

Kavita S.J.

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

INTERIM APPLICATION (L) NO.6892 OF 2024

IN

COMMERCIAL ADMIRALTY SUIT NO.21 OF 2023

SAYI VENKATA PRASAD SANTHANA KRISHNA ...Applicant/
alias (S. SAYI VENKATA PRASAD) Plaintiff

Versus

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

AND

COMMERCIAL ADMIRALTY SUIT NO.21 OF 2023

Mr. Prathamesh Kamat a/w Apurva Mehta (Pohonerkar) for the
Applicant/Plaintiff.

CORAM : R.I. CHAGLA, J.

DATED : 2nd MAY, 2024.

ORDER :

1. By the present Interim Application, the Applicant / Original Plaintiff has 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.

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2. The Applicant / Plaintiff has filed the above admiralty Suit against the sale proceeds of the Defendant Vessel, MV BRAHMAPUTRA DOLPHIN(IMO No. 7608916), for outstanding wages amounting to Rs. 12,28,552/- being principal claim; and interest at the rate of 8% p.a. from date of repatriation till filing of the Suit of Rs. 3,79,673/-; aggregating to Rs. Rs.16,08,225/-, and further interest on the principal claim amount INR 12,28,552/- from the 1st August 2023 till payment / realization, plus legal costs of Rs. 2,00,000/-. 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. The Plaintiff had issued the Writ of Summons on 25th October 2023 which was returned as “Unclaimed”. On 30th January 2024, the Writ of Summons was published in two local news papers i.e “Free Press Journal” which is an English Daily and “Navshakti” which is a Vernacular (Marathi) Daily and also served by email upon the Owners of the Defendant Vessel on 31st January 2024. Although, the Writ of Summons has been duly served.

6. The Plaintiff is a seafarer, who was employed on board the Defendant Vessel, MV BRAHMAPUTRA DOLPHIN(IMO No. 7608916), in Rank of Chief Engineer, employed by the erstwhile owners of the Defendant vessel. The Plaintiff has not received his wages for the period from 05.03.2019 to 20.09.2019.

7. The details of the Plaintiff's claim for wages appears in paragraph 3 of the Interim Application. I have perused the Employment Agreement with the erstwhile owners of the Defendant Vessel; the Continuous Discharge certificate and Plaintiff's Passport evidencing the Plaintiff's service on board the Defendant Vessel; Articles of Agreement signed by the Plaintiff and Owners of the Defendant Vessel; the sign on/ sign off records issued by the Bureau of Immigration; Testimonial of Sea Service issued by the Master of the Defendant Vessel, which are annexed to this Application. The Plaintiff also lodged his grievance with the Office of the Shipping Master for unpaid wages. The Office of the Shipping Master by Circular dated 16th November 2022 directed the seafarers to take necessary actions before this Court. The Plaintiff's complaint and the circular dated 16th November 2022 is also annexed herewith.

8. The Plaintiff has claimed interest at the rate of 8% p.a. on the principal claim amount of Rs. 12,28,552/- from the date of repatriation till 31st July 2023 and thereafter till payment/realisation.

9. 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/Plaintiff is seafarer 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.

10. 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.

11. 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 12,28,552/- (Indian Rupees Twelve Lakhs Twenty Eight Thousand Five Hundred and Fifty Two Only) along with interest thereon at the rate of 8

*% p.a. from the date of their repatriation till 31.07.2023 amounting to Rs.3,79,673/- (Indian Rupees Three lakhs Seventy Nine Thousand Six Hundred and Seventy Three only), aggregating to Rs.16,08,225/- (Indian Rupees Sixteen lakhs Eight Thousand Two Hundred and Twenty Five only) and further interest on the principal claim amount INR 12,28,552/- (Indian Rupees Twelve lakhs Twenty Eight Thousand Five hundred and Fifty Two only) from the 1st August 2023 till payment / realization, plus costs of Rs. 2,00,000/-, aggregating to INR 18,08,225/-(Indian Rupees Eighteen lakhs Eight Thousand Two Hundred and Twenty Five only), as per the Plaintiff's Particulars of Claim, **Exhibit M** hereto.*

12. In light of the order passed in this Application, the Suit itself now stands disposed of as the same is decreed. It is however kept pending only for the purpose of deciding priorities and pay out.
13. The drawn up decree / order is dispensed with.
14. The Interim Application is disposed of accordingly.

[R.I. CHAGLA, J.]