

Kavita S.J.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ADMIRALTY AND VICE ADMIRALTY JURISDICTION

INTERIM APPLICATION (L) NO.2378 OF 2024

IN

COMMERCIAL ADMIRALTY SUIT NO.10 OF 2023

NAGARAJAN MALEALATTANE & 5 Others

...Applicants/
Plaintiffs

Versus

The sale proceeds of MV BRAHMAPUTRA ...Defendants
DOLPHIN (IMO No. 7608916)

AND

COMMERCIAL ADMIRALTY SUIT NO.10 OF 2023

Mr. Prathamesh Kamat a/w Apurva Mehta (Pohonerkar) for the
Applicants/Plaintiffs.

CORAM : R.I. CHAGLA, J.

DATED : 2nd MAY, 2024.

ORDER :

1. By the present Interim Application, the Applicants / Original Plaintiffs have sought Summary Judgment under Order XIII A as well as application for decree on admission under Order XII Rule 6 of the Code of Civil Procedure, 1908.

KAVITA
SUSHIL
JADHAV

Digitally signed
by KAVITA
SUSHIL JADHAV
Date: 2024.05.06
18:44:16 +0530

2. The Applicants / Plaintiffs have filed the above admiralty Suit against the sale proceeds of the Defendant Vessel, MV BRAHMAPUTRA DOLPHIN (IMO No. 7608916), for their outstanding wages amounting to Rs. 46,10,761 /- along with interest thereon at the rate of 8 % p.a. from the date of their repatriation till 28.02.2023 amounting to Rs.14,70,245/-, aggregating to Rs. 60,81,006/- and further interest on the principal claim amount INR 46,10,761 /- from 1st March 2023 till payment / realization, plus costs of Rs. 5,00,000/-, aggregating to INR 65,81,006/-. The Defendant is the sale proceeds of the Vessel, MV BRAHMAPUTRA DOLPHIN (IMO No. 7608916) which was sold vide an Order dated 13th September 2022. The sale proceeds represent the Defendant Vessel, MV BRAHMAPUTRA DOLPHIN(IMO No. 7608916).

3. Since, the Plaintiff – applicant seeks a decree against sale proceeds of the defendant vessel, *in rem*, it is necessary to consider the tenability of the action. Mr. Kamat submitted that the instant action against the sale proceeds is in rem. It is not obligatory for a person having a maritime claim against the vessel to proceed against the owner and manager of the vessel. Mr. Kamat sought to draw support to the aforesaid submission from the judgment of this Court

in the case of *Board of Trustees of Port of Mumbai/Raj Shipping Agencies Vs. Barge Madhwa and another reported in 2020 SCC Online Bom 651*, wherein, elucidating the nature of an action in rem this Court observed as under:

“21. Action in rem is against the ship and not the owner 22. A ship or a vessel as commonly referred to is a legal entity that can be sued without reference to its owner. The purpose of an action in rem against the vessel is to enforce the maritime claim against the vessel and to recover the amount of the claim from the vessel by an admiralty sale of the vessel and for payment out of the sale proceeds. It is the vessel that is liable to pay the claim. This is the fundamental basis of an action in rem. The Claimant is not concerned with the owner and neither is the owner a necessary or proper party. The presence of the owner is not required for adjudication of Plaintiff's claim. That is why no writ of summons is required to be served on the owner of the vessel. The service of the warrant of arrest on the vessel is considered sufficient. 23. For the purpose of an action in rem under the Admiralty Act, the ship is treated as "a separate juridical personality, an almost corporate capacity, having not only rights but liabilities (sometimes distinct from those of the owner)" - (M.V. Elisabeth and Ors. V/s. Harwan Investments and Trading Pvt. Ltd.).

24.

25. The fundamental legal nature of an action in rem as distinct from its eventual object is that it is a proceeding against res. Thus, when a ship represents such res as is frequently the case, the action in rem is an action against the ship itself. The action is a remedy against the corpus of the offending ship. It is distinct from an action in personam which is a proceeding inter-partes founded on personal service on Defendant within jurisdiction, leading to a judgment against the person of the Defendant. In an action in rem no direct demand is made against the owner of the res personally (Maritime Liens by D R Thomas, Volume 14, British Shipping Laws).”

4. The aforesaid pronouncement has been followed by this Court in the case of *Anand Prakash Gupta and others vs. Sale Proceeds of Uma Prem and others reported in MANU/MH/1135/2020* and in an unreported Judgment of this Court dated 29th November 2022, in *Angre Port Private Limited v. Sale Proceeds of GP Asphalt I [IMO No. 9120891]*. In view of the aforesaid enunciation, the Plaintiff / Applicant is entitled to proceed in rem against the sale proceeds of the defendant vessel, for enforcement of its claim.

