IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ADMIRALTY AND VICE-ADMIRALTY JURISDICTION

IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO. 2648 OF 2025

IN

COMMERCIAL ADMIRALTY SUIT NO. 29 OF 2024

Falcon Offshore Services (I) Pvt Ltd … Applicant

In the matter between :

The Board of Mumbai Port Authority … Plaintiff

Versus

Sale Proceeds of the vessle Barge Madhwa and another … Defendants

WITH

INTERIM APPLICATION NO. 4914 OF 2025

IN

COMMERCIAL ADMIRALTY SUIT NO. 29 OF 2024

The Board of Mumbai Port Authority … Applicant

In the matter between :

The Board of Mumbai Port Authority … Plaintiff

Versus

Sale Proceeds of the vessel Barge Madhwa and another … Defendants

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Mr. Dhruva Gandhi alongwith Ms. Khushboo Rupani and Mr. Sharan Shetty instructed by HSA Advocates, Advocate for the Plaintiff.
Mr. Prathamesh Kamat alognwith Mr. Kayush Zaiwalla, Ms. Apurva Mehta and Mr. Shrijit Khande instructed by ANB Legal, Advocate for the Applicant in IA-4914-2025/Defendant No.2.

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CORAM : ABHAY AHUJA, J.

DATE : 7 NOVEMBER 2025

P.C. :

Interim Application No. 2648 of 2025 and Interim Application No. 4914 of 2025 :

1. Interim Application No.2648 of 2025 has been filed by the Defendant No.2 in the Suit seeking a Summary Judgment dismissing the Suit and/or rejecting the Plaint against the Defendant No.2 on the ground that the Defendant No.2 is an agent of a disclosed principal.

2. On the other hand, Interim Application No.4914 of 2025 has been filed by the Plaintiff seeking a Summary Judgment under Order XIII-A of the Code of Civil Procedure, 1908 ("the CPC") against the sale proceeds of the vessel Barge Madhwa.

3. Mr. Prathamesh Kamat, learned Counsel, appearing for the Applicant in Interim Application No.2648 of 2025 has submitted that the Applicant admittedly is an agent of a disclosed principal and draws this Court's attention to the cause title of the plaint as well as to the paragraphs 3, 4, 5 and 6 of the plaint. Mr. Kamat submits that this being the admitted position, in view of Section 230 of the Indian Contract Act, 1872 and the decision of the Hon'ble Supreme Court in the case of ***Marine Container Services South Pvt. Ltd. vs. Go Go***

Garments[1], the decision of this Court in the case of ***Midland Overseas vs. M.V. "CMBT Tana" and others***[2], and the decision of Calcutta High Court in the case of ***West Bengal Essential Commodities Supply Corporation Ltd. vs. Koren Foreign Transportation Corporation and another***[3], the suit against the said Defendant be dismissed and/or the plaint be rejected and the application for Summary Judgment be allowed as the Plaintiff has no reasonable prospect of succeeding against the agent of a disposed principal.

4. On the other hand, Mr. Dhruva Gandhi, learned Counsel, appearing for the Plaintiff submits that this Court may consider the Interim Application for summary judgment against the sale proceeds of the vessel – Barge Madhwa and may not only pass appropriate orders in Interim Application No.2648 of 2025, but also in the Interim Application No.4914 of 2025 as the outstanding invoices are raised by the port authority on the basis of Scale of Rates ("SoR") payable by the Defendant-vessel for anchorage charges.

1 (1998) 3 SCC 247
2 1999 SCC OnLine Bom 460
3 2001 SCC OnLine Cal 177

5. Mr. Gandhi submits that the Plaintiff's claim has been described in the Plaint in paragraph 8 and has been claimed on the basis of the invoices raised by the Plaintiff, which have remained unpaid despite notice and statement of outstanding being submitted to the ship owners.

6. Mr. Gandhi submits that the Defendant-vessel was arrested pursuant to order dated 11th December 2014 passed in Admiralty Suit No.6 of 2015 and on 10th January 2020, this Court confirmed the sale of the vessel and the sale proceeds are lying in the account of the Prothonotary & Senior Master of this Court. That the suit has been filed and the summary judgment has been sought against the sale proceeds of the Defendant-vessel.

7. Mr. Gandhi submits that the Plaintiff's claim is to recover statutory dues of the Marine Department of the Plaintiff for the port pilotage and anchorage services and that the claim for the same is within limitation.

