IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION
INTERIM APPLICATION NO 2019 OF 2025
IN
ADMIRALTY SUIT 2 OF 2015

Visalakshi Ramanthan Chettiar … Applicant
In the matter between:
Visalakshi Ramanthan Chettiar …Plaintiff
Versus
M V Shivam & Ors …Defendants

Mrs. Sandhya Pillai a/w Mrs. Shweta Tripathi and Mr. Gagan Joshi, for Applicant/Plaintiffs
Mr. Ajai Fernandes a/w Mrs. Nina Motiwalla, Ms. Janhavi Kandekar, Ms.Anjali Kotecha i/b. Motiwalla and Co. for the Defendant No. 3
Ms. Priyanka Jindal, through VC for the Official Liquidator.

CORAM : ABHAY AHUJA, J.
DATE : 07th NOVEMBER 2025

ORDER. :-

1. The above Interim Application has been filed by the Applicant/Plaintiff under Order XII Rule 6 of the Code of Civil Procedure, 1908 ("CPC").

2. Ms. Sandhya Pillai, learned Counsel appearing for the Plaintiff/Applicant submits that although the reply has been filed, she has instruuctions not to file rejoinder in the matter and this Court may proceed with the hearing of the matter.

3. Ms. Pillai submits that the Suit has been filed for a judgment and decree for a sum of Rs. 15,69,544/- plus simple interest @12% per

annum total of Rs. 37,16,168/- and Rs.10,00,000/- legal fees/costs with further interest at the rate of 12% till payment/realization together with costs.

4. Ms. Pillai submits that the Plaintiff is the Sole Proprietor of the Sole Proprietorship concern, Prassanna Offshore Enterprises engaged inter alia in the business of supplying provisions, housekeeping items and ships' stores i.e. necessaries to vessels. The Defendant No.1 is an Indian flag vessel owned by Defendant No.2 as the registered owner. That during the pendency of the Suit, the management of the Defendant No.2 was handed over to Official Liquidator attached to Hon'ble Delhi High Court and accordingly the Defendant No.2 is represented by the Official Liquidator. That Defendant No.3 Port has intervened in the Applicant's Suit as a claimant for their dues against the Defendant No.1 vessel.

5. Ms. Pillai submits that the Plaintiff's claim in the Suit is for recovery of unpaid invoices for supply of necessaries supplied by the Plaintiff to the Defendant No.1 vessel and its sister-ships i.e. M.V. Stayam,M.V Sundaram and M.V Sachinam. Ms.Pillai submits that after the filing of the present Suit, the Defendant No.2 being owners of the

Defendant No.1 vessel, approached the Applicant/Plaintiff for an amicable settlement of the Applicant/Plaintiff's claims against the Defendants in the present Suit, and accordingly the Applicant/Plaintiff and Defendants entered into a Settlement Agreement on 17th December 2014, under which Agreement in the Clause 1 the Defendant had agreed to pay a sum of Rs.15,69,544/- in three monthly installments towards full and final settlement of the present Suit claim by way of cheques on or before 16th December, 2014.

6. Ms. Pillai submits that the first installment of Rs. 5,23,181/- was to be paid by 31st December, 2014 and the same was paid by the Defendant on 07th January 2015, but the second installment of Rs.5,23,181/- which was to be paid by 31st January 2015 and third installment of Rs.5,23,181/- which was to be paid by 28th February 2015 have remained unpaid and as the Defendants defaulted in making payment, the Applicant/Plaintiff invoked the Clause 5 of the Settlement Agreement dated 17th December 2014 which stipulated that should any payment under Clause 1 not be received by the dates specified, the Plaintiff shall continue to pursue the present Suit and the entire amount as claimed shall be payable to the Plaintiff. Accordingly pursuant to Order dated 28th October 2015 read with Order dated 03rd

November 2015, the auction sale of the Defendant Vessel was confirmed in favour of M/s. Delta Maritime and Industrial Skill Training Institute Pvt Ltd at an amount of Rs.40,00,000/- (Rupees Forty Lakhs Only).

7. Ms. Pillai submits that in face of the categorical admission in the Settlement Agreement particularly Clause 5, qualifying as an admission of liability for the purpose of Order XII Rule 6 of the CPC, the Plaintiff is entitled to a judgment/decree on admission in terms of prayer clause (a) of the Plaint in the Suit in the sum of Rs.37,16,168 in addition to further interest and legal costs.

