

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION NO.969 OF 2022
IN
COM. ADMIRALTY SUIT NO.35 OF 2020**

Axis Trustee Services Ltd.	...	Applicant
and		
Indian Oil Corporation Ltd.	...	Plaintiff
versus		
The sale Proceeds of M.T.Prem Mala	...	Defendant

Mr. Ashwin Shankar with Ms. Shweta Sadanandan, for Applicant.

Mr. Siddhanath Chhabria with Ms. Rujuta Patil i/by Negandhi Shah and Himayatullah, for Plaintiff.

CORAM : N.J.JAMADAR, J.

DATE : 24 JANUARY 2023

P.C.

1. The Applicant who claims to be a decree holder in Comm. Admiralty Suit (L) No.7 of 2020 against the sale proceeds of M.T.Prem Mala the Defendant in the instant suit (COMAS 35 of 2020) has preferred this Application to intervene in the instant Suit under Rule 1086 of the Bombay High Court (Original Side) Rules, 1980 (the said Rules).

2. M.T.Prem Mala, the Defendant Vessel in the instant Suit, was mortgaged to the Applicant. The said Vessel was arrested and subsequently sold pursuant to the orders passed by this Court. The Suit instituted by the Applicant in the capacity of debenture trustee to enforce the registered mortgage/charge over the

Defendant Vessel came to be decreed (COMAS (L) No.7 of 2020) by an order dated 5 May 2021. The Applicant, thus, has an interest in the sale proceeds of the Defendant Vessel. Therefore, the Applicant be permitted to intervene in the instant Suit instituted by the Plaintiff, also, seeking a decree against the sale proceeds of M.T.Prem Mala.

3. An Affidavit in Reply is filed on behalf of the Plaintiff resisting the prayer for intervention. It is, inter alia, contended that the Plaintiff has a maritime lien against the sale proceeds in contradistinction to maritime claim simplicitor of the Applicant. In any event, according to the Plaintiff, the Plaintiff's claim stands higher in priority over that of the Applicant.

4. In Interim Application No.895 of 2021 in Com. Admiralty Suit No.11 of 2021, I had an occasion to consider the remit of Rule 1086 of the Rules, which makes the provision for intervention. The observations in paragraph Nos.15, 21 and 26 are relevant and govern the facts in the case at hand as well. They read thus :

“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 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.

21. In the aforesaid context, the question of propriety of allowing a competing maritime lien holder to intervene in the suit against the sale proceeds of the Vessel, which was sold in an action in a rem, is required to be appreciated. Mr. Kamat is justified in canvassing a submission that a person, who has no concern at all either with the Vessel or with the claim of the Plaintiffs, cannot be permitted to intervene just to dispute or delay the realization of the Plaintiff's claim. Undoubtedly, a busybody who has no semblance of interest cannot be permitted to intervene. It is for this reason that Clause (a) of Rule 1086 postulates that the essential and primary qualification 'to intervene' is the 'existence of an interest' either in the vessel or the sale proceeds. In a case where the applicant – intervener is a person holding maritime lien it would be rather difficult to urge that such application has, "no interest" in the vessel or sale proceeds.

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."

5. In the case at hand, the Applicant is a decree holder. It also claims to be a mortgagee of / charge holder over, the Defendant Vessel. It would be audacious to

contend that the Applicant has no interest in the sale proceeds of M.V.Prem Mala. Faced with the aforesaid situation, the learned Counsel for the Plaintiff, banking upon the observations in paragraph No.26, urged that in the event the Court is inclined to allow the Application, the intervention deserves to be restricted to the conditions enunciated therein.

6. This submission of the learned Counsel for the Plaintiff seems to carry conviction. Thus, I am inclined to allow the Application subject to certain conditions.

7. Hence, the following order :

ORDER

(i) The Application stands allowed in terms of prayer clause (a).

(ii) The Plaintiff shall amend the Complaint and implead the applicant as a party defendant within two weeks from today and serve a copy of the complaint and accompaniments on the Applicant.

(ii) The Applicant shall file written statement within a period of 30 days of being served with a copy of the complaint, to raise defences restricted to the extent indicated in paragraph No.26 (extracted above in para No.4).

(iv) No costs.

(N.J.JAMADAR, J.)