8. Learned Counsel submits that the Vessel, being an accommodation barge, entered the waters of the Mumbai Port

Authority on 23rd November 2013. Since then, the vessel had been lying within the waters of Mumbai Port Authority and was allotted Y-5 anchorage point.

9. Mr. Gandhi submits that the Plaintiff has regularly raised invoices upon the Defendant No.2 being the agent of the erstwhile owner of the vessel though disclosed. Mr. Gandhi submits that the agent has not disputed the receipt of the invoices, nor has it disputed the fact that it was the agent of the registered/erstwhile owner.

10. Mr. Gandhi has drawn this Court's attention to the invoices annexed along with the Plaint at Exhibit "A" to Exhibit "H" being the invoices for anchorage and pilotage charges in which invoices for interest are at Exhibits B and F. The invoices have been raised in terms of the SoR which is prescribed by the Mumbai Port Authority as is stated in paragraph 6 of the plaint.

11. Mr. Gandhi further submits that the only defence, if at all which could have been raised in so far as the present suit is concerned is that of limitation, however, the same has been duly explained by the Applicant relying on the order of the Hon'ble Supreme Court dated 10th

January 2020 passed in Suo Moto Writ Petition (C) No. 3 of 2020, Mr. Gandhi submits that as mentioned in paragraph 5(III) of the said order, in cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022 and in the event the actual balance period of the limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

12. Mr. Gandhi tenders across the bar the computation of the limitation period for each of the invoices, which is reproduced as under :

No.	**Date of Invoice**	**Due Date under Invoice**	**Expiry of Limitation w/o S.C. Exclusion**	**Expiry of Limitation w/S.C. Exclusion**
1.	12.05.2018	21.05.2018	21.05.2021	06.05.2023
2.	29.05.2018	N/A (Interest Bill)		
3.	26.09.2018	06.10.2018	06.10.2021	21.09.2023
4.	07.05.2019	17.05.2019	17.05.2022	02.05.2024
5.	05.08.2019	15.08.2019	15.08.2022	01.08.2024
6.	14.11.2019	N/A (Interest Bill)		
7.	17.01.2020	27.01.2020	27.01.2023	12.01.2025
8.	23.06.2020	03.07.2020	03.07.2023	18.06.2025

13. Mr. Gandhi submits that the period excluded in the order of the Hon'ble Supreme Court from 15th March 2020 to 28th February 2022 and the limitation period which was available to the Plaintiffs as on 28th February 2022, exceeded 90 days therefore, the longer period would apply in this case. That the suit has been filed on 1st March 2023 and therefore, the claim of the Applicant is within limitation.

14. Mr. Gandhi submits that the registered/erstwhile owner (represented by the Official Liquidator appointed under the provisions of the Insolvency and Bankruptcy Code, 2016) has not come forth to defend or to object to the invoices raised by the Plaintiff and therefore, as grounds specified under Order XIII-A of the CPC as amended by the Commercial Courts Act, 2015 have been made out, this Application be allowed.

15. I have heard the learned Counsel in both the applications.

16. Section 230 of the Indian Contract Act, 1872 (the "Act") clearly provides that an agent cannot personally enforce contracts entered into by him on behalf of his principal nor is he personally bound by them.

17. In the case of a *Midland Overseas vs. M.V. "CMBT Tana" and others* (supra), this Court has clearly observed that an agent of a disclosed principal cannot be made personally liable. So also, in the case of *West Bengal Essential Commodities Supply Corporation Ltd. vs. Koren Foreign Transportation Corporation and another* (supra), the suit against an agent of a disclosed principal was held not maintainable, and it was observed that under Section 230 of the Act, normally the agent is not liable for civil action nor the agent is entitled to enforce a claim on behalf of the principal unless there is an express agreement to the contrary. There is an exception to the aforesaid averment and the agent can sue in its own name and be sued on behalf of the foreign principal and/or undisclosed principal. When the Plaintiff has chosen to sue the foreign principal, the agent is automatically relieved of its liability so far as it relates to dealings and transaction between the Plaintiff and the principal. Both the principal and the Defendant cannot be sued. There must be an election by the Plaintiff of the party against whom the Plaintiff wants to recover its claim. Ordinarily, the action lies against the principal.