8. Ms. Pillai has relied on the decision of this Court in the case of ***Raj Shipping Agencies Vs. Barge Madhwa and Ors***[1] in support, submitting that the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 which is a Special Act will prevail over the Companies Act which is a General Act, and therefore the Court which is winding up the Company would not have jurisdiction to entertain or dispose of the action *in rem* against a Vessel filed before the High Court which has been conferred with the Admiralty Jurisdiction under the Admiralty Act.

[1] IAL 15746 of 2023 in ADMS 6 of 2015 dated 24th January, 2025.

9. Ms. Pillai submits that, therefore, this Interim Application filed seeking a decree on admission be allowed in view of the aforesaid submissions.

10. Ms. Jindal learned Counsel appearing for the Official Liquidator submits that the Plaintiff cannot be permitted to recover its claim in priority over other creditors when the Company is under liquidation but would have to follow the priorities in accordance with the Insolvency and Bankruptcy Code (“IBC”) and that the claims of all creditors of the Corporate Debtors viz. Defendant No. 2 will be treated in accordance with IBC and the regulations thereunder. Ms. Jindal submits that therefore the claim of the Plaintiff cannot be considered by this Court and will have to decided as per IBC and the regulations thereunder.

11. I have heard the learned Counsel and considered the submissions.

12. In the case of *Raj Shipping Agencies vs. Barge Madhwa and others (supra)*, it was held by this Court in paragraph 31 to 48 as under:

31. It is at the outset to be noted that Mr. Zatakia, learned Counsel for the Liquidator of Defendant No.2 has not disputed the aspect of admission of liability, under Order XII Rule 6 of the Code of Civil Procedure, 1908. His entire opposition revolves around the proposition that if this Application is allowed, the Plaintiff will claim priority over other creditors and despite the Plaintiff's claim having been admitted under IBC, the Plaintiff would jump the priorities under Section 53 of the IBC and in particular under Section 53(1)(b)(ii) which the Plaintiff cannot be permitted to do, having already relinquished the security interest under Section 52(1)(a) of the IBC. Mr.Zatakia, learned Counsel has relied upon paragraph 101 of the decision in the case of Barge Madhwa, which is usefully quoted as under :-

> *"101. If the company is liquidated then Plaintiff's action being an action in rem will proceed and the vessel will be sold by way of an Admiralty sale to maximize its realisation value. Section 33(5) of the IBC does not prohibit the continuation of pending suits and the liquidator will be entitled to defend it as this power is expressly provided in Section 35(1)(k) of the IBC. Viewed at from another angle, Plaintiff and any other claimant who has a maritime claim or a maritime lien and has obtained an order of arrest before liquidation, will be considered a secured creditor and will be entitled to enforce and realize his security interest in accordance with the applicable law, viz., Admiralty Act, as provided in Section 52(4) of the IBC."*

32. On the other hand, Mr.Gandhi, learned Counsel has relied upon paragraphs No.84, 87, 102 and 103 of the very same decision in support of his contentions that parties having a maritime lien or a maritime claim are entitled to file an action in rem against the sale proceeds and that the determination of priorities would be done in accordance *with Section 10 of the Admiralty Act and inter se priorities of maritime liens under Section 9 of the Admiralty Act and that Section 53 of the IBC which refers to distribution of assets will not apply. Paragraphs No.84, 87, 102 and 103 of the said decision in the case of Barge Madhwa are also usefully quoted as under :*

> *"84. Once this fundamental distinction between an action in rem against a vessel which is a distinct and separate entity dehors its owner is recognized, it is easy to reconcile the ostensible conflict between Admiralty and Insolvency. Thus, an action in rem against the ship is not an action against the owner of the ship who may be the corporate debtor as defined under the IBC. Neither is the action in rem considered as a proceeding against the asset of the owner/corporate debtor. It is a proceeding against the ship to recover the claim from the ship, not an action against the owner/corporate debtor to recover the claim by attachment of the asset of the owner/corporate debtor.*
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> *87. The authorities also are unanimous in stating that once a ship is arrested in respect of a maritime lien or a maritime claim, the Claimant becomes a secured creditor qua that arrested vessel and the vessel is effectively encumbered with the Plaintiff's claim. In re ARO Company Ltd. reported in (1980) 1 Ch 196 (C.A.), it was held that Plaintiffs having arrested the ship and perfected the security of their claim were thus secured creditors with the result that the vessel was effectively encumbered with their claim. In the book Admiralty Jurisdiction and Practice by Nigel Meeson and John A. Kimbell, (5th Edition) (hereinafter referred to as Meeson), paragraphs 3.89 and 3.90, the authors say in paragraph 3.89 that "The holder of a maritime lien is also a secured creditor from the moment the maritime lien arises which is simultaneously with the*

