



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

INTERIM APPLICATION NO. 4907 OF 2022
IN
COMM ADMIRALTY SUIT NO. 41 OF 2022

Kroll Trustee Services Ltd. ...Applicant
In the matter between
Kroll Trustee Services Ltd. ...Plaintiff
Versus
M. V. AEON (IMO No.9576818) ...Defendant

WITH
INTERIM APPLICATION (L) NO. 38845 OF 2022
IN
COMM ADMIRALTY SUIT NO. 41 OF 2022

Global Radiance Ship Management PTE Ltd. ...Applicant
In the matter between
Kroll Trustee Services Ltd. ...Plaintiff
Versus
M. V. Aeon (IMO No.9576818) ...Defendant

WITH
INTERIM APPLICATION NO. 1262 OF 2023
IN
COMM ADMIRALTY SUIT NO. 41 OF 2022

Termoil Ltd. ...Applicant
In the matter between
Kroll Trustee Services Ltd. ...Plaintiff
Versus
M. V. Aeon (IMO No.9576818) ...Defendant

Mr. Prashant Pratap, Senior Advocate, a/w Shyam Kapadia,
Nishaan Shetty, Rishabh Saxena, Raghvendra Desai
and Mr. Burjis i/b Bose and Mitra, for the Plaintiff and
for the Applicant in IA/4907/2022.

Mr. Navroz Seervai, Senior Advocate, a/w Nena Bhosale,
Disha Parekh, Anisha Didwania, Laveena Tejwani,

Anuja Diwadkar and A. Kalarikkal i/b NDB Law, for the Applicant in IA(L)/38845/2022.

Mr. Yazdi Jijina, i/b Mulla & Mulla & CB & C, for the Defendant in ComAS/41/2022.

Mr. Dhruva Gandhi, a/w Siddharth Manek, i/b M/s. Crawford Bayley & Co., for the Applicant in IA/1262/2023.

CORAM: N. J. JAMADAR, J.

Reserved On: 12th JANUARY, 2024

Pronounced On: 19th JULY, 2024

ORDER:-

INTERIM APPLICATIONS:

1. The plaintiff has preferred IA/4907/2022 for a summary judgment under Order XIII-A of the Code of Civil Procedure, 1908 in a Commercial Admiralty Suit instituted *inter alia* for a decree in the sum of US\$ 23,132,644.10 alongwith further interest at the rate of 12% p.a. from the date of the institution of the suit.
2. IA(L)/38845/2022 is filed by Global Radiance Ship Management PTE Ltd. ("Global Radiance"), who claims to have arranged supplies and rendered services to the defendant Vessel for her operation, management, preservation and maintenance, to permit it to intervene in the said suit.
3. IA/1262/2023 is preferred by Termoil Ltd. ("Termoil") to intervene in the said suit on the premise that it had supplied

bunkers to the defendant Vessel and, therefore, has a maritime claim under Section 4(1)(l) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (“the Admiralty Act, 2017”).

The Suit Claim:

4. To being with, it may be necessary to briefly note the nature of the plaintiff’s claim in the suit:

(a) The plaintiff, Kroll Trustee Services Ltd. (“Kroll”), formerly Lucid Trustee Services Limited, a company registered under the laws of England and Wales, is a security and facility agent holding security on behalf of a syndicate of lenders.

(b) The defendant “M. V. AEON”, is a Combined Chemical and Oil Tanker flying the flag of Panama. The defendant Vessel is in the registered ownership of Samnium Maritime Limited (“Samnium”), a company incorporated under the laws of the Republic of Marshal Islands.

(c) On 24th July, 2017, a Term Loan Facility (the Facility Agreement) came to be entered between Blue Ocean Onshore Fund LP (“Blue Ocean”) and EnTrustPermal ICAV (“EnTrust”), as the lenders, and (i) Samnium Maritime Limited (‘Registered Owners of the defendant - Vessel’),

(ii) Inlustrem Maritime Limited ('Inlustrem'), (iii) Radiilucis Maritime Limited ('Radiilucis') and (iv) Trieste Marine Limited ('Trieste'), as borrowers.

(d) Under the terms of the said Facility Agreement as sum of US\$ 34,025,000 was to be disbursed in two advances under four tranches. On 24th July, 2017 and 26th September, 2017 pursuant to the request of the borrowers the sums of US\$ 23,625,000 and US\$ 10,192,000, respectively, came to be disbursed. In accordance with the terms of the Facility Agreement, on 28th September, 2017, Samnium, the registered owner, executed two Mortgage Deeds thereby creating a first and second preferred mortgage on the defendant – Vessel in favour of Wilmington Trust National Association ("Wilmington"), the original Security and Facility Agent.

(e) On 26th May, 2020, the Facility Agreement was amended by an 'Amending and Restating Agreement'. Wilmington, the original security and facility agent, was replaced by the plaintiff. The Mortgage Deeds were also amended. The two mortgages stood transferred to the plaintiff. Thus, the plaintiff became the mortgagee of the defendant - Vessel.

