

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

**INTERIM APPLICATION NO. 4910 OF 2025
IN
COMMERCIAL ADMIRALTY SUIT NO. 11 OF 2021**

Carnival PLC	Applicant
<u>In the matter between</u>	
Irwin Edmund Sequeira & Ors.	...Plaintiffs
V/s.	
Sale Proceeds of MV Karnika	...Defendant

Mr. Prashant Pratap, Senior Advocate i/b Mr. Kaushik S. Krishnaswamy for the Applicant.

Mr. Prathamesh Kamat i/b Renata Partners LLP for the Plaintiffs.

Mr. Ajai Fernandes i/b Motiwalla and Co. for the Defendant.

CORAM	:	ABHAY AHUJA, J.
DATE	:	12th DECEMBER, 2025

ORAL ORDER :

1. By this Interim Application, the Applicant viz. Carnival PLC seeks intervention in Commercial Admiralty Suit No. 11 of 2021 and permission to be joined as party Defendant therein.

2. Earlier reply has been filed on behalf of the Plaintiffs in the Suit, opposing the Intervention Application. On the 28th November, 2025, Mr. Pratap, learned Senior Counsel for the Applicant had submitted that no rejoinder is necessary in the matter as the Interim Applicant has a decree in its favour and are interested in the outcome of the Suit and

that this Court may allow the Interim Application for intervention of the Applicant. This Court had adjourned the matter to be listed on 5th December, 2025 and however also permitted rejoinder, if any, to be filed and served by the next date. Thereafter, the matter was listed on 5th December, 2025, when this Court was informed that no rejoinder would be filed. On the said date, Mr. Prathamesh Kamat, learned Counsel for the Plaintiff, had opposed the intervention and tendered across the bar two decisions of this Court in the cases of *Axis Trustee Services Ltd. in the matter between Indian Oil Corporation Ltd. Vs. The Sale Proceeds of M. T. Prem Mala*¹ (“Interim Application No. 969 of 2022”) and *The Board of Trustees of the Port of Mumbai in the matter between Irwin Edmund Sequeira & Ors. Vs. M. V. Karnika (IMO-8521220)*² (Interim Application No. 895 of 2021) in support of his contentions.

3. Today when the matter is called out, Mr. Kamat, learned Counsel appearing for the Plaintiff submits on instructions that while he has no objection to the intervention being allowed, however, the intervenor be allowed to intervene in the Suit for the limited purpose of demonstrating that the Plaintiff is not entitled to a decree in excess of

1 Order dated 24th January 2023 in Interim Application No. 969 of 2022 in Commercial Admiralty Suit No. 35 of 2020.

2 Order dated 22nd March 2022 in Interim Application No. 895 of 2021 in Commercial Admiralty Suit No. 11 of 2021.

the genuine and sustainable claim and only raise those defences which are appropriate to his character as the competing maritime lien holder/claimant. Drawing this Court's attention to paragraph 26 of the decision in *Interim Application No. 895 of 202 (supra)*, Mr. Kamat submits that this Court has after considering Rule 1086 of the Bombay High Court (Original Side) Rules, 1980 ("Rule 1086"), clearly observed that if the Court is satisfied that the Applicant has an interest in the vessel or the sale proceeds, he can be allowed to intervene in the Suit for the limited purpose of demonstrating that the Plaintiff is not entitled to a decree in excess of the genuine and sustainable claim and that a Claimant who is allowed to intervene cannot definitely step into the shoes of the original Defendant, vessel and or its owner, much less take all the defences which are open to such Defendant. Mr. Kamat submits that the intervenor would be entitled to raise only those defences which are appropriate to his character as the competent maritime lien holder/Claimant. Mr. Kamat has in support also drawn this Court's attention to paragraph 27 (iii) of the order in the said decision to submit that although the Applicant was permitted to file written statement but was permitted to raise defences restricted to the extent indicated in paragraph 26 of the said decision. Mr. Kamat has also as noted above relied upon the decision in *Interim Application No.*

969 of 2022 (*supra*), and submits that while permitting intervention, the Court has relied upon the very same paragraph 26 and directed the Applicant therein to file written statement raised defences to the extent indicated in paragraph 26 of the decision in *Interim Application No. 895 of 2021(supra)*.

