

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION NO.4419 OF 2022
IN
COMM. ADMIRALTY SUIT NO.45 OF 2021**

Kenmark Tech Solutions ... Applicant/Plaintiff
versus
Sale Proceeds of MV Karnika (IMO No.8521220)
and Ors. ... Defendants

Mr. Mohit Bharadwaj i/by for Plaintiff.
Ms. Siddha Pamecha with Mr. Shailesh Prajapati i/by Dua Associates for Respondent No.3.

CORAM: N.J.JAMADAR, J.

DATE: 29th NOVEMBER, 2022

P.C.:

1. This is an application for summary judgment under Order XIII A of the Code of Civil Procedure, 1908.
2. The Plaintiff provides specialized services to ships and ship owners including repairs and maintenance. The Plaintiff also supplies spare parts for reequipping the ships.
3. The Defendant No.1 Vessel came to Mumbai Port on 17 April, 2019 Jalesh Cruises Mauritius Ltd. (Jalesh) - Defendant No.2, was the registered owner of Defendant No.1 Vessel. Zee Media Corporation Ltd. (Zee Media) - Essel Group, was the beneficial owner of Defendant No.1 Vessel. Waterways Leisure Tourism Pvt. Ltd.

(Waterways) - Defendant No.4 was the assignee of interest of Defendant No.3 in the Defendant No.1 Vessel.

4. Pursuant to an order dated 7th October, 2021 in Interim Application (L) No.3962 of 2020, Defendant No.1 Vessel was ordered to be sold for USD 11,650,00.

5. During the period 9 October, 2019 to 10 February 2020, the Plaintiff had rendered various services such as repairs, supply of parts for re-equipping it for operation, management, preservation and maintenance. Bills were raised by the Plaintiff for the said supplies. Defendant Nos.1 to 3 committed defaults amidst sporadic payment. The last payment was received on 13 April 2020. An amount of Rs.10,63,461/- remained outstanding. Hence the Suit.

6. The Applicant/Plaintiff has taken out this Application for summary judgment asserting, inter alia, that the claim of the Plaintiff represents an admitted liability and there is no real prospect of successfully defending the Suit. An Affidavit of service on Defendant Nos.2 to 4 has been filed.

7. I have heard the learned Counsel for the Applicant/Plaintiff and the learned Counsel for Defendant No.3.

8. The claim of the Plaintiff that it had rendered services to M.V.Karnika is evidenced by the invoices raised by the Plaintiff along the corresponding delivery notes (Exhibit E collectively). The invoices contain the description of the goods supplied and services rendered. The delivery notes also evidence the supply of the

goods and services rendered to Defendant No.1 Vessel by the Plaintiff. In the statement of Account (Exhibit F) maintained by the Plaintiff, the amounts debited to and received from Jalesh are indicated, leaving the outstanding balance of Rs.10,63,461.32.

9. It would be contextually relevant to note that in a communication addressed on 20 March 2020, the Defendant No.2 assured the Plaintiff to clear the outstanding payment without any demur and the liability was clearly acknowledged in as much as time was sought to clear the outstanding amount on account of unavoidable situation. Thereafter by an email dated 26th May, 2020, Defendant No.2 again sought 30 days time to make the outstanding payment under the invoices. Thus there is an admission of liability which further fortifies the claim of the Plaintiff, evidenced by the documents of unimpeachable character. In the circumstances, I do not find that there is any real prospect of the Defendants successfully defending the Suit. Nor there is any other compelling reason not to dispose of the claim without recording oral evidence. Hence the following order :

ORDER

- (i) The Interim Application stands allowed.
- (ii) There shall be a summary judgment and decree in favour of the Plaintiff and against the sale proceeds of M.V.Karnika and Defendant Nos.2 to 4 jointly and severally in the sum of Rs.13,75,581/- along with further interest @ 9% p.a.

on the sum of Rs.10,63,461/- from the date of institution of the Suit till payment and/or realization.

(iii) The Defendants shall pay costs of the Suit quantified at Rs.50,000/-.

(iv) The Suit stands decreed in the above terms.

(v) Drawn up decree dispensed with.

(N.J.JAMADAR, J.)