5. Mr. Kamat states that by way of abundant precaution, a Writ of Summons was issued on 22nd June 2023. It was served upon the last known address of erstwhile Owners of Defendant Vessel, which was returned “Unclaimed”. Mr. Kamat submits that the Supreme Court in *K. Bhaskaran v. Sankaran Vaidhyan Balan & Anr. reported in (1999) 7 SCC 510*, has held that “unclaimed” is deemed to be duly served upon addressee and is treated as proper service. Mr. Kamat also invited the attention of the Court to the recent Judgment of the Supreme Court in *Priyanka Kumari v. Shailendra Kumar [Transfer Petition (Civil) No. 2090 / 2019]* reiterating the same proposition. I agree with Mr. Kamat. Accordingly, the service of Writ of Summons on the owners of the Defendant vessel is treated a validly served.

6. I have perused the averments of the Plaint as well as the Interim Application. The Claim of the Plaintiff is that they are seafarers, who were employed on board the Defendant Vessel, MV BRAHMAPUTRA DOLPHIN(IMO No. 7608916), in various Ranks by the erstwhile owners of the Defendant vessel. The Plaintiffs have not received their wages for the period they were employed on board the Defendant Vessel. The details of the Plaintiffs' claim for wages appears in paragraph 3 of the Interim Application. I have also perused the Employment Agreements with the erstwhile owners of the Defendant Vessel; the Continuous Discharge certificates and Plaintiffs' Passport. The aforesaid documents clearly establish that the Plaintiffs served on board the Defendant vessel. Further, Mr. Kamat submits that the fact that the erstwhile owners did not make payment towards wages has been admitted in correspondence with the Shipping Master, Plaintiffs and the erstwhile Owners. The Articles of Agreement signed by the Plaintiffs and Owners of the Defendant Vessel are annexed to this Application. The Plaintiff also lodged his grievance with the Office of the Shipping Master for unpaid wages and the Shipping Master who has passed Awards in favour of the Plaintiffs for payment of their wages.

7. The Plaintiff has claimed interest at the rate of 8% p.a. on the principal claim amount of Rs. 46,10,761/- from the date of repatriation till 28th February 2023 and thereafter till payment/realisation.

8. Having gone through the Interim Application seeking summary judgment and after hearing the learned Advocate appearing for the Applicants/Plaintiffs, I am satisfied that the Applicants are entitled to a summary judgment under [Order XIII A of the CPC](#), 1908. The Applicants/Plaintiffs are seafarers who was employed on board the vessel and has a Maritime claim and lien against the Vessel/ her sale proceeds in terms of Section 4 (1) (o) read with Section 9(1) (a) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017. Further, none have come forward to dispute the claim of the Applicants/Plaintiffs.

9. After perusing the documents annexed to the Plaint and the Interim Application, I am satisfied that the Defendant has no real prospect of successfully defending the claim and there is no other compelling reason why the claim made by the Applicants should not be disposed of before recording of oral evidence.

10. It is in these circumstances, that there shall be an order and decree in favour of the Applicants in terms of prayer clause (a) :

*(a) That the Defendant be ordered, directed and decreed to pay to the Plaintiffs the sum of INR 46,10,761/- (Indian Rupees Forty Six Lakhs Ten Thousand Seven Hundred and Sixty One only) along with interest thereon at the rate of 8 % p.a. from the date of their repatriation till 28.02.2023 amounting to Rs.14,70,245/- (Indian Rupees Fourteen Lakhs Seventy Thousand Two Hundred and Forty Five only), aggregating to Rs. 60,81,006/- (Indian Rupees Sixty lakhs Eighty One Thousand and Six only) and further interest on the principal claim amount INR 46,10,761 /- (Indian Rupees Forty Six Lakhs Ten Thousand Seven Hundred and Sixty One only) from 1st March 2023 till payment / realization, plus costs of Rs. 5,00,000/-, aggregating to INR 65,81,006/- (Indian Rupees Sixty lakhs Eighty One Thousand and Six only), Plaintiffs as per the Plaintiff's Particulars of Claim, **Exhibit RR** hereto;*

11. In light of the order passed in this Application, the Suit itself now stands disposed of as the same is decreed.

12. The drawn up decree / order is dispensed with.

13. The Interim Application is disposed of accordingly.

[R.I. CHAGLA, J.]