4. Mr. Kamat has also today tendered across the bar decision of this Court dated 19th July 2024 in the case of ***Global Radiance Ship Management PTE Ltd. in the matter between Kroll Trustee Service Ltd. Vs. M. V. Aeon (IMO-9576818) and Connected matters***³ (“Interim Application No. 4907 of 2022 & Connected matters”) and submits that after having considered the decisions rendered so far this Court allowed the intervention in the said matter clarifying in paragraph 63(v) that the Applicants are allowed to intervene in the Suit for the limited purpose demonstrating that the Plaintiff is not entitled to a decree in excess of a genuine and sustainable claim and to raise only those defences which are appropriate to their character as the competing maritime claimants.

5. Mr. Kamat further submits that nowhere in Order 1 Rule 10 of the Civil Procedure Code, 1908 (“CPC”), it has been stated that the Court while directing filing of a written statement to a necessary and

3 Order dated 19th July 2024 in IA 4907/22 @ IAL 38845/22 and IA 1262/23 in COMAS 41/22.

proper party, prohibited restriction of the scope of the defence and that therefore, the interpretation of Rule 1086 as observed in the aforesaid decisions of this Court is tenable in law.

6. On the other hand, Mr. Pratap, learned Senior Counsel appearing for the Applicant has submitted that the Applicant was the original registered owner of the vessel Pacific Jewel which name was subsequently changed to KARNIKA. That the Applicant sold the vessel to Essel Media and Entertainment Ltd. for USD 52.5 million and Essel in turn nominated Jalesh Cruise Mauritius Ltd. as Buyer to perform the Agreement for Sale. That a Credit Agreement dated 11th March, 2019 had been executed between the Applicant and Jalesh would pay the balance consideration amount in installments. As security, Jalesh mortgaged the vessel to the Applicant and a First Registered Mortgage dated 12th March, 2019 on the Defendant Vessel was executed and registered with the Registry of the Common Wealth of Bahamas on 12th March, 2019. However, in view of defaults committed by Jalesh in payment of the last five installments, the Applicant addressed a notice of default and demand on 30th March, 2020 and in response Jalesh accepted that they were in default and that USD 12 million was outstanding. Although Jalesh requested for deferment of payment and

proposed installments, however, no payments were received. It has been submitted that the Defendant vessel in the meantime was arrested at the instance of another creditor pursuant to order dated 17th March, 2020 and was thereafter, auctioned and sold to M/s. NKD Maritime Limited for USD 11,650,000/- pursuant to the order dated 28th October, 2020 in Sheriff's Report No. 53 of 2020 in Commercial Admiralty Suit (L) No. 3579 of 2020. Mr. Pratap, learned Senior Counsel, submits that the net sale proceeds of INR 85 Crore are lying in this Court.

7. That the Applicant thereafter filed Commercial Admiralty Suit No. 33 of 2021 *inter alia* to enforce the mortgage on the vessel and for recovery of an amount of USD 12,000,000/- being the outstanding principal amount under the credit / loan agreement secured by the mortgage, together with further interest and costs. That by a Judgment and order dated 13th September, 2022 this Court has decreed the said Suit in favor of the Applicant for USD 12,972,981/- plus interest @ 8% per annum from the date of the said suit and costs.

8. It has been submitted that the Applicant has a maritime claim against the Defendant Vessel under Section 4(1)(c) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017 ("Admiralty Act"), and had filed the suit *in rem* against the Defendant Vessel and its

sale proceeds. That the Suit having been decreed by this Court on 13th September 2024, the Applicant as Mortgagee and Creditor of the Defendant Vessel has an interest in the vessel and the money representing the sale proceed of the vessel.

9. Mr Pratap, learned Senior Counsel, submits that the Applicant being a competing maritime claimant with the Plaintiffs has an interest in the subject matter of the Suit that has been filed by the Plaintiffs. That if the Plaintiffs suit is undefended and the claim is not challenged, the Plaintiff will obtain a decree for sums they are not entitled to and without proving their claim, which in turn would reduce the amounts that would be available for satisfaction of the decree obtained by the Applicant and therefore, this Application has been filed seeking to intervene in the Suit to be impleaded as party Defendant. Mr. Pratap submits that the Applicant being a party interested in the Defendant Vessel, now represented by the sale proceeds of the vessel, is entitled to intervene in the present Suit with the leave of this Court in accordance with Rule 1086.