> *claim". And in paragraph 3.90, "A claimant having only a statutory right of action in rem becomes a secured creditor at the latest when he causes the ship to be arrested." The Claimant is not a secured creditor of the owner but only that of the particular ship and to the extent of the value of the ship. This also meets with the definition of "secured creditors" as per Section 3(30) and "security interest" as per Section 3(31) of the IBC.*
>
> *102. Since the sale proceeds represent the res, the Admiralty Court will be entitled to invite claims against the sale proceeds by following the Admiralty procedure prescribed in the Rules. In admiralty law there is no difference between an action in rem against a ship and an action in rem against the proceeds of sale of that ship (See m.v. The Convenience Container). Parties having a maritime lien or a maritime claim will be entitled to file an action in rem against the sale proceeds. The determination of priorities will also be done in accordance with Section 10 of the Admiralty Act and inter se priorities of maritime liens will be decided in accordance with Section 9 of the said Act. Section 53 of the IBC which refers to distribution of assets will not apply. If the ship is sold by the Admiralty Court in exercise of its jurisdiction in rem then the machinery of the Admiralty Act will apply and the sale proceeds will be distributed on the basis of priorities determined under the Admiralty Act.*
>
> *103. All those claimants who are unable to recover their claim from the sale proceeds will have to pursue their claim in the liquidation as unsecured creditors."*

33. The decision in the case of Barge Madhwa has very succinctly captured the inter play between the provisions of the Admiralty Act and the IBC.

34. An action in rem against a ship is not an action against the owner of the ship who may be the corporate debtor as defined under the IBC. That neither is the action in rem considered as a proceeding against the assets of the owner/corporate debtor. That it is a proceeding against the ship to recover the claim from the ship and not an action against the owner/corporate debtor to recover the claim by attachment of the assets of the owner/corporate debtor or by lodging a claim with the Liquidator of the corporate debtor.

35. In maritime law, once a ship is arrested in respect of a maritime lien or a maritime claim, the claimant becomes a secured creditor vis-a-vis the arrested vessel and the vessel is encumbered with the Plaintiff's claim as all those who have maritime lien and claims can enforce them by filing an action against the sale proceeds.

36. The claimant is not a secured creditor of the owner but only that of the particular ship and to the extent of the value of the ship.

37. Holding that the Admiralty Act and the IBC are to be construed harmoniously, so as to give effect to both, the decision in the case of Barge Madhwa has categorically held that a ship against whom a maritime claim can proceed in an action in rem does not fall within the definition of corporate debtor under the IBC. Neither is the ship being proceeded against as an asset of the corporate debtor. It is the ship itself which is liable and which is arrested for crystallizing the maritime claim. The ship is an independent juridical entity which is sued in its own name dehors the status of its own owners, who may be the corporate debtor and without reference of its owner.

38. Thus an action in rem filed under the Admiralty Act for arrest of the ship would not amount to an institution of suit against a corporate debtor as defined under the IBC nor would continuation of an action in rem amount to continuation of a suit against a corporate debtor.

39. As an action in rem proceeds in accordance with the applicable law, namely, the Admiralty Act, the priorities for payment out of the sale proceeds will also be determined in accordance with the said Act and Section 53 of the IBC will not apply.

40. In paragraphs 99 and 100 of the said judgment in the case of Barge Madhwa, it has been held that, if CIRP is not successful and the company is ordered to be liquidated, the security provided for Plaintiff's claim will inure to the benefit of Plaintiff alone. It is in such a case that the Plaintiff will be a secured creditor in liquidation and will be entitled to realise its security interest as provided in Section 52(4) of the IBC which provides "A secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it." The law as applicable would be the Admiralty Act. Consequently, upon an order of liquidation being made and a liquidator being appointed, the Suit will proceed in personam under the Admiralty Act and the Plaintiff will be entitled to realise its security and it will be open to the Liquidator to defend the suit which right is available to him as provided in Section 35(1)(k) of the IBC. It is in this context that in paragraph 101 it has been held that, if the company is liquidated then Plaintiff's action being an action in rem will proceed and the vessel will be sold by way of an Admiralty sale to maximize its realisation value *and the Plaintiff and any other claimant who has a maritime claim or a maritime lien and has obtained an order of arrest before liquidation, will be considered a secured creditor and will be entitled to enforce and realize his security interest in accordance with the applicable law, viz., Admiralty Act, as provided in Section 52(4) of the IBC.*

