Kavita S.J.

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

INTERIM APPLICATION NO.4910 OF 2022

IN

COMMERCIAL ADMIRALTY SUIT NO.43 OF 2022

ISS Shipping Services Dubai LLC **...Applicant/ Plaintiff**

Versus

MV KARNIKA (IMO NO. 8521220) & Anr., **...Defendant**

AND

COMMERCIAL ADMIRALTY SUIT NO.43 OF 2022

Mr. Prathamesh Kamat a/w Mr. Ashwini Sinha i/b Adil Patel for the Plaintiff.
None for the Respondent/Defendant.

CORAM : R.I. CHAGLA, J.

DATED : 2nd MAY, 2024.

ORDER :

1. This is an application for summary judgment under order XIII-A and Order XII Rule 6 of the Code of Civil Procedure 1908 (**"the Code"**) against the sales proceeds of M.V. Karnika (IMO No. 8521220), the defendant.

2. The Applicant has instituted the present Suit, seeking a decree *in rem* against the Defendant Vessel for an aggregate sum of US $ 1,106,555 (i.e. US $ 1,042,234 towards the principal claim + US $ 49,321 being interest @ 5% pa on US $ 1,042,234 + US $ 15,000 being the legal costs) for the services and necessaries rendered by the Applicant.

3. I have perused the averments of the Plaint as well as the Interim Application. Jalesh Cruises Mauritius Limited was the owner of M.V. Karnika (**"Owners"**). The Applicant was appointed as the Agent of the Defendant Vessel in Dubai Port by her erstwhile owners, i.e. Jalesh Cruises Mauritius Limited. The Applicant had provided various services including Agency Service to the Defendant vessel and has incurred expenses by making payments to various authorities, vendors, etc. for and on behalf of the Defendant Vessel at the instance of its owners. The Owners of the Defendant Vessel have failed to pay the agency fee as well as reimburse the amounts incurred by the Applicant as agents for and on behalf of the Defendant Vessel including payments to various authorities, vendors etc. at the instance and request and for and on behalf of the Master of the Defendant vessel. The Master had no money towards its

disbursements, therefore, the Applicant was asked to incur these payments for and on his behalf.

4. In August and September 2019, Owners of the Defendant Vessel approached the Applicant wanting to engage the Applicant as their agents in the Middle East for the port of Dubai, UAE. The Applicant accordingly commenced and continued acting as agents for Owners of the Defendant vessel when she would call at the port of Dubai, UAE and rendered all the necessary services and necessaries to her from time to time and making disbursement for and on behalf of the Defendant Vessel/ it's Master/ Owner.

5. The Applicant periodically raised various invoices to Owners of the Defendant Vessel most of which remained unpaid. The Applicant repeatedly called upon the Owners of the Defendant vessel to settle their dues and outstanding. In fact, on 14th November 2019, Owners of the Defendant Vessel vide its email to the Applicant, inter alia, informed that the outstanding bill would be settled by the end of November 2019. On 4th December 2019, the Applicant vide its email to the Owners of the Defendant Vessel, inter alia, advised them of having received a small sized payment of US $ 35,000, but drew their attention to the fact that a sum of US $ 3.392 million was

outstanding.

6. On 5th January 2020, in a meeting that took place between the representatives of the Owners of the Defendant Vessel and the Applicant, the Applicant was assured that its dues would be paid off immediately upon the Owners receiving investment loans, etc. On 10th January 2020, one Swiss Alpha Management on behalf of the Owners of the Defendant Vessel advised the Applicant that they had contracted to loan to the owners of the Defendant vessel a sum of US$ 100 million, and the delay in drawing down the loan was unrelated to the owners of the Defendant vessel. They assured that the Applicant could expect to see release of funds within the coming 10 days.

7. Till March 2020, the Owners of the Defendant Vessel kept assuring that the Applicant's dues would be cleared. On 9th March 2020, the Owners of the Defendant Vessel forwarded to the Applicant an email informing that they have reached an Agreement with reference to the overdue funding and that they are expected to receive the first funds in the next 2-3 days thereby assuring that they will pay the Applicant's dues accordingly.

8. In view of dues not having been paid, the Applicant thus instituted the present Suit, seeking a decree against the Defendant Vessel for an aggregate sum of US $ 1,106,555 (i.e. US $ 1,042,234 towards the principal claim + US $ 49,321 being interest @ 5% pa on US $ 1,042,234 + US $ 15,000 being the legal costs) for the services and necessaries rendered by the Applicant.

