretion of the Court to allow a party to intervene.”

8. All the four aforesaid postulates seem to have been made out in the case at hand. The instant suit is an action in rem. The vessel, to which the Plaintiff claims to have rendered services, is sold and the action is practically against the sale proceeds of the said vessel. Interest of the Applicant in the subject matter of action in rem is self-evident. The Applicant claims to be the first mortgagee of the said vessel. The Applicant has also instituted a suit to enforce its rights as a mortgagee.

9. Mr. Fernandes, learned Counsel for the Plaintiff, however, banked upon the observations in paragraph Nos.25 and 26 of the aforesaid Order, which read as under :

25. The matter can be looked at from a slightly different perspective. Under Clause (e) of Rule 1087, the notice shall, *inter alia*, state that any person having claim against the ship or the proceeds of the sale thereof shall file a suit to prove his claim before the expiration of the specified period. In a given case, pursuant to notice, a claimant may institute the suit and have the

admiralty claim proved against the ship or sale proceeds. If such person ranks low in priority and a person standing higher in priority gets a decree for a sum in excess of the entitlement, and is paid out, nothing would remain for distribution to such decree holder, who ranks low in priority. The situation gets accentuated where the claim is against the sale proceeds and there is nobody to defend the suit.

26. The conspectus of aforesaid consideration is that in view of Rule 1086 of the Admiralty Rules, if the Court is satisfied that the applicant has an interest in the vessel or the sale proceeds, he can be allowed to intervene in the suit for the limited purpose of demonstrating that the plaintiff is not entitled to a decree in excess of the genuine and sustainable claim. In short, a claimant, who is allowed to intervene, cannot definitely step into the shoes of original defendant – vessel and/or its owner, much less take all the defences which are open to such defendant. An intervener would be entitled to raise only those defences which are appropriate to his character as the competing maritime lien holder/ claimant. Thus, I am inclined to allow the application.”

10. I am afraid the aforesaid observations are of no assistance in advancing the cause of the submission on behalf of the Plaintiff in the case at hand. In my considered view, the aforesaid reasons, if construed in correct perspective, lend support to the claim of the Applicant. I am, therefore, inclined to allow the Application. Hence, the following order :

ORDER

- (i) The Application stands allowed in terms of prayer clause (a).
- (ii) The Plaintiff shall implead the Applicant as a party Defendant to

this Suit.

(iii) Necessary amendment be carried out within a period of two weeks and copy of the amended Plaint be served on the Defendants within a week thereafter.

(iv) The newly added defendant shall file Written Statement within a period of one month of being served with a copy of the amended plaint.

(N.J.JAMADAR, J.)