41. In the facts of this case, pursuant to CIRP the claim lodged by the Applicant with the Liquidator has been admitted and therefore even if the Applicant has given up its security interest under Section 52(1)(a) of the IBC, the Applicant admittedly having a maritime lien/maritime claim against the sale proceeds, the determination of priorities will be in accordance with Section 10 of the Admiralty Act and inter se priorities of the maritime liens will be decided in accordance with Section 9 of the said Act and as held in paragraph 102 of the said decision in the case of Barge Madhwa, Section 53 of the IBC which refers to distribution of assets will not apply as the ship has been sold by the Admiralty Court in exercise of its jurisdiction in rem and the machinery of the Admiralty Act will apply and the sale proceeds will be distributed on the basis of priorities determined under the Admiralty Act.

42. Of course needless to say that after having recovered the entire claim under the Admiralty Act, the Applicant cannot seek to recover the same claim even though admitted by the Liquidator under the IBC. Therefore, the question of Plaintiff/Applicant jumping the process or the priorities set out under Section 53 of the IBC would not arise, if this Court decrees the Suit in favour of the Plaintiff/Applicant.

43. No doubt if the claim is unable to be recovered or satisfied from the sale proceeds, the said part will have to be pursued under the IBC.

44. In my view, therefore, by allowing this application and decreeing the suit, would not result in the Plaintiff's jumping the process of priorities set out under Section 53 of the IBC in as much as, the said provision will not apply in view of what has been held as above in view of the decision in the case of Barge Madhwa. Therefore, the objection by Mr.Zatakia, learned Counsel is to be rejected.

45. Mr.Gandhi, learned Counsel has also relied upon the decision of this Court in the case of Uttam Singh Duggal & Co. Ltd Vs. United Bank of India and Others (supra), to submit that where a claim is admitted, the Court has jurisdiction to enter a judgment for the Plaintiff and to pass a decree on the admitted claim.

46. Paragraphs 12 and 17 of the decision of the Hon'ble Supreme Court in the case of Uttam Singh Duggal & Co. Ltd Vs. United Bank of India and Others (supra), which summarize the law of decree on admission is usefully quoted as under :

> *"12. As to the object of Order 12 Rule 6, we need not say anything more than what the legislature itself has said when the said provision came to be amended. In the Objects and Reasons set out while amending the said Rule, it is stated that "where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled". <u>We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where the other party has made a plain admission entitling the former to succeed, it should apply and also wherever there</u>*

> *is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed.*
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> *17. Learned counsel for the petitioner contended that admissions referred to in Order 12 Rule 6 CPC should be of the same nature as other admissions referred to in other rule preceding this Rule. Admissions generally arise when a statement is made by a party in any of the modes provided under Sections 18 to 23 of the Evidence Act, 1872. Admissions are of many kinds; they may be considered as being on the record as actual if they are either in the pleadings or in answer to interrogatories or implied from the pleadings by non-traversal. Secondly, as between parties by agreement or notice. Since we have considered that admission for passing the judgment is based on pleadings itself it is unnecessary to examine as to what kinds of admissions are covered by Order 12 Rule 6 CPC."*
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> *(emphasis supplied)*

47. Mr.Gandhi, learned Counsel has also relied upon the decision of the Hon'ble Supreme Court in the case of Charanjit Lal Mehra and Others Vs. Kamal Saroj Mahajan (Smt) and Anr (supra), to submit that admission includes one that can be inferred from the facts and circumstances of the case without any dispute.

48. The following portion of paragraph 8 of the said decision is relevant and is usefully quoted as under :

> *"8………………. In fact, Order 12 Rule 6 CPC is enacted for the purpose of and in order to expedite the trials if there is any admission on behalf of the defendants or an admission can be inferred from the facts and circumstances of the case without any dispute; then, in such a case in order to expedite and dispose of the matter such*

> *admission can be acted upon. In the present case, looking at the terms of the lease deed, there can be no two opinions that the tenancy was joint/composite and not an individual one. Therefore, on these admitted facts the view taken by learned Single Judge of the High Court appears to be justified. In this connection, a reference may be made to a decision of this Court in the case of Uttam Singh d Duggal & Co. Ltd. v. United Bank of India. Their Lordships have held as follows: (SCC p. 121)*
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> *"In the objects and reasons set out while amending Rule 6 of Order 12 CPC it is stated that 'where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled.*
>
> *The Supreme Court should not unduly narrow down the meaning of this rule as the object is to enable a party to obtain speedy judgment... "*
>
> *(emphasis supplied)*