(f) The borrowers, including Samnium, committed default in repayment of the loan amount. On 15th January, 2021, the plaintiff addressed a 'Notice of Default and Reservation of Rights' notifying the borrowers and the guarantors that the borrowers had failed to repay a sum of US\$ 23,67,625.83, in accordance with the terms of the contract. As there was no response, the plaintiff addressed a 'Notice of Acceleration, Demand and Reservation of Rights' on 9th August, 2021. The said notice was followed by the 'Notice of Repossession' dated 25th May, 2022.

(g) Thus, the plaintiff instituted the suit *inter alia* for enforcement of the first and second priority registered mortgage over the defendant Vessel, recovery of the sum of US\$ 23,132,644.10 alongwith interest at the rate of 12% p.a. from the date of the institution of the suit and for the arrest and sale of the defendant – Vessel.

(h) The defendant – Vessel came to be arrested at the instance of the plaintiff by an order dated 20th August, 2022. Prior thereto the defendant – Vessel was arrested by an order of this Court dated 6th June, 2022 in Commercial Admiralty Suit (L) No.17470 of 2020. Subsequently, the Vessel came to be arrested in a number of Admiralty Suits. Eventually, by an

order dated 15th August, 2022, the defendant – Vessel was ordered to be sold. On 30th August, 2022, the bid of M/s. Seven Line Shipping Ltd. for the sum of Rs.103,67,06,200/- was accepted and the defendant – Vessel was sold. The sale proceeds, after deduction of the Sheriff's expenses and crew wages, stand deposited with this Court.

IA/4907/2022 for Summary Judgment:

5. The plaintiff has filed this application for a summary judgment under Order XIII-A of the Code asserting that Samnium, the registered owners of the defendant – Vessel has not contested the claim as it has no defence to the claim of the applicant. Thus, there is no reason why the claim of the applicant - plaintiff should not be disposed of without recording oral evidence.

6. An affidavit-in-reply has been filed by the erstwhile registered owner of the defendant – Vessel admitting the liability incurred under the Facility Agreement dated 24th July, 2017 and the Amending and Restating Agreement dated 26th May, 2020. The erstwhile registered owner has admitted the principal amount due and payable to the plaintiff, interest thereon and legal costs and expenses, as claimed by the plaintiff.

IA(L)/38845/2022 for Intervention:

7. Global Radiance has preferred this application purportedly in the capacity of the manager of the defendant – Vessel. It is averred in the application that, Global Radiance carries on business of providing maritime management services including ship management, off shore management and manpower management etc. The applicant had arranged for supplies to be made and services to be rendered to the defendant – Vessel for her operation, management, preservation and maintenance. The applicant had also incurred disbursements on behalf of the erstwhile registered owner of the defendant – Vessel. As the owner committed default in payment of outstanding dues of US\$ 1,660,795.38, Global Radiance has instituted Comm Admiralty Suit (L) No.38835/2022 against the sale proceeds of M.V. AEON, the defendant Vessel.

8. The applicant avers, it has a maritime claim against the defendant – Vessel under Section 4(1)(l) and 4(1)(p) of the Admiralty Act, 2017. The applicant has thus instituted a suit in rem against the sale proceeds of the defendant – Vessel, in the capacity of the creditor of the vessel. Consequently, being

a competing maritime claimant of the plaintiff in the instant suit, the applicant has an interest in the subject matter of the instant suit. It is further asserted the instant suit cannot be fully and finally adjudicated in the absence of the applicant.

9. The applicant further avers that it is entitled to intervene in the present suit to ensure that unjustified claims of the plaintiff are not granted. Since erstwhile registered owner of the defendant – Vessel is not contesting the claim of the plaintiff, the applicant would suffer prejudice in the event the plaintiff obtains a decree for an unjustified amount, even if there are legitimate defences to the claim of the plaintiff.

10. The plaintiff resisted the application for intervention by filing an affidavit-in-reply, tenor of which was that of denial of the assertions in the application for intervention.

11. An additional affidavit was filed on behalf of the applicant on 23rd June, 2023 asserting *inter alia* that a Business Collaboration Agreement was executed under which Sannium, the registered owner, and Saint James Shipping Ltd. (“Saint James”) the commercial manager of the vessel, had jointly and severally furnished security against the Vessel to the applicant.