10. Mr. Pratap submits that the intervention is necessary to ensure that unjustified and exaggerated claims of the Plaintiff are not granted, more so, as the owners of the Defendant Vessel are not appearing

before this Court to contest the claim of the Plaintiffs. Mr. Pratap submits that if the Applicant is not permitted to intervene, it is possible that the Plaintiffs will obtain the decree for the said claim without contest or proof even if there are legitimate defences to their claims. Learned Senior Counsel reiterates that any amount for which the Plaintiffs obtain a decree will reduce the amount available to the Applicant whose claim exceeds the net sale proceeds deposited in this Court. Mr. Pratap submits that even the Mumbai Port Trust has filed a suit for recovery of INR 53,18,24,381 plus interest @ 15% per annum from the date of proceedings. That the Port's claim is also higher than of the Applicant, although the Port authority is yet to obtain a decree as the claim is contested by the Applicant who was entitled to intervene the Port Suit by order dated 2nd August, 2022.

11. Mr. Pratap submits that by order dated 28th March, 2025 passed by this Court in Commercial Admiralty Suit No. 33 of 2021, priorities of various claimants have been determined in relation to the Defendant Vessel, M.V Karnika, and as can be seen, the claim of the Plaintiffs is ranked higher in priority than that of the Applicant as the Plaintiffs have styled their claim as claim for wages even though the Plaintiffs had been paid by the P & I Club and P & I Club is not entitled to claim

for maritime lien. Mr. Pratap submits that on merits also, part of the claim is for purported necessities supplied to the vessel and cannot be recovered as wages or on priority as it is a maritime claim ranking below the claim of the Applicant. Mr. Pratap submits that therefore, in the event that the Plaintiffs succeed in the present Suit without contest by the Applicant, the Plaintiffs would be entitled to receive payment in respect of the entire claim first, in priority from the sale proceeds which they are not entitled to. Mr Pratap submits that the Applicant has also learnt that the Plaintiffs have amended their original claim and increased it from USD 341,552.82/- to USD 674,052/- and that is also a cause for concern if the Plaintiffs are granted the same without any opposition. Mr. Pratap submits that the same would not only affect the rights of the Applicant but also other creditors of the Defendant Vessel. That therefore, also the Applicant be permitted to intervene to ensure that no justifiable claim is granted to the Plaintiffs. Mr Pratap submits that as submitted, the independent claim of the Applicant has been decreed by order dated 13th September, 2022 and as such the Applicant has interest in the vessel and its sale proceeds.

12. Mr. Pratap has submitted that therefore, this application be allowed.

13. In support of his contentions, Mr. Pratap has relied upon the order dated 2nd August, 2022 in Interim Application No. 2544 of 2022 in Commercial Admiralty Suit No. 42 of 2021, where the Applicant has been permitted to intervene in the Commercial Admiralty Suit No. 42 of 2021 as party Defendant and to file written statement without being restricted to the extent indicated in paragraph 26 of the order dated 22nd March, 2022 in *Interim Application No. 895 of 2021 (supra)*. Mr. Pratap submits that the Plaintiff in the said Suit had also advanced similar arguments as Mr. Kamat herein and after considering the said arguments as well as the order dated 22nd March, 2022 in *Interim Application No. 895 of 2021 (supra)* and in particular paragraph 26 and also after having quoted various paragraphs, has observed in paragraph 10 that the said observations are of no assistance in advancing the cause or the submission on behalf of the Plaintiff and permitted the Applicant herein to be impleaded as a party Defendant therein and to file written statement without any restrictions within a period of one month of being served with the copy of amended Plaint.

14. In support Mr. Pratap has also relied upon the decision of this Court in *Interim Application No. 4907 of 2022 & Connected matters (supra)*. Mr. Pratap has also relied upon the commentary on Admiralty

Jurisdiction and Practice (5th Edition) by Nigel Meeson and John A. Kimbell and in particular to paragraphs 4.74, 4.75 and 4.76 to submit that there is no limit to the category of person who may have interest in the property under arrest or the proceeds of sale, or whose interests may be affected by an order sought or made and that if a person has an interest in the property under arrest or in the proceeds of sale in Court or whose interest are affected by any order sought or made, he may apply to the Court to be made a party to the claim. Mr. Pratap submits that the provision of Rule 1086 and the provisions as quoted in the said commentary on Admiralty Jurisdiction and Practice (5th Edition) by Nigel Meeson and John A. Kimbell are rules which reflect historic policy of the Admiralty Court that “if a person may be injured by a decree in the suit, he has a right to be heard as against the decree; although it may eventually turn out that he can derive no pecuniary benefit from the result of the Suit itself”. Mr Pratap submits that obviously the right of a person who has been made a party under Rule 1086 is limited to the protection of his interest in the *res* and the court will not permit into raise extraneous issues. That an intervenor cannot stand in any better position than the Defendant and is therefore, only entitled to raise defences which the owner could have raised.