18. In the case of *Marine Container Services South Pvt. Ltd. vs. Go Go Garments* (supra) also, the Hon'ble Supreme Court has held that

in view of Section 230 of the Act, an agent is entitled to invoke the provision of Section 230 of the Act as a defence if the facts support him.

19. In view of the law laid down in the aforesaid decisions and applied to the facts of this case, which clearly indicate that the Defendant No.2 in the suit is an agent of a disclosed principal and which has not been controverted in any manner whatsoever, the suit be dismissed against the said Defendant No.2 as the Plaintiff has no real prospect of succeeding in its claim against Defendant No.2 in view of Section 230 of the Act. There is no compelling reason why the suit should not be dismissed as against Defendant No.2 before recording of oral evidence.

20. Accordingly, Interim Application No. 2648 of 2025 is allowed in terms of prayer clause (a), which reads thus :

> (a) That the Hon'ble Court be pleased to pass a Summary Judgment dismissing the Suit and/or rejecting the Plaint against the Applicant/Defendant No.2.

21. As regards the application for summary judgment of the Plaintiff against the sale proceeds of vessel – Barge Madhwa, the suit

claim is for payment of anchorage and pilotage charges with respect to invoices which are at Exhibits A to Exhibits H of the plaint including invoices for interest.

22. As can be seen the claim of the Applicant is a maritime lien under Section 9(1)(d) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 and the suit is proceeding against the sale proceeds of the Defendant-vessel. Learned Counsel appearing for the Plaintiff has submitted that service of the application has been effected on the liquidator of the ship owner of the vessel yet none appears.

23. In view of the decisions 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***[4]*,* I am of the view that the Applicant/Plaintiff is entitled to proceed *in rem* against the sale proceeds of the Defendant-vessel for enforcement of its claim.

24. There has been no opposition to the claim of the Plaintiff. No material has been brought before me to demonstrate that the suit claim is not tenable. I am also satisfied that the claim of the Plaintiff is within

4 2020 SCC Online Bom 651

limitation as the same has been filed before the expiry of limitation period after excluding the period as prescribed by the Hon'ble Supreme Court.

25. Having perused the Interim Application for Summary Judgment and also the documents which are annexed to the Plaint, more particularly the invoices which have been raised in terms of the SoR prescribed by the Mumbai Port Authority and also having heard the learned Counsel for the Applicant, I am satisfied that there is a maritime lien of the Applicant against the Defendant. There is no objection raised to the claim of the Applicant/Plaintiff and the claim of the Applicant has not been disputed.

26. I am also satisfied that there is no real prospect of any one successfully defending the claim and there is no compelling reason why the claim made by the Applicant should not be allowed before recording of oral evidence and that the Applicant/Plaintiff is entitled to Summary Judgment under Order XIII-A of the CPC.

27. Accordingly, the Interim Application No. 4914 of 2025 is allowed in terms of prayer clause (a), which read thus :

> (a) Pass a summary judgment under Order XIII-A of Code of Civil Procedure, 1908 declaring that Defendant No.1 is liable to pay to the Applicant/original Plaintiff a sum of Rs.96,75,191.00/- (Rs.62,19,583.00/- (Rupees Sixty-Two Lakhs Nineteen Thousand Five Hundred Eighty-Three only) being the principal amount due alongwith interest to the tune of Rs.34,55,608.00/- (Rupees Thirty-Four Lakh Fifty-Five Thousand and Six Hundred Eight only) till 12th February 2023 and further interest @ 15% from 13th February 2023 till the date of payment and/or realization, computed on the principal sum of Rs.62,19,583.00/-.

28. Accordingly, let there be a decree and order in favour of the Plaintiff-Applicant for a sum of Rs.96,75,191.00/- (Rs.62,19,583.00/- (Rupees Sixty-Two Lakhs Nineteen Thousand Five Hundred Eighty-Three only) being the principal amount due alongwith interest to the tune of Rs.34,55,608.00/- (Rupees Thirty-Four Lakh Fifty-Five Thousand and Six Hundred Eight only) till 12th February 2023 and further interest @ 15% from 13th February 2023 till the date of payment and/or realization, computed on the principal sum of Rs.62,19,583.00/-.

29. Drawn up decree is dispensed with.

30. Both the Interim Applications accordingly stand allowed and disposed as above. The Suit is decreed against Defendant No.1 and

dismissed against Defendant No.2 but kept pending for determination of priorities and for pay out, for which the Applicants may take out an application at an appropriate stage.

(ABHAY AHUJA, J.)