12. Under the terms of the said Business Collaboration Agreement the applicant had a charge over the defendant – Vessel. Thus, the applicant’s claim was on par with the registered mortgages. Secondly, it was contended that the plaintiff has filed multiple proceedings for the same claim in various jurisdictions. Apart from the instant suit, the plaintiff had instituted Admiralty Suit No.22/2022 in the High Court of Gujarat, and a suit for the recovery of the very same amount in the Dominican Republic under Request No.2023/003825. As against the alleged liability of US\$ 23,132,644.10, the plaintiff has thus instituted three suits in different jurisdictions with the suit claims aggregating to US\$ 70 million, approximately. Moreover, the lenders including the plaintiff had taken possession of one of the Vessels MT ARIANA for the purported default in repayment of the said loan. However, the aforesaid material facts have been suppressed by the plaintiff.

13. Another additional affidavit was filed on behalf of the applicant on 25th October, 2023 asserting *inter alia* that the applicant learnt that the plaintiff had filed proceedings before the High Court of England and Wales in respect of the very same financial facility and under a consent order dated 9th

February, 2023 the plaintiff had got awarded its claim of US\$ 24,000,000, inclusive of interest, in full settlement of all its claims excluding legal fees and expenses. Armed with the said consent order, the plaintiff made an attempt to intervene in a matter before the Singapore Supreme Court as well for the very same amount. The said facts have also been deliberately suppressed by the plaintiff. It is, therefore, necessary to permit the applicant to intervene in the instant suit.

14. In response to the first additional affidavit dated 23rd June, 2023, the plaintiff contended that the liability of the borrowers under the Facility Agreement is joint and several. The loan was secured by a mortgage registered on each of the four vessels. Therefore, the plaintiff is entitled to proceed against the each of the four vessels for enforcement of its security by sale of the vessels to recover its outstanding dues under the Facility Agreement and the mortgages registered in respect of the Vessels. Thus, the only thing that can be examined is that the plaintiff does not recover amount in excess of the aggregate value of the outstanding loan and interest accrued thereon. Therefore, no fault can be found with the action initiated by the plaintiff in various

jurisdiction as the mortgaged vessels were then within different territorial waters, over which different courts exercised jurisdiction. The plaintiff has not made any recovery in respect of the amount claimed in the instant suit. In any event, even if the entire amount under the consent order is paid over to the plaintiff, the same would be still less than the principal amount claimed in the instant suit.

15. In response to the additional affidavit dated 25th October, 2023 the plaintiff contends that the claim before the High Court of England and Wales was *in personam*. Whereas the instant suit is an action *in rem*. Both actions are permissible in law and are cumulative and not in the alternative. In fact, the applicant has recovered no amount whatsoever in the various proceedings instituted in respect of the mortgaged ships. Therefore, none of the grounds raised by the applicants in the application as well as two additional affidavits entitle the applicant to intervene in the suit at this stage. It is only at the stage of execution and pay out of the sale proceeds that the question as to whether any recovery has been made by the plaintiff in the other proceedings would arise and the decree would be marked satisfied to that extent and not otherwise. Thus only at the stage of the

determination of priorities, the applicant can be heard. Hence, the plaintiff has prayed for rejection of the application.

IA/1262/2023 for Intervention:

16. The applicant Termoil Ltd. is a company incorporated under the laws of Cyprus. The applicant has instituted a suit being Commercial Admiralty Suit (L) No.21337/2022 in which the defendant – Vessel was ordered to be arrested on 5th July, 2022.

17. The claim of the applicant in the said suit is that Saint James Shipping Ltd., the Manager of the defendant – Vessel had placed an order with the applicant for the supply of 300.00 MTS of fuel oil grade VLSFO 0.5% S. max RMG 380 0.5% (bunkers) to the defendant – Vessel, at Istanbul Port. Pursuant to the said order, the applicant supplied the Bunkers under Bunker Delivery Note dated 19th May, 2022, at Istanbul Port. The delivery was accepted by Master/Chief Engineer of the defendant – Vessel. Invoice was raised on 20th May, 2022 for an amount of US\$ 292,500. As there was default in payment of the price of the bunkers, the applicant was constrained to institute Comm Admiralty Suit (L) No.21337/2022 to enforce its maritime claim under Section

4(1)(l) of the Admiralty Act, 2017. In that capacity, the applicant is entitled to a charge over the sale proceeds of the defendant – vessel. Hence, this application for intervention in the instant suit.

18. The plaintiff resisted the application for intervention by filing an affidavit-in-reply. The plaintiff has denied the claim of the applicant in toto.

19. In the backdrop of the aforesaid facts and pleadings, I have heard Mr. Pratap, the learned Senior Advocate for the plaintiff and the applicant in IA/4907/2022 , Mr. Seervai, the learned Senior Advocate for the Global Radiance – the applicant in IA(L)/38845/2022 and Mr. Gandhi, the learned Counsel for the Termoil Ltd., the applicant in IA/1262/2023, at some length. The learned Counsel took the Court through the pleadings and documents on record.

20. In the light of the nature of the controversy, I deem it in the fitness of things to first determine the applications for intervention as that would bear upon the application for summary judgment taken out by the plaintiff.