15. Mr. Pratap submits that the plain language of Rule 1086 does not limit the scope of the defence and all it says is that a person who has interest in the ship or money but who is not a defendant, may with the leave of the Judge intervene in the Suit. Referring to Order 1 Rule 10 of the CPC, Mr. Pratap has submitted that where a Defendant is added, the Plaint is to be amended in such manner as may be necessary. Learned Senior Counsel submits that neither by Rule 1086 nor by Order 1 Rule 10 of the CPC nor by any of the statutory provision the Defendant's scope of defence can be limited.

16. Mr. Kamat learned Counsel appearing for the Plaintiff in rejoinder while denying the submissions on the merits of the Plaintiff's claim, submits that in fact the Applicant is seeking to intervene at this belated stage to delay the judgment / decree of the Plaintiffs and also the Application for Summary Judgment preferred by the Plaintiffs.

17. Mr. Kamat further submits that the commentary on Admiralty Jurisdiction and Practice (5th Edition) by Nigel Meeson and John A. Kimbell as referred to by Mr. Pratap has been extracted in paragraph 49 by this Court in its decision dated 19th July, 2024 in *Interim Application No. 4907 of 2022 & Connected matters (supra)* and after considering

the same this Court has clarified in 63(v) of the said decision that that Applicants are allowed to intervene in the suit for limited purpose of demonstrating that the Plaintiff is not entitled to a decree in excess of a genuine and sustainable claim and to raise only those defences which are appropriate to their character as the competing maritime claimants. Mr. Kamat submits that therefore, this court may allow the application for intervention by restricting the Applicant to raise defences in the written statement to the extent indicated in paragraph 26 of the decision of this Court in *Interim Application No. 895 of 2021 (supra)*.

18. As regards the submission on behalf of the Plaintiffs that the intervention is belated and only to delay the judgment / decree of the Plaintiffs as well as the application for Summary Judgment preferred by the Plaintiffs, Mr. Pratap has submitted that Rule 1086 does not prescribe any limitation and the only criteria is that the party claiming intervention has to have an interest in the Vessel or the sale proceeds thereof. Mr. Pratap reiterates that not permitting intervention in the present Suit is necessary to ensure that unjustified and exaggerated claims of the Plaintiffs are not granted, more so since the owners of the Defendant Vessel are not appearing before this Court and the Plaintiffs may obtain a decree for sums claimed without contest or proof, even if

there are legitimate defences to their claims which will reduce the amount available to the Applicant.

19. As regards the commentary on Admiralty Jurisdiction and Practice (5th Edition) by Nigel Meeson and John S. Kimbell, Mr. Pratap learned Senior Counsel has submitted that although the same has been quoted in paragraph 49 of the decision in *Interim Application No. 4907 of 2022 & Connected matters (supra)*, however, in paragraph 50 it has been clearly held that the true test to be applied is to assess whether the party claiming intervention has any 'interest' in the vessel or the sale proceeds. Mr. Pratap submits that therefore as held in the case of the very same Applicant in Interim Application No. 2544 of 2022 in Commercial Admiralty Suit No. 42 of 2021, this Court may allow the application and permit impleadment and filing of written statement without any restriction.

20. I have heard the learned Senior Counsel for the Applicant and the learned Counsel for the Plaintiffs in the Suit.

21. It is to be noted that Mr. Kamat, learned Counsel appearing for the Plaintiff has submitted that while he has no objection if the intervention is allowed, however, the Applicant be restricted to raise defences only to the extent indicated in paragraph 26 of the order

dated 22nd March, 2022 in *Interim Application No. 895 of 2021 (supra)*.

