

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

INTERIM APPLICATION NO. 536 OF 2025

in

COMMERCIAL ADMIRALTY SUIT NO. 11 OF 2023

ABDUL SAEED AND OTHERS)...APPLICANTS

IN THE MATTER BETWEEN

ABDUL SAEED AND OTHERS)...PLAINTIFFS

V/s.

SALE PROCEEDS OF VESSEL M T AEON)

IMO 9576818)...DEFENDANT

WITH

COMMERCIAL ADMIRALTY SUIT NO. 9 OF 2024

WITH

INTERIM APPLICATION NO. 687 OF 2025

IN

COMMERCIAL ADMIRALTY SUIT NO. 9 OF 2024

Mr.Karan Bhosale a/w. Ms.Madhura Shah, Mr.Yashwant Singh i/by
Mr.Utsav Dalal, Advocate for the Plaintiff in COMAS/11/2023 and for
the Applicant in IA/536/2025.

Mr.Shlok Bodas a/w. Mr.Amit Patil and Mr.Divyanshu Gupta i/by
Parinam Law Associates, Advocate for the Plaintiff in COMAS/9/2024
and for the Applicant in IA/687/2025.

CORAM : ABHAY AHUJA, J.

DATE : 21st MARCH 2025

PC. :

1. Pursuant to earlier orders of this Court, today when the matter is
called out, Mr.Karan Bhosale, learned Counsel, appears for the

Plaintiff / Applicant in Interim Application No.536 of 2025 in Commercial Admiralty Suit No.11 of 2023 and submits that Interim Application (Lodging) No.9032 of 2024 is incorrectly mentioned on the cause-list in as much as the said Interim Application has already got a final number i.e. Interim Application No.536 of 2025 which is also listed on board.

2. Registry to remove Interim Application (Lodging) No.9032 of 2024 from the board.

3. Mr.Bhosale, learned Counsel, has now proceeded to argue the Interim Application No.536 of 2025. The Interim Application filed by the Plaintiffs / Applicants seeks decree / summary judgment without recording oral evidence against the sale proceeds of the Defendant – vessel under Order XIII-A of the Code of Civil Procedure, 1908 (“CPC”).

4. At the outset, this Court had expressed apprehension as to the tenability of the action in as much as the Suit has been filed by 29 Plaintiffs against only the sale proceeds of vessel M T Aeon and there has been no service to or any response from the Respondents, as there are no Defendants other than the sale proceeds.

5. Referring to the decision of this Court in the case of *Board of Trustees of Port of Mumbai / Raj Shipping Agencies vs. Barge Madhwa and Another with connected matters*¹ followed by a series of decisions of this Court in the cases of *Nagarajan Malealattane and Others vs. The Sale Proceeds of M V Brahmaputra Dolphin (IMO No.7608916)*², *Anand Prakash Gupta and Others vs. Sale Proceeds of Uma Prem and Others*³ and *Angre Port Private Limited vs. Sale Proceeds of GP Asphalt I*⁴, Mr.Bhosale has submitted that for an action against the sale proceeds, it is not obligatory for a person having a maritime claim against the vessel to proceed against the owner and manager of the vessel and that the said action against the sale proceeds is an action in *rem*. Mr.Bhosale has drawn this Court's attention to following paragraphs 21 and 25 in support which read thus :

“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

1 2020 SCC Online Bom 651

2 Interim Application (Lodging) No.2378 of 2024 in Commercial Admiralty Suit No.10 of 2023 decided on 2nd May 2024

3 MANU/MH/1135/2020

4 Interim Application No.1992 of 2022 in Commercial Admiralty Suit No.29 of 2021 decided on 29th November 2022

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. (1993 Supp (2) SC 433).

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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)."

6. As noted above, the aforesaid principles have been followed in various decisions of this Court and based on the aforesaid submissions, I am of the view that the Applicant is entitled to proceed in *rem* against the sale proceeds of the vessel in enforcement of its claim.

7. However, as noted above, considering that the Suit has been filed by numerous crew members claiming dues of their outstanding wages out of the sale proceeds of the Defendant – vessel based upon their employment agreement / contract at various dates with the Defendant, this Court is of the view that a Court Commissioner be appointed to verify the same.

8. Accordingly, this Court appoints Mr. Talekar, learned Master & Assistant Prothonotary of this Court, as Commissioner to verify the following documents in respect of all the Plaintiffs and submit his report by 2nd May 2025 :

- (i) Original agreement / contracts, passports extracts duly certified by Advocate for Plaintiff / Notarized, respective extracts of Seaman's book and Wage statement in respect of crew members with their claims in the Suit with so far originals of which are available.
- (ii) Power of attorney in originals, if any, issued by Plaintiffs to lodge or receive such claims on behalf of the Plaintiffs.
- (iii) Commissioner shall verify the particulars and submit the report by 2nd May 2025.

9. List on 2nd May 2025.

(ABHAY AHUJA, J.)

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