Submissions in IA(L)/38845/2022:

21. Mr. Seervai, the learned Senior Advocate for the applicant, advanced a two-pronged submission. First, the

plaintiff has invoked multiple jurisdictions to recover the very same amount. It is only on the basis of the information gathered by the applicant, it could be brought to the notice of this Court that apart from the instant suit the plaintiff has instituted a suit in the Gujarat High Court, a proceedings in Dominican Republic and also had a consent order passed in the High Court of England and Wales. Non-disclosure of these proceedings and the outcome thereof by the plaintiff constitutes a material suppression of facts. The intervention by the applicant is, therefore, necessary to ensure that the plaintiff does not get a decree for an unjustified claim.

22. Laying emphasis on the provisions contained in Rule 1086 of the Admiralty Rules, Mr. Seervai submitted that it can hardly be disputed that the applicant has interest in the sale proceeds of the defendant – Vessel. A very strong reliance was placed by Mr. Seervai on an order passed by the Gujarat High Court in R/Admiralty Suit No.22 of 2022 instituted by the plaintiff wherein the Gujarat High Court, after an elaborate analysis of the governing principles and the relevant precedents, was persuaded to allow the intervention by the parties, who claimed interest in the sale

proceeds of the Vessel, which was also mortgaged to the plaintiff pursuant to the Facility Agreement.

23. Secondly, Mr. Seervai would urge that the the applicant has a possessory lien over the sale proceeds on the defendant – Vessel as the applicant had placed crew on board the defendant – Vessel and was in possession of the Vessel through the crew. A submission was assiduously canvassed by Mr. Seervai that the possessory lien stands on a higher pedestal than the claim of the plaintiff based on the mortgage over the defendant – Vessel.

24. To buttress these submissions, Mr. Seervai placed a strong reliance on a decision of this Court in the case of *Ashoke Arya vs. M.V. Kapitan Mitsos, Board of Trustees of the Port of Bombay and ors*¹ and the observations of the Supreme Court in the case of *MV. Elizabeth and ors. vs. Harwan Investment and Trading Pvt. Ltd. and ors.*², which were referred to by the Supreme Court in the case of *Cosmos Corporation vs. MGR Sales Pvt. Ltd. and others*³

25. Mr. Pratap, the learned Senior Advocate for the plaintiff, submitted that the application for intervention does not

1 AIR 1988 Bom 329.

2 AIR 1993 SC 1014.

3 AIR 2017 SC 5530.

deserve to be entertained as from the own showing of the applicant, it becomes evident that the applicant was aware that the ships were mortgaged and the owners were financially embarrassed when the applicant had allegedly supplied the necessities and rendered the services to the defendant – Vessel. Mr. Pratp further submitted that the applicant has been economical in its disclosure as the fact that there were Ship Management and Business Collaboration Agreements was not at all adverted to in the application. On the contrary, the applicant initially proceeded on the premise that intervention was required to ensure that unjustified claims of the plaintiff were not granted as the registered owner of the Vessel was then not appearing before this Court to contest the claim of the plaintiff.

26. Mr. Pratap would urge the aforesaid stand of the applicant is plainly against the weight of the material on record. The erstwhile registered owner of the defendant – Vessel appeared before the Court and in fact filed an affidavit admitting the claim of the plaintiff. In these circumstances, when the defendant admits the claim of the plaintiff, there is no propriety in allowing the applicant to intervene as the

intervener cannot be permitted to set up the defences other than those which the owner could set up. It was strenuously submitted that an intervener can only take those defences which the defendants could have legitimately raised. Attention of the Court was invited to the commentary in the Admiralty Jurisdiction and Practice by Nigel Meeson and John Kimbell under the caption 'Third parties interested in property under arrest'.

27. As a second limb of the submission, Mr. Pratap would urge that since the erstwhile registered owner of the defendant – Vessel admits the claim of the plaintiff, in its entirety, the plea for intervention does not deserve to be entertained at all. For it cannot be said that the eventual decree that may be passed would be based on a false claim or fraud. A very strong reliance was placed by Mr. Pratap on an order of a learned Single Judge of this Court in the case of *Cosmos Cooperative Company Ltd. vs. MT Pratibha Cauvery and another*⁴.

28. Joining the issue on the alleged suppression of facts, Mr. Pratap would urge that there is no prohibition in law in the plaintiff's enforcement of the mortgage against the

⁴ Admiralty Suit (L) No.356/2013.

respective Vessel, in the jurisdictions where the said Vessel was found sailing. Likewise, the fact that the plaintiff had obtained a consent order against the borrowers and guarantors *in personam* does not preclude the plaintiff from instituting a suit in rem against the defendant – Vessel over which the plaintiff had first and second priority mortgage. It was urged that these issues have been raked up to show that the intervention by the applicant is required when, in fact, no such case was pleaded in the application. Even otherwise, according to Mr. Pratap, the sale proceeds of all the Vessels are not sufficient to discharge the liability towards the plaintiff.