22. This Court therefore proceeds on the basis that it is not in dispute that the Applicant is a person who has interest in the ship or the sale proceeds. In *Interim Application No. 895 of 2021 (supra)*, this Court while considering the Interim Application of the Port Authority to intervene in the Suit has, after considering Rule 1086 and in the context of the arguments by the parties with respect to *interse* priority between the claims of the Plaintiffs and the Port Authority to decide an Intervention Application under Rule 1086, observed in paragraph 26 as under:-

“26 The conspectus of aforesaid considerations is that in view of Rule 1086 of the Admiralty Rules, if the Court is satisfied that the applicant has an interest in the vessel or the sale proceeds, he can be allowed to intervene in the suit for the limited purpose of demonstrating that the plaintiff is not entitled to a decree in excess of the genuine and sustainable claim. In short, a claimant, who is allowed to intervene, cannot definitely step into the shoes of original defendant – vessel and/or its owner, much less take all the defences which are open to such defendant. An intervener would be entitled to raise only those defences which are appropriate to his character as the competing maritime lien holder/ claimant. Thus, I am inclined to allow the application.”

(emphasis supplied)

23. As can be seen, the Court in the above context has observed in view of Rule 1086, that if the Court is satisfied that the Applicant has

an interest in the vessel or the sale proceeds, he can be allowed to intervene in the Suit for the limited purpose of demonstrating that the Plaintiff is not entitled to a decree in excess of a genuine and sustainable claim and thereby, raise only those defences which are appropriate to his character as the competing maritime lien holder / claimant. However, when similar arguments as in *Interim Application No. 895 of 2021 (supra)* were raised by the Plaintiff-Port Authority, while the Applicant was seeking to intervene in the **Port Authority Suit**⁴, as submitted by Mr. Pratap, learned Senior Counsel for the Applicant, after considering paragraph 26 of the decision in *Interim Application No. 895 of 2021 (supra)*, this Court refused to entertain the said arguments and rejected the contention of the Plaintiff therein to restrict the Applicant to raise defences to the extent indicated in paragraph 26. For the sake of convenience paragraphs 7 to 10 of the said order are usefully extracted as under:-

“7. In Interim Application No.895 of 2021 in Comm. Admiralty Suit No.11 of 2021, where the Plaintiff herein had sought impleadment, I had an occasion to consider the import of the aforesaid Rules. It was, inter alia, observed as under :

15. Sub-clause (a) of Rule 1086 provides that where an action in rem is brought against a ship, which is under arrest, or the sale proceeds of the ship, (which is in deposit with the Court), a person, who has interest in

⁴ Interim Application No. 2544 of 2022 in Commercial Admiralty Suit No. 42 of 2021

that ship or sale proceeds may intervene in the suit, with the leave of the Judge, if he is not party defendant to the suit. On a plain reading, four postulates emerges. One, an action in rem must have been brought against the vessel. Two, the vessel must be either under arrest or, post its sale, the Court holds seisin over the sale proceeds of the ship. Three, the person who seeks to intervene must have an interest in the said vessel or its sale proceeds. From the point of view of the intervener, what has to be established is the existence of an interest in the vessel or the sale proceeds. Four, it is in the discretion of the Court to allow a party to intervene.”

8. *All the four aforesaid postulates seem to have been made out in the case at hand. The instant suit is an action in rem. The vessel, to which the Plaintiff claims to have rendered services, is sold and the action is practically against the sale proceeds of the said vessel. Interest of the Applicant in the subject matter of action in rem is self-evident. The Applicant claims to be the first mortgagee of the said vessel. The Applicant has also instituted a suit to enforce its rights as a mortgagee.*

9. *Mr. Fernandes, learned Counsel for the Plaintiff, however, banked upon the observations in paragraph Nos.25 and 26 of the aforesaid Order, which read as under :*

25.The matter can be looked at from a slightly different perspective. Under Clause (e) of Rule 1087, the notice shall, inter alia, state that any person having claim against the ship or the proceeds of the sale thereof shall file a suit to prove his claim before the expiration of the specified period. In a given case, pursuant to notice, a claimant may institute the suit and have the admiralty claim proved against the ship or sale proceeds. If such person ranks low in priority and a person standing higher in priority gets a decree for a sum in excess of the entitlement, and is paid out, nothing would remain for distribution to such decree holder, who ranks low in priority. The situation gets accentuated where the claim is against the sale proceeds and there is nobody to defend the suit.