13. This Court has in the case of ***Raj Transport and Trading Company v Barge Madhwa and Another***[2] held that a maritime lien/maritime claim against the sale proceeds is to be decided in accordance with Section 9 of the Admiralty Act and Section 53 of the IBC which refers to distribution of assets, will not apply as the ship has been sold by the Admiralty Court in exercise of its jurisdiction *in rem* and the machinery of the Admiralty Act will apply and the distribution of the sale proceeds will be in accordance with the Admiralty Act.

[2] 2025:BHC-OS:6532

14. Order XII Rule 6 of the CPC is also usefully quoted as under :-

> ***"6. Judgment on admission. —*** *(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.*
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> *(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."*
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> (emphasis supplied)

15. The Hon'ble Supreme Court in the case of ***Uttam Singh Duggal & Co. Ltd Vs. United Bank of India and Others***[3] has summarized the law of decree on admission. Paragraphs 12 and 17 of the decision, are usefully quoted as under :

> ***"12.*** *As to the object of Order 12 Rule 6, we need not say anything more than what the legislature itself has said when the said provision came to be amended. In the Objects and Reasons set out while amending the said Rule, it is stated that "where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled". We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where the other party has made a plain admission entitling the former to succeed, it*

[3]AIR 2000 SC 2740

> *should apply and also wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed.*
>
> ***17.*** *Learned counsel for the petitioner contended that admissions referred to in Order 12 Rule 6 CPC should be of the same nature as other admissions referred to in other rule preceding this Rule. Admissions generally arise when a statement is made by a party in any of the modes provided under Sections 18 to 23 of the Evidence Act, 1872. Admissions are of many kinds; they may be considered as being on the record as actual if they are either in the pleadings or in answer to interrogatories or implied from the pleadings by non-traversal. Secondly, as between parties by agreement or notice. Since we have considered that admission for passing the judgment is based on pleadings itself it is unnecessary to examine as to what kinds of admissions are covered by Order 12 Rule 6 CPC."*
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> *(emphasis supplied)*

16. In the facts of this case as noted above, the Settlement Agreement in Clause 5 clearly sets out as under:

> *"On failure to pay as per clause 1 above Shiv Vani agrees and admits that the said Admiralty Suit Lodging No. 999 of 2014 shall be ordered and decreed in favour of Prassanna against Shiv Vani for the balance dues with interest at 12% per annum on the balance unpaid amount till payment/realization as claimed in the said suit"*

17. The Settlement Agreement is signed by the Financial Controller of the Defendant No.2 and stamped by Defendant No.2. Ms. Jindal, has not disputed the Settlement Agreement. Facts and

circumstances clearly suggest admission on behalf of the Defendant No.2 warranting a decree on admission in terms of Order XII Rule 6 of the CPC.

18. The Applicant/Plaintiff has claimed legal costs of Rs.10,00,000/-. However, there is no break up given of the said legal costs, nor are such costs mentioned in the Settlement Agreement. In the face of the principal claim being Rs. 15,69,544/- legal fees/costs of Rs.10,00,000/- do not look reasonable. Accordingly, this Court restricts legal costs to Rs.2,50,000/-.

19. In view of the above discussion, I am inclined to allow this Application.

20. Let there be a decree and order in favour of the Plaintiff/Applicant against the sale proceeds of the Defendant-vessel for a sum of Rs. 15,69,544/- plus Simple Interest @12% anuum (INR 21,46,624), total of Rs.37,16,168/- and Rs. 2,50,000/- legal fee/costs with further interest at the rate of 12% till payment/realization together with costs and poundage to be paid from the sale proceeds of the vessels lying with the Prothonotary and Senior Master, Bombay High Court.

21. The Interim Application accordingly stands allowed and disposed as above. Drawn up decree is dispensed with. The Suit is decreed but kept pending for determination of priorities and for pay out. The Interim Application No. 2260 of 2025 for deciding priorities will be considered on 28th November 2025.

22. Erroneously the said Interim Application has been shown to be listed on 28th November 2025 along with Interim Application No. 2260 of 2025 by an Order of the same date. In view of the above, paragraphs no. 3 to 6 except the portion which lists Interim Application No. 2260 of 2025 on 28th November, 2025 be deleted and the corrected order be uploaded.

(ABHAY AHUJA, J.)