29. The submission based on possessory lien was stated to be wholly misconceived. It was urged with a degree of vehemence that the submission that the manager of the Vessel under a ship management agreement had a possessory lien on the Vessel is required to be repelled outrightly. The reliance placed by Mr. Seervai on the judgment in the cases *Ashoke Arya* (supra), *MV. Elizabeth* (supra) and *Cosmos Corporation* (supra) was of no assistance to the applicant as in those cases the possessory liens were claimed by a ship repairer or Port within whose waters the

ships were lying as they had physical possession which is necessary to claim the possessory lien.

30. Mr. Pratap further urged that with the enactment of the Admiralty Act, 2017, there is a closed list of maritime claims and maritime liens. In the face of the said statutory prescription, the claim based on possessory lien under common law rights cannot be entertained at all. To this end, reliance was placed on the decision of the Supreme Court in the case of *MV Polaris Galaxy vs. Banque Cantonale De Geneve*⁵

31. At any rate, Mr. Pratap submitted, all the points which were sought to be urged by Mr. Seervai were not at all pleaded in the application. There is no whisper about the possessory lien in the application for intervention.

32. Mr. Seervai countered by canvassing a submission that in paragraph 12 of the plaint in Commercial Admiralty Suit (L) No.38835/2022, filed by the applicant, there is a clear and categorical assertion that the plaintiff (applicant), apart from enforcing its maritime claim was also enforcing the contractual lien on the vessel and also had possessory lien over the Vessel. And under common law as well as

5 2022 SCC Online SC 1293.

internationally accepted practice the plaintiff's claim has the highest priority. Thus, by reference, the applicant had pleaded the case of possessory lien, submitted Mr. Seervai.

Submissions in IA/1262/2023:

33. Mr. Gandhi, the learned Counsel for the applicant, submitted that Termoil has undoubtedly a maritime claim under Section 4(1)(l) of the Admiralty Act, 2017 in the capacity of the supplier of the bunkers. It was urged that the supply of bunkers is evidenced by documents of unimpeachable character. A decree obtained by a claimant, who ranks higher in priority has a profound effect on the claim of the claimant, who ranks lower in priority. It is, therefore, necessary that a party is not permitted to have a decree for a justifiable claim.

34. An endeavour was made by Mr. Gandhi to urge that apart from the admission made by the erstwhile registered owner, there is no independent evidence to substantiate the claim of the plaintiff. The intervention of the applicant would thus assist the Court in a just and effective adjudication of the dispute. Mr. Gandhi placed reliance on an order passed by this Court in *IA/895/2021 in Comm Admiralty Suit No.11/2021 the Board of Trustees of the Port of Mumbai vs.*

M. V. Karnika (IMO 8521220) to buttress the submission that the applicant falls within the category of the parties who can be permitted to intervene in the suit.

35. Mr. Pratap submitted that Termoil has also raised the grounds, which were not at all pleaded in the application. Even if the Court proceeds on the premise that the applicant had supplied bunkers to the defendant – Vessel, that, by itself, would not clothe the applicant with such interest as to intervene in the instant suit. Mr. Pratap urged with tenacity that the claim of the plaintiff, as a mortgagee of the defendant – Vessel, stands higher in priority than the claims of both the applicants, under Section 10(1)(b) of the Admiralty Act, 2017. None of the applicants can claim a maritime lien, which ranks above the registered mortgages, claimed by the plaintiff. Therefore, the proper stage at which the applicants can intervene is, the determination of priorities and pay out.

Consideration:

36. I have given anxious consideration to the rival submissions. In order to appreciate the controversy in a correct perspective I have noted the facts rather elaborately. The pivotal issue that crops up for consideration is whether

the applicants are entitled to intervene in the instant suit, which is primarily for the enforcement of the mortgages on the defendant – Vessel.

37. At the outset, it is necessary to note that the initial claim of both Global Radiance and Termoil was that they have a maritime claim against the defendant – Vessel. Global Radiance asserted that its claim was covered by clauses (l) and (p) of sub-section (1) of Section 4 of the Admiralty Act, 2017. Termoil asserted that it has a maritime claim under clause (l) of Section 4(1).

38. Conversely, initially, neither Global Radiance nor Termoil claimed that it had a maritime lien falling under clauses (a) to (e) of sub-section (1) of Section 9. Subsequently, Global Radiance contended that it had a possessory lien which ranks higher in priority, with which I shall deal a little later. At this juncture, a brief recourse to statutory provisions may be apposite.

39. Under clause (f) of Section 2, a ‘maritime claim’ means a claim referred to in Section 4. Clause (g) of Section 2 defines a ‘maritime lien’ to mean a maritime claim against the owner, demise charterer, manager or operator of the vessel referred to in clauses (a) to (e) of sub-section (1) of section 9,

which shall continue to exist under sub-section (2) of that section.