26. The conspectus of aforesaid consideration is that in view of Rule 1086 of the Admiralty Rules, if the Court is satisfied that the applicant has an interest in the vessel or the sale proceeds, he can be allowed to intervene in the suit for the limited purpose of demonstrating that the plaintiff is not entitled to a decree in excess of the genuine and sustainable claim. In short, a claimant, who is allowed to intervene, cannot definitely step into the shoes of original defendant – vessel and/or its owner, much less take all the defences which are open to such defendant. An intervener would be entitled to raise only those defences which are appropriate to his character as the competing maritime lien holder/ claimant. Thus, I am inclined to allow the application.”

10. I am afraid the aforesaid observations are of no assistance in advancing the cause of the submission on behalf of the Plaintiff in the case at hand. In my considered view, the aforesaid reasons, if construed in correct perspective, lend support to the claim of the Applicant. I am, therefore, inclined to allow the Application. Hence, the following order :

ORDER

(i) The Application stands allowed in terms of prayer clause (a).

(ii) The Plaintiff shall implead the Applicant as a party Defendant to this Suit.

(iii) Necessary amendment be carried out within a period of two weeks and copy of the amended Plaintiff be served on the Defendants within a week thereafter.

(iv) The newly added defendant shall file Written Statement within a period of one month of being served with a copy of the amended plaintiff.”

24. Mr. Kamat has relied upon the decision in *Interim Application No. 4907 of 2022 & Connected matters (supra)* to submit that after considering the decision in *Interim Application No. 895 of 2021 (supra)*

and also the commentary on Admiralty Jurisdiction and Practice (5th Edition) by Nigel Meesan and John A. Kimbell, this Court allowed intervention subject to a clarification that the intervention in the Suit is allowed for limited purpose of demonstrating that the Plaintiff is not entitled to a decree in excess of the genuine and sustainable claim and raise only those defences which are appropriate to their character as competent maritime claimants.

25. Mr. Pratap, on the other hand, has submitted that it is only at the stage of trial that a Court would determine whether the intervening Defendant has raised the defences which are appropriate to his character as the competing maritime lien holder / Claimant.

26. I am of the view that the said clarification is implied in every case where intervention is allowed where the intervenor is permitted to be impleaded as Defendant. The commentary on Admiralty Jurisdiction and Practice (5th Edition) by Nigel Meeson and John A. Kimbell, in paragraph 4.74 has clearly observed that the right of a person who has been made a party is limited to the protection of his interest in the *res* and the Court will not permit him to raise extraneous issues and that an intervenor cannot stand in any better position than the Defendant and is therefore, only entitled to raise defences which the owner could

have raised. Paragraphs 4.74, 4.75 and 4.76 of the said commentary on Admiralty Jurisdiction and Practice (5th Edition) are usefully quoted as under:-

“Third parties interested in property under arrest:

4.74 Where a person who is not a party to the claim has an interest in the property under arrest, or the proceeds of sale in court, or whose interests are affected by any order sought or made he may apply to the court to be made a party to the claim. (CPR Part 61.8(7)). Such applications are usually heard by the Admiralty Registrar. This provision in the rules reflects the historic policy of the Admiralty Court that “if a person may be injured by a decree in a suit, he has a right to be heard as against the decree; although it may eventually turn out that he can derive no pecuniary benefit from the result of the suit itself (The “Dowthroe” (1843) 2 Wm Rob 73, at page 77, per Dr. Lushington). However, the right of a person who has been made a party under this provision is limited to the protection of his interest in the res and the court will not permit him to raise extraneous issues. (The “Lord Strathcona” (No.2) [1925] P 143 (Hill J). An intervener cannot stand in any better position than the defendant and is therefore only entitled to raise defences which the owner could have raised. In The “Byzantion” (1922) 12 L1 L Rep 9 at pages 11 – 12). Hill J described the position of the interveners as follows:

“Intervention may be for either or both of two purposes: (1) to defend the action either as to liability, or as to quantum, or both, and (2) to establish a prior claim to the res without defending the action. But where the intervener defends, he defends an action not against himself, but against the res; and, as there can be no liability of the res unless there is a personal liability of the owner, he defends an action against the owner. The questions on such a defence are, is the owner liable to the plaintiff, and has the plaintiff a right in rem against the ship? It follows that the intervener cannot set up defences unless they are defences which the owner could set up.”

