

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO. 3104 OF 2025
IN
COMMERCIAL ADMIRALTY SUIT NO. 11 OF 2024

THE BOARD OF DEENDAYAL PORT AUTHORITY)...APPLICANT
IN THE MATTER BETWEEN
THE BOARD OF DEENDAYAL PORT AUTHORITY)...PLAINTIFF
V/s.

SALE PROCEEDS OF LPG MAHARSHI)
SHUBHATREYA (IMO NO.8114716) AND ORS.)...DEFENDANTS

Mr.Prathamesh Kamat a/w. Mr.Kayush Zaiwalla and Ms.Heenal
Wadhwa i/by The Law Point Advocates, Advocate for the Applicant /
Plaintiff.

None for the Defendants.

CORAM : ABHAY AHUJA, J.

DATE : 25th JULY 2025

ORDER :

1. This application has been filed by the Applicant/ Plaintiff seeking a summary judgment/decreed against the Defendant under Order XIII-A of the Code of Civil Procedure, 1908 ("CPC") of the Commercial Courts Act, 2015, seeking payment to the Plaintiff of Rs.1,22,57,941.59 ps. (Rupees One Crore Twenty-Two Lakhs Fifty-Seven Thousand Nine Hundred Forty-One and Fifty Nine Paise Only) inclusive of penal

interest at 15% per annum till 31st July 2023 and further penal interest at 15% from 1st August 2023 till realization of the outstanding dues along with GST on interest at 18% per annum as per the particulars of claim at Exhibit Q to the Plaint.

2. The Applicant/ Plaintiff seeks a decree *in rem* against the sale proceeds of five Defendant Vessels deposited in this Court.

3. The Applicant/ Plaintiff is one of the major ports who has filed the Suit through Board of Trustees claiming a maritime lien over the sale proceeds of the Vessel. The Applicant/ Plaintiff's claim is for providing various port facilities, which include berth hire charges, pilotage, shifting charges, tug charges, etc. and is asserting maritime lien and for recovery of the statutory charges payable to it from the proceeds of the Vessel(s).

4. The Applicant/ Plaintiff claims that between 7th May 2017 to 1st August 2017, Defendant Vessels were anchored at different berths of the Plaintiff. These Vessels were arrested by the orders of this Court dated 9th September 2017. The orders are at Exhibits A-1 to A-5 of the plaint as well as the Interim Application.

5. That, by a common order dated 27th April 2018, this Court confirmed the sale of the Vessels for a sum of Rs.183,00,00,000/-. The said Order of sale dated 27th April 2018, is annexed at Exhibit C to the Plaintiff as well as the interim application.

6. Mr.Kamat, learned Counsel appearing on behalf of the Applicant/Plaintiff submits that pursuant to the sale of these Vessels, the sale proceeds have been deposited and are lying in the account of the Prothonotary & Senior Master of this Court and that the Suit has been filed against the sale proceeds of the Defendant Vessels.

7. It is submitted that these Vessels were owned by an entity called as “Varun Resources Limited”. Varun Resources Limited went into insolvency. A petition being CP (IB) No. 247/I&BP/NCLT/MAH/2017 filed by Indian Bank was admitted on 14th June 2017. Thereafter, by an order dated 4th December 2018, the National Company Law Tribunal (NCLT) passed an order appointing one Mr. Sanjeev Maheshwari as the liquidator of Varun Resources Limited.

8. Upon initiation of the corporate insolvency resolution process and subsequently the liquidation process, the Applicant/Plaintiff

submitted a proof debt with the liquidator on 29th January 2019 and the liquidator of Varun Resources Limited vide its email dated 8th May 2023 admitted the claim of the Applicant/Plaintiff and indicated to the Applicant that there was no separate requirement of approaching the NCLT, Mumbai for admission of its claim. Mr.Kamat, however, submits that he has instructions to give up the Applicant's claim as admitted by the liquidator. The statement is accepted.