40. Clauses (l) and (p) of Section 4(1) read as under:

4. Maritime claim.—(1) The High Court may exercise jurisdiction to hear and determine any question on a maritime claim, against any vessel, arising out of any—

.....

(l) goods, materials, perishable or non-perishable provisions, bunker fuel, equipment (including containers), supplied or services rendered to the vessel for its operation, management, preservation or maintenance including any fee payable or leviable;

.....

(p) disbursements incurred on behalf of the vessel or its owners.

.....”

41. Sub-section (1) of Section 10 which determines the order of priority of maritime claim reads as under:

“10. *Order of priority of maritime claims.*—

(1) The order of maritime claims determining the inter se priority in an admiralty proceeding shall be as follows:—

(a) a claim on the vessel where there is a maritime lien;

(b) registered mortgages and charges of same nature on the vessel;

(c) all other claims.”

42. Evidently, the maritime claims which do not constitute maritime lien fall under clause (c) of sub-section (1) of Section 10 and rank below the registered mortgages and charges.

43. The thrust of the submission of Mr. Pratap was that even if the case of the applicants that they have a maritime claim under Section 4(1)(l) and (p) of the Admiralty Act, 2017, is taken at face value, they would rank below in priority and, therefore, at this stage they cannot be permitted to intervene. To put it in other words, the submission of Mr. Pratap was that the aspect of priority of claims deserves to be taken into account while determining whether a party should be permitted to intervene in the suit.

44. At this stage, a reference to the provisions contained in Rule 1086 and Rule 1087 of the Admiralty Rules, 2018 becomes necessary. They read 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.

Rule 1087 Order for sale of ship and determination of priority of claims.-

(a) Where in a suit in rem the ship proceeded against is sold and the sale proceeds are paid into court, any party who has obtained or obtains a decree or judgment against such ship or proceeds of sale may apply to the court by interim application for an order determining the order of priority of claims against the proceeds of sale of such ship.

.....

(d) When an application is made under sub-rule (a), the Sheriff shall send for publication in such newspapers as the court may direct, a notice complying with the provisions of sub-rule (e).

(e) The notice referred to in sub-rule (d) shall state-

.....

(iv) that any person having a claim against the ship or the proceeds of sale thereof, should file a suit to prove his claim before the expiration of the period.”

45. In the case of *MV Karnika* (supra), I had an occasion to deal with a submission premised on the priority of the claims in the matter of permitting a party to intervene in the suit. This Court culled out the postulates which emerge from a reading of the afore-extracted Rule 1086 and 1087 of the Admiralty Rules, 2018. The observations in paragraphs 15, 16, 20, 21, 25 and 26 read 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 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 xistence 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.

16. In order to appreciate, the nature and extent of interest which would justify an application for intervention, it is necessary to note the purpose of an action in rem against the vessel. In the case of *The Board of Trustees of the Port of Mumbai in the matter between Raj Shipping Agencies Ltd. vs. Barge Madhava and Anr.* on which reliance was placed by Mr. Kamat, the learned Single Judge of this Court expounded the nature and legal import of action in rem against the ship. The observations in paragraphs 22, 23, 25 and 31 are instructive and hence extracted below:

“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. Harwan Investments and Trading Pvt. Ltd. (1993 Supp(2) SCC 433).

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).

31. The fundamental principle is that a maritime lien attaches only to the res in respect of which the claim arises. No other property is capable of being charged, not even other property which is in the same ownership as the res in respect of which the claim arises.”

.....

20. In the context of the aforesaid provisions, the submission of Mr. Kamat that the claim of the applicant that the statutory dues/charges have priority over the claims of the plaintiffs-crew members is unsustainable, is well-grounded in facts and law. However, I find it rather difficult to accede to the submission of Mr. Kamat that on this count alone the application for intervention deserves to be jettisoned away. The claim of the applicant that its statutory dues rank above all is definitely unsustainable qua the claim of the plaintiffs, in view of the provisions contained in Section 9(1)(a) of the Admiralty Act, 2017. However, the issue is not merely of *inter se* priority. The Court cannot lose sight of the fact that if a person, who stands at a higher pedestal in the order of priority, as prescribed under Section 9, gets an unjustified claim, it has the effect of diminishing the entitlement of the person, who stands at a lower stage in the order of priority.

21. In the aforesaid context, the question of propriety of allowing a competing maritime lien holder to intervene in the suit against the sale proceeds of the vessel, which was sold in an action in a rem, is required to be appreciated. Mr. Kamat is justified in canvassing a submission that a person, who has no concern at all either with the vessel or with the claim of the plaintiffs, cannot be permitted to intervene just to dispute or delay the realization of the plaintiff's claim. Undoubtedly, a busybody who has no semblance of interest cannot be permitted to intervene. It is for this reason that Clause (a) of Rule 1086 postulates that the essential and primary qualification 'to intervene' is the 'existence of an interest' either in the vessel or the sale proceeds. In a case where the applicant – intervener is a person holding maritime lien it would be rather difficult to urge that such applicant has, “no interest” in the vessel or sale proceeds.