4.75 *There is no limit to the category of person who may have an interest in the property under arrest or the proceeds of sale, or whose interests may be affected by an order sought or made but the following are examples of the type of persons who have been permitted to intervene:*

(i) mortgagees; (The “Gulf Venture” [1985] 1 Lloyd’s Rep 131 (Sheen J).

(ii) time characters claiming ownership of bunkers on board; (The “Saint Anna” [1980] 1 Lloyd’s Rep 180 (Sheen J).

(iii) liquidator of owners; (The “Acrux” [1961] 1 Lloyd’s Rep 471 (Hewson J).

(iv) trustee in bankruptcy of owner; (The “Dowthorpe” (1843) 2 Wm Rob 73.

(v) charterers; (The “Lord Strathcona” (No.2) [1925] P 143 (Hill J).

(vi) ship repairers; (The “Byzantion” (1922) 12 L1 L Rep 9.)

(vii) harbour authority claiming statutory rights of detention and sale; (The “Sea Spray” [1907] P 133; The “Ousel” [1957] 1 Lloyd’s Rep 151; The “Queen of the South” [1968]P449 (Brandon J))

(viii) underwriters of the ship under arrest; (The “Regina del Mare” (1864) Br & L 315 (Dr. Lushington).

(ix) an adverse claimant against the property under arrest or the proceeds of sale. (Brown v The “Flora” (1898) 6 Ex. C. R. 133 (Canada)).

4.76. *In addition to the power to permit intervention under CPR Rule 61.8(7), the court has power to allow intervention under the general provision of CPR Part 19.1. This power is very wide in its scope.”*

(emphasis supplied)

27. In fact, in the decision of this Court dated 19th July, 2024 in *Interim Application No. 4907 of 2022 & Connected matters (supra)*, after quoting the commentary on Admiralty Jurisdiction and Practice

(5th Edition) by Nigel Meeson and John A. Kimbell, in paragraph 50 it has clearly been held that the entitlement to intervene cannot be adjudged only on the basis of the nature of the possible defences which the proposed intervenor may take and the true test to be applied is to assess whether the party claiming intervention has any interest in the vessel or the sale proceeds. Paragraph 50 of the said decision is usefully quoted as under:-

“50. A fair reading of the aforesaid passages would indicate that the category of persons, who may claim interest in the res, is not limited. Illustrative capacities of interested parties have been indicated. However, in my considered view, in the face of an express provision in the Rules, if viewed in the context of the nature of the action in rem, where the vessel is sold and the sale proceeds are held for the benefit of all the creditors (of course subject to priority), the entitlement to intervene cannot be adjudged only on the basis of the nature of the possible defences which the proposed intervenor may take (depending upon contest or no contest by the original defendant). The true test to be applied is, to assess whether the party claiming intervention has any ‘interest’ in the vessel or the sale proceeds.”

(emphasis supplied)

28. Rule 1086 clearly provides that where a ship against which a suit in rem is brought is under arrest or money representing the proceeds of the sale of that ship is in Court, a person who has interest in that ship or money but who is not a defendant to the suit may with the leave of the Judge, intervene in the Suit. Rule 1086 of the Bombay High Court (Original Side) Rules, 1980 is usefully quoted as under-

“Rule 1086 Interveners –

(a) Where a ship against which a suit in rem is brought is under arrest or money representing the proceeds of sale of that ship is in court, a person who has interest in that ship or money but who is not defendant to the suit may, with the leave of the Judge, intervene in the suit.

(b) An application for grant of leave under this rule may be made ex-parte by an affidavit showing the interest of the applicant in the ship against which the suit is brought or in the money held in court.

(c) A person to whom leave is granted to intervene shall thereupon become a party to the suit and shall file an appearance in person or by vakalatnama within the period specified in the order granting leave. On filing such appearance or vakalatnama, the intervener shall be treated as if he were a defendant in the suit.

(d) The Judge may order that a person to whom he grants leave to intervene in a suit, shall, within such period as may be specified in the order, serve on every other party to the suit such pleading as may be specified.”

(emphasis supplied)

29. As can be seen all that is required for intervention is that the person has to have interest in the ship or the money. There is no other qualification or restriction to the same. And as noted above that the Applicant has interest in the sale proceeds of the Defendant-Vessel is not at all in dispute.