9. Eventually, by an order dated 28th October 2020, passed by this Court in Comm. Adm. Suit (L) No.3579 of 2020, the Defendant Vessel came to be sold.

10. The Applicant has taken out this application with the assertion that the Applicant has a maritime claim which is in the nature of a maritime lien. Mr. Kamat asserts that the liability is admitted and there is no real prospect of successfully defending the Applicant/Plaintiff's claim which is *in rem.*

11. Further, the Applicant's Suit against the Respondent will proceed ex-parte against the sale proceeds of Respondent/Defendant vessel MV KARNIKA which was sold by this Court. The learned Advocate appearing for the Defendant vessel entered appearance in this suit on behalf of her Owners, waiving service of the Writ of

Summons. A copy of the Judge's Order and Plaint was duly served upon her vide email dated 12th December 2020 and the same was acknowledged by her. On 15th February 2021, the Advocate for the Defendant vessel sent an email, *inter alia,* to the Advocates for the Applicant advising that she was no longer acting for the Administrator of Jalesh Cruises Mauritius Limited, the owners of the Defendant vessel. The owners of the Defendant vessel failed to file their Written Statement and further, they abandoned the vessel. The instant Suit will proceed ex-parte against them.

12. I have heard Mr. Kamat, the learned Counsel for the Applicant-Plaintiff.

13. 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.).*
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> *24. .....*
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> *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).*"

14. 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.

15. The substance of the Applicant's claim is that despite providing services to the Defendant Vessel and despite granting sufficient time, Owners of the Defendant Vessel have failed and neglected to pay the sums due to the Applicant. In fact, Owners of the Defendant Vessel have acknowledged the claim of the Applicant in various correspondences time and again, has clearly admitted their liability and had in fact sought time to clear the same on various occasions. The Applicant's claim is a maritime claim within the meaning of Section 4(l) and 4 (t) of the Admiralty (Jurisdiction) and Settlement of Maritime Claims) Act 2017. The Applicant is entitled to proceed *in rem* against Defendant vessel and its sale proceeds for enforcing its rights and claims. The services and necessaries provided by the Applicant are essential for the operation and maintenance of the vessel to trade in commerce and remain seaworthy. Without these

services and supplies, the vessel would not have been in a position to operate. The supplies and services were not done with a gratuitous intention and the vessel has availed of the supplies and services and acknowledged them and the Defendant/Respondent is liable to make payment in respect thereof. Thus, the Applicant has a maritime claim towards its claim for services provided to the vessel and maritime lien under common law for expenses incurred by the Plaintiff for and on behalf of the Master/owner against the Defendant vessel and its sale proceeds which are lying in this Court.

16. In the aforesaid context, I have perused the averments in the plaint and the interim application. The Applicant/Plaintiff's claim that it had provided services to the Defendant Vessel is substantiated by its invoices. The fact that the Applicant/Plaintiff rendered services to the Defendant Vessel is incontestable. It further appears that the Applicant/Plaintiff made several demands for payment of its dues. In response thereto, Owners of the Defendant Vessel have acknowledged the claim of the Applicant/Plaintiff in various correspondences time and again, has clearly admitted their liability and had in fact sought time to clear the same on various occasions. However, despite several promises, Owners of the Defendant Vessel have failed in their obligations to pay to the Applicant/Plaintiff their legitimate dues.

Pertinently, at no point in time till date has the Owners of Defendant vessel ever disputed liability towards the Applicant/Orig. Plaintiff. Not a single invoice was disputed in fact, it advises to make payment to the Applicant/ Plaintiff at the earliest. Thus, there is no dispute to the Applicant/Plaintiff's claim.

17. In the circumstances of the case, it does not appear that that the Defendant has any real prospect of successfully defending the Plaintiff's claim, which is supported by documents of unimpeachable character. Nor there is any compelling reason not to dispose of the claim without leading evidence.

18. Hence, the following order:

: ORDER :

I. The Application stands allowed.

II. There shall be a summary judgment and decree in favour of the Applicant against the sale proceeds of M.V. Karnika in the sum of US $ 1,042,234 along with interest @ 5% p.a. on US $ 1,042,234 from the date of the suit till realisation.

III. The Applicant/Plaintiff is entitled to costs of USD 15,000.

IV. The Suit stands decreed in the aforesaid terms.

V. Drawn up decree dispensed with.

VI. The Interim Application is disposed of accordingly.

[R.I. CHAGLA, J.]