9. Mr.Kamat has taken this Court through the invoices which were also submitted along with the supporting documents to the liquidator which are at Exhibit K-1 to Exhibit O-2. Mr.Kamat, thereafter, has invited the attention of this Court to the scale of rates for the Plaintiff which are gazetted being Gazette No. 287 dated 12th July 2016 and to the general conditions and in particular to Clause 1.2 (viii)(a) wherein the penal interest on delayed payments is stated to attract interest at 15% per annum. It is submitted that the said claim is statutory in nature as the same is a part of the scale of rates.

10. Mr.Kamat submits that considering that the Suit is a Suit filed *in rem*, this Court, in view of the documents establishing claim of the Applicant before this Court, allow the application filed under Order

XIII-A of the CPC seeking a summary judgment since the Port dues are a maritime lien under Section 9(1)(d) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (the “Admiralty Act”) and also ranks first in priorities under Section 10(1) (a) of the Admiralty Act and also since the Defendant has no real prospect for successfully defending the claim as this is a Suit that has been filed against the sale proceeds of the Defendant Vessels.

11. Mr.Kamat submits that, therefore, this Court allow the application and decree the Suit in favour of the Plaintiff.

12. I have heard the learned Counsel.

13. As noted above, this application has been filed seeking a summary judgment.

14. I have perused the documents annexed to the plaint, more particularly the invoices, the arrival reports of each of the Vessel and the admission of the liquidator. The invoices submitted to the liquidator have not been disputed. There is also no dispute with respect to the dates on which the Vessels were at the anchorage of the Plaintiff. I have

also gone through the tables at paragraph 14 of the plaint which indicate the outstanding of each of the Vessel.

15. Having heard the learned Counsel and having considered the submissions made by the learned Counsel for the applicant as also having perused the documents annexed to the plaint, I am satisfied that the conditions of Order XIII-A of the CPC are met with as there is no real prospect of any one successfully defending the claim nor is there any other compelling reason why the claim of the Applicant/ Plaintiff should not be allowed before recording of oral evidence. I find that this is a fit case for awarding summary judgment to the applicant.

16. Considering the fact that the Applicant/Plaintiff has given up the claim made before the Liquidator, though admitted, it would not be necessary to go into the aspect of *res judicata* of the claim but suffice to say that considering that the claim made in this Suit is not against the owner of the Vessels but against the sale proceeds of the Vessels, which continues to be an action *in rem*, an adjudication *in personam* against the owner of the Vessel cannot attract the principle of *res judicata* to an action *in rem* against the sale proceeds of the Vessels in the present Suit. In fact, in the case of ***Board of Trustees of the Port Mumbai – Raj***

*Shipping vs. Barge Madhwa and Another*¹ with connected matters this Court in paragraph 51.7 has clearly held that all those claimants who are unable to recover their claims from the sale proceeds, will have to pursue their claims in the liquidation as unsecured creditors. However, since Mr.Kamat has submitted that the Plaintiff/Applicant has given up it's claim in liquidation and does not intend to claim the same amount both from the sale proceeds and from the liquidator, this application under Order XIII-A of the CPC is allowed.

17. Accordingly, let there be a decree and order in favor of the Applicant/ Plaintiff in terms of prayer clause (a) of the application against the sale proceeds of the Defendant Vessels for a sum of Rs.1,22,57,941.59 ps. inclusive of penal interest at 15% per annum till 31st July 2023 and further penal interest at 15% from 1st August 2023 till realization of the outstanding dues along with GST on interest at 18% per annum as per the Plaintiff's particulars of claim which is at Exhibit Q of the plaint.

1 2020 SCC Online Bom 651

18. The Suit is decreed as above but kept pending for determination of priorities and for pay out, for which the Applicant / Plaintiff may take out an appropriate application.

19. Drawn up decree is not dispensed with.

20. The Interim application accordingly stands allowed and disposed as above.

(ABHAY AHUJA, J.)

ARTI
VILAS
KHATATE
Digitally
signed by
ARTI
VILAS
KHATATE
Date:
2025.08.11
17:22:24
+0530