30. In the case of ***Kroll Trustee Services Limited in the matter between Global Radiance Ship Management PTE Ltd. Vs. Sale Proceeds of MT Aeon***⁵ (“Interim Application No. 3703 of 2024”), this Court has

⁵ Order dated 04th July 2025 in Interim Application No. 3703 of 2024 in Commercial Admiralty Suit No. 2 of 2023.

in the case of mortgagee having filed a suit for a claim under Section 4(1)(c) of the Admiralty Act held that the Applicant would be a person interested in the proceeds of the sale lying with the Prothonotary & Senior Master, the suit having been filed as a suit in *rem* and the vessel having been arrested earlier and the sale proceeds of auction sale of the vessel having been deposited and lying with the Prothonotary & Senior Master of this Court.

31. In the facts of this case, the Applicant, as submitted above and which is not in dispute, is a decree holder having obtained decree dated 13th September 2022 of its claim as a mortgagee in Commercial Execution Admiralty Suit No. 33 of 2021 for USD 12,972,981 plus interest @ 8% p.a. and costs for a maritime claim under Section 4(1)(c) of the Admiralty Act having filed the suit in *rem* against the Defendant Vessel and its sale proceeds.

32. Nowhere in the Admiralty Act or in the Bombay High Court (Original Side) Rules, 1980 relevant to the Admiralty jurisdiction or in the CPC there is any provision or scope for limiting the defence of an intervenor who would be impleaded as a Defendant in the Suit. It is implied that an intervenor be entitled to raise defences which are appropriate to his character as the competing maritime lien holder /

claimant but whether the defences raised meet this requirement, in my view, would have to be adjudicated by the Court after the filing of the written statement. I, therefore, agree with Mr. Pratap that it is only at the stage of trial that a Court would determine whether the intervening Defendant has raised the defences which are appropriate to his character as the competing maritime lien holder / Claimant. The true test to be applied, as rightly observed by this court in *Interim Application No. 3703 of 2024 (supra)*, for considering the application for intervention is to assess whether the party claiming intervention has any interest in the vessel or the sale proceeds. That, I reiterate is the only test and no more.

33. As regards Mr. Kamat's submissions that the intervention is belated and the Applicant is seeking to intervene at a belated stage and delay the judgment / decree of the Plaintiffs and also the application for Summary Judgment, I am of the view that the said submissions are not tenable, particularly in view of Rule 1086 which only requires the person seeking intervention to have an interest in the Vessel or in the sale proceeds and pertinently there is no time limitation prescribed for the same. Moreover, it is only at the stage of trial that this Court will decide whether the defences raised by the Applicant are

appropriate to his character as an intervening Defendant, especially considering that the claim of the Applicant has been ranked below the claim of the Plaintiffs by order dated 28th March 2025 and despite the same being disputed by the Applicant that the Plaintiffs have styled their claim as a claim for wages even though the Plaintiffs have been paid by the P&I Club and the P&I Club is not entitled to claim a maritime lien.

34. Ergo, in the facts of this case, as can be seen that the Applicant has already obtained the judgment and decree dated 13th September 2022 as a Mortgagee in Commercial Execution Admiralty Suit No. 33 of 2021 for USD 12,972,981 along with interest, in a suit in *rem* brought against the vessel / sale proceeds under Section 4(1)(c) of the Admiralty Act, after its arrest on 17th March 2020, and the sale proceeds of the of the auctioned sale of INR 85 Crore have been deposited and are lying with the Prothonotary & Senior Master of this Court, the Applicant-Intervenor, admittedly having established the existence of an interest in the vessel or the sale proceeds, I am of the view that Carnival PLC, the Applicant-Intervenor, be allowed to intervene and impleaded as Defendant.

35. Accordingly the following order is passed:-

ORDER

(i) The Application stands allowed in terms of prayer Clause (a), which reads thus:-

“(a) allow this Application and permit the Applicant to intervene in Commercial Admiralty Suit No. 11 of 2021 and be joined as a party Defendant.”

(ii) The Plaintiff shall implead the Applicant as a party Defendant to this Suit.

(iii) Necessary amendments be carried out within a period of two weeks and copy of the amended Plaint be served on the Defendants within a week thereafter and an appropriate affidavit of service be filed.

(iv) The newly added Defendant shall file written statement within a period of 30 days of being served with a copy of the amended Plaint.

(ABHAY AHUJA, J.)

Digitally
signed by
NIKITA
YOGESH
GADGIL
Date:
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