22. The judgment of Gujarat High Court in the case of Enmal TD Corporation (supra), on its fair reading, seems to have turned on the peculiar facts of the said case. The Gujarat High Court, on facts, found that the apprehension of the applicant – proposed intervener therein that a collusive decree was sought to be obtained by the plaintiff therein was misconceived. It was thus held that the

applicant therein by way of filing an intervention application cannot oppose the claim of the plaintiff in the suit and deny the genuineness of the claim or make objection so as to defeat the genuineness of the outstanding claim of the plaintiff in the said case. It was more so, when the applicant had filed a separate and substantive suit before the same Court for adjudication of its claim.

23. With respect, in my considered view, the Gujarat High Court has not adverted to the question of the impact of the adjudication of the claim of a claimant, who stands at a higher degree of priority, over the entitlement of the claimant standing at a lower degree, where both hold maritime lien, if the former gets a decree for an unjustified sum. In a situation of this nature, where the credentials of the applicant as the person having interest in the vessel cannot be questioned (in the case at hand, indisputably, the applicant has instituted suit No.42 of 2021) the intervention of a competing maritime lien holder can be justifiably allowed to demonstrate that the plaintiffs are entitled to a decree only to the extent their claim is genuine and sustainable.

24. Mr. Kamat was justified in submitting that the Court may not grant an unjustifiable claim. However, in the light of the fact that eventually the decree may affect the entitlement of the maritime lien holder, who stands in a lower order of priority, in my considered view, it is necessary to allow the intervention for the limited extent to demonstrate that disingenuous and unjustifiable claim is not granted.

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.

(emphasis supplied)

46. Mr. Pratap submitted that there may not be a quarrel with the aforesaid propositions, but they do not govern the facts of the case at hand. Mr. Pratap made an effort to distinguish the aforesaid order by urging that this Court had adverted to a situation whether the claim was against the sale proceeds and there was nobody to defend the suit. In the case at hand, on the contrary, not only the claim of the plaintiff is supported by documents of unimpeachable character but the erstwhile registered owner admits the claim of the plaintiff. This constitutes a significant change in facts and, therefore, the instant case would be governed by the judgment of this Court in the case of *Cosmos Cooperative Company Ltd.* (supra).

47. In the case of *Cosmos Cooperative Company Ltd.* (supra), after adverting to Rule 949 of the Bombay High Court (Original Side) Rules (Old Rules) this Court had held that, the said rule was framed to protect the interest of the person, who was interested in the property i.e. the ship or

money i.e. the sale proceeds, by joining that person as party defendant to the suit. The purpose of Intervener being allowed to be joined as a party defendant was to ensure that no orders are ultimately passed qua the ship which is arrested or the sale proceeds in respect of the said ship if sold so that the Intervener who also has a right to obtain orders against the Vessel and/or share its sale proceeds is not lost. The Court further observed that, in the facts of the said case, it was not the case of the caveator that the claim of the plaintiff therein was bogus and the decree obtained by consent was to defraud the creditors of the defendant, who have a right qua the vessel or its sale proceeds. Therefore, the opposition on the part of the caveator therein on the basis of Rule 949 of the Old Rules was rejected.

48. I am afraid, the aforesaid decision advances the cause of the submission on behalf of the plaintiff. Evidently, the decision turned on its peculiar facts. A correct reading of the aforesaid order would indicate that this Court had emphasised that the purpose of the Intervener being allowed to be joined as a party to the suit was to ensure that no orders are ultimately passed so that the intervener who also has a right to obtain orders against the vessel and/or share

its sale proceeds does not suffer any prejudice on account of the orders being passed in his absence.

49. The submission of Mr. Pratap based on the fact that the erstwhile registered owner has admitted the claim of the plaintiff and thus there was no scope for any intervention by the applicant was premised on the principle that the intervener was entitled to raise only those defences which the owner could have raised. The said aspect is addressed by Nigel Meeson and John Kimbell in 'Admiralty Jurisdiction And Practice' as under:

"Third parties interested in property under arrest:

4.71 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 "Dowthrope" (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 LIL 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 owners, 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.”

4.72 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 charterers claiming ownership of bunkers on board (*The “Saint Anna” [1980] 1 Lloyd’s Rep 180 (Sheen J).*
- (iii) liquidator of owner (*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 Sirathcona” (No.2) [1925] P 143 (Hill J).*
- (vi) ship repairers (*The “Byzantion” (1922) 12 LIL Rep 9.*
- (vii) harbour authority claiming statutory rights of detention and sale. (*The “Sea Spray” [1907] P 133.*
- (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. (see e.g. *The “Panglobal Friendship” [1978] 1 Lloyd’s Rep 368 (CA).*

4.73. In addition to the power to permit intervention under CPR Part 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.”

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 intervener 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.

51. A profitable reference can be made to a decision of a Division Bench of this Court in the case of ***SPAREBANKEN SOGN OG FJORDANE vs. M. V. BOS ANGLER and others***⁶, wherein while interpreting the Rules 949, 950 and 951 of the Old Rules, the Division Bench adverted to few fundamental principles governing the exercise of the jurisdiction *in rem* in admiralty proceedings as under:

“12. When an action is brought against a vessel in rem, the Court exercises its jurisdiction treating the vessel which is sued as an entity in itself. When the Court orders the sale of the vessel, it has the inherent power in the exercise of its admiralty jurisdiction to convey upon the purchaser a valid title to the res that is sold free of all charges and encumbrances. This principle was established

6 2013(2) Mh.L.J. 898.

in the common law as one fundamental to public policy, since it would be manifestly contrary to the evolution of maritime law if a Court of competent jurisdiction which effected the sale of a ship were unable to convey a valid title to an innocent purchaser. Consequently, once a vessel has been sold in the exercise of the jurisdiction *in rem*, all claims against the vessel have to be enforced against the proceeds of the sale and before the Court which exercises jurisdiction to arrest and thereafter sell the vessel. Equally, it is a matter of settled principle that the Court which holds the proceeds of the sale holds them not merely for the benefit of the Plaintiff who moves the Court in the jurisdiction *in rem* but for and on behalf of all persons who may have claims in respect of the property of the vessel and, after the sale, in respect of the sale proceeds. Consequently, even if in a given case the claim of the Plaintiff were to fail, that would not obviate the fundamental duty and obligation of the Court in the exercise of the admiralty jurisdiction to ensure that the monies which it holds are properly distributed to persons whose claims have been adjudicated upon for realization. Upon the process of adjudication, the issue of determining priorities would arise. The issue of determining priorities comes up before the Court in a situation where the amount representing the aggregate of the claims against the vessel exceeds the amount which has been realized upon the sale of the vessel. Obviously in a situation where the aggregate of the claims is equal to or less than the amount which lies deposited with the Court every one of the claims can be paid in full and it is in a situation where the aggregate of the claims represents a value in excess of what is realized upon the sale of the vessel that the determination of priorities assumes importance. These principles of law have been consistently followed and reiterated in the exercise of the admiralty jurisdiction in common law countries.

(emphasis supplied)

52. The Division Bench has thus in terms emphasised that the Court which holds the proceeds of the sale of the vessel holds them not merely for the benefit of the plaintiff, who moves the Court in the jurisdiction *in rem*, but for and on behalf of all persons, who may have claims in respect of the vessel and, post sale, the sale proceeds. It is the duty and

obligation of the Court exercising admiralty jurisdiction to properly distribute the sale proceeds to persons whose claims have been adjudicated upon for realization. It only upon the process of adjudication the issue of determining the priorities would arise. It is only in a situation where the aggregate of the claims represents a value in excess of what is realised upon the sale of the Vessel that the determination of the priorities assumes salience.

53. In the light of the aforesaid nature of the exercise of admiralty jurisdiction in rem, if the facts of the case at hand are examined on the postulates, which have been culled out in the case of *MV Karnika* (supra), the following position emerges. First, actions in rem have been brought against the vessel by a number of claimants including the plaintiff and the applicants. Second, the defendant – Vessel has been sold, post arrest, and this Court holds seisin over the sale proceeds of the vessel. Third, the applicants being the maritime claimants have *prima faice* interest in the sale proceeds of the defendant – Vessel.

54. The decision of Gujarat High Court in R/Admiralty Suit No.22 of 2022 which has its genesis in the same Facility

Agreement also deserves to be noted, as it was rendered in somewhat identical fact-situation.

55. The Gujarat High Court observed, *inter alia*, as under:

“9. It is true that the applicants have no interest in the claims made by opponent no.1- plaintiff, except the claims of the applicants in the sale proceeds of the vessel. The opponent no.1- plaintiff has claimed to be mortgagee of the vessel and therefore, opponent no.1 has to prove its claim.

10. As held by this Court in case of **Bank of sharjah v. Joplin Overseas Investment Limited (2014 SCC OnLine Guj 14621)**, for judging the locus standi of the applicant to be allowed to become an intervener in the suit is whether the applicant has an interest in the subject matter of the suit or not and whether he has got a crystallised right which both have different and distinct concepts. Interest at its best, is an inchoate right and whether the interest of the party is to fructify or crystallise as an enforceable right is a matter of adjudication. Therefore, it is observed by this court that the stage of consideration whether a person is entitled to get impleaded as party in the suit and/or intervener is not the stage of adjudication of rights.

11. As observed