

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO. 4094 OF 2025
IN
COMMERCIAL ADMIRALTY SUIT NO.51 OF 2022

ARUN KUMAR PUNCHAKKARA)
KOROTHAN AND OTHERS)...APPLICANTS

IN THE MATTER BETWEEN

ARUN KUMAR PUNCHAKKARA)
KOROTHAN AND OTHERS)...PLAINTIFFS

V/s.

SALE PROCEEDS OF THE VESSEL)
MV KAMRUP IMO NO.8218108 AND ANR)...DEFENDANTS

Mr.Sunip Sen, Senior Advocate i/by Mr.Shubro Dey a/w. Mr.Sutapa Saha, Advocate for the Applicants / Plaintiffs.

None for the Defendants.

CORAM : ABHAY AHUJA, J.

DATE : 12th SEPTEMBER 2025

PC. :

1. This summary judgment application has been filed under Order XIII-A of the Code of Civil Procedure, 1908 ("CPC") by the Plaintiffs submitting that since the claim is against the sale proceeds of the Vessel M.V. Kamrup, there are no prospects of the Defendants being likely to succeed in defending the Suit.

2. Mr.Sunip Sen, learned Senior Counsel, appears for the Plaintiffs / Applicants and submits that in the case of the very same Vessel on 12th January 2024, this Court has granted payment out to the Mumbai Port Authority. Mr.Sen tenders across the bar the said decision. Mr.Sen points out that the claims of the Plaintiffs / Applicants are for unpaid wages and submits that the same is based on Seafarers' Employment Agreement as well as the Articles of the Agreement for employment of seafarers and also refers to the Passport details and Indian Continuous Discharge Certificate cum Seafarer Identity documents as well as copies of the Sign on and Sign off records of the seven Plaintiffs from the Defendants' Vessel from the office of the Bureau of Immigration in support of his contention.

3. Mr.Sen submits that the Applicants are entitled to proceed *in rem* against the sale proceeds of the Defendant Vessel and are entitled to receive their claims for outstanding salary / wages which constitute a maritime claim / lien under Section 4(1)(o) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (the "Admiralty Act") and are accorded the highest priority in the *inter se* priority of maritime lien under Section 9(1)(a) of the Admiralty Act.

4. The learned Senior Counsel for the Applicants has stated that the Applicants / Plaintiffs had sought to serve the application on the owner of the Vessel, however, the envelope has returned with the remark “left” and the Prothonotary & Senior Master of this Court with whom the sale proceeds are lying has been served with the notice of the present Interim Application.

5. This Court has 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 1*⁴, has held 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*. Paragraphs 21 to 25 of the decision in the case of

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

Board of Trustees of Port of Mumbai / Raj Shipping Agencies vs. Barge Madhwa and Another with connected matters (supra) are relevant, which are usefully reproduced 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. (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 decisions, I am of the view that the Applicants are entitled to proceed *in rem* against the sale proceeds of the Vessel in enforcement of their claims.

7. However, as noted above, considering that the Suit has been filed by seven crew members claiming dues of their outstanding wages out of the sale proceeds of the Defendant – vessel based upon their Seafarers' Employment Agreement as well as the Articles of the Agreement for employment of seafarers and also refers to the Passport details and Indian Continuous Discharge Certificate cum Seafarer Identity documents as well as copies of the Sign on and Sign off records of the seven Plaintiffs from the Defendants' Vessel from the office of the Bureau of Immigration, this Court is of the view that a Court Commissioner be appointed to verify the same.

8. Accordingly, this Court appoints Mrs.Jyoti Bidye, learned Associate of this Court, as Commissioner to verify the following

documents in respect of all the Plaintiffs and submit her report by 21st November 2025 :

- (i) Seafarers' Employment Agreement as well as the Articles of the Agreement, Passport extracts duly certified by Advocate for Plaintiffs/Notarized, Indian Continuous Discharge Certificates cum Seafarer Identity documents as well as respective extracts of the 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 21st November 2025.

9. List on **21st November 2025.**

(ABHAY AHUJA, J.)