

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION
IN ITS COMMERCIAL DIVISION
NOTICE OF MOTION NO.73 OF 2019
IN
COMM. ADMIRALTY SUIT NO.46 OF 2018**

IOGPL Offshore Pvt. Ltd.	...	Applicant
and		
Wizdoms Naik International Ltd.	...	Plaintiff
versus		
DSV Gerimal	...	Defendant

Mr Bhupesh Dhumatkar i/by Arun Nile for Applicant.

Ms. Sneha Pandey i/by Motiwala and o., for Plaintiff in COMASL 19327 of 2021.

**CORAM : N.J.JAMADAR, J.
DATE : 28 FEBRUARY 2023**

P.C.

1. Heard the learned Counsel for the parties.
2. This Court has passed a detailed order dated 27 January 2023 in instant Notice of Motion No.73 of 2019 in COMAS 46 of 2018 and Sheriff's Report No.3 of 2023 with Judge's Order No.182 of 2021 in COMAS(L) No.19327 of 2021.
3. Paragraph Nos.9 to 14 of the said order read as under :

“9. The situation which thus obtains is that the Defendant Vessel is under order of arrest since 8 June 2018. As the applicant in Notice of Motion No.73 of 2019 has laid claim over the equipments and the earlier auction sale was inclusive of the machinery and equipments on board, the Court though it appropriate to cancel the same. The question as to who is entitled to claim the equipment and machineries over which the applicant in Notice of Motion No.73 of 2019 lays claim awaits adjudication.

10. In the meanwhile, the vessel continues to deteriorate posing serious navigational hazard. Delay in the sale of the same would operate to the detriment of stake holders in the vessel and/or the sale proceeds in the event the sale materializes. Not to sale the vessel till the time the question of title over the equipments is decided would thus cause benefit to none.

11. In the circumstances, when the matter was heard today, the learned Counsel for the applicant in Notice of Motion No.73 of 2019 was requested to take instruction as to whether the applicant is willing to furnish adequate security, on the strength of which the applicant can be permitted to remove the equipments and machineries subject to determination of entitlement thereto in an appropriate proceedings. The learned counsel submits that, at this stage, the Applicant is not in a position to assess the nature and condition of the equipments and machineries, on board, and it's approximate value. The learned Counsel seeks permission to take inspection of the said equipments and machineries and make a statement as to the quantum of security which the applicant may be required to furnish.

12. In any event, since the sale of the defendant vessel could not proceed as the issue of title to the equipments and machineries, over which the applicant lays a claim arose, it may be expedient to direct the Sheriff to have a separate valuation of the said equipment and machinery so that appropriate orders of either the sale of the defendant vessel, after removing said equipments and machineries, or carving out of a portion of the sale proceeds, if the vessel is sold along with equipments and machineries, can be passed.

13. In the circumstances, the applicant is permitted to inspect the equipment and machinery over which the applicant laid the claim, in the presence of representative of the Port Trust and owner of the defendant Vessel.

14. In the meanwhile, the Sheriff shall have a separate valuation of the equipment and machinery which may be pointed out by the applicant.”

4. Pursuant to the said order, M/s. J.B.Boda Insurance Surveyors and Loss

Assessors Pvt. Ltd., has inspected the equipments and machineries on board for saturation and air diving system and submitted a valuation report.

5. The valuer has, inter alia, reported as under :

“9 CONCLUSION :

Based on our inspection of saturation and air diving system equipment & machinery on board the vessel DSV – Gerimal on 2nd February 2023. We understand all the equipments and machinery are on board since 2017 and have not been operated as the vessel lay unattended without any repair and operation. All the equipments and machinery observed in neglected and poor condition. In our opinion to repair and overhauling/servicing, the equipments and machinery of diving systems will be beyond economical repairs in the present status and condition.

All the equipment and machinery are capable of removal from vessel at cost.”

6. On 7 February 2023 a copy of the valuation report was directed to be furnished to the parties to the suit and the Applicant in NMCD 73 of 2019. On that day, Mr Rafeeq Peer Mohideem, Advocate had appeared and made a statement that the Plaintiff has instructed him to appear in the matter. Today, none appears for the Plaintiff.

7. The learned Counsel for the Applicant, on instructions, submits that the Applicant is ready to deposit the amount as assessed by the valuer towards the value of the equipments and machineries for saturation and air diving system on board the Vessel.

8. This Court has noted that the sale of the Vessel is hindered on account of the rival claims over the machineries and equipments on board. The Vessel continues to deteriorate, posing serious navigational hazardous. Deterioration of value of the vessel is pre-judicially affecting the rights of the parties who have a maritime claims in respect of the Vessel Gerimal.

9. In view of the above, the Notice of Motion is made absolute in terms of prayer clauses (a), (d) and (e), subject to the Applicant a sum of Rs.18,00,000/- towards the value of the machineries and equipments in this Court, within a period of two weeks.

9. Upon deposit, the Prothonotary and Senior Master shall invest the said amount in an interest bearing account initially for a period of six months.

10. The Plaintiff shall amend the Plaint so as to implead the Applicant as a party Defendant to the Suit.

11. The newly added Defendant shall be entitled to file written statement to the extent of its claim over the equipments and machineries as listed in Exhibit D and E to the Application and Schedule to the additional Affidavit at Exhibit G.

12. The Notice of Motion stands disposed.

13. List the Suit on 14 March 2023 along with COMAS(L) No.19327 of 2021.

(N.J.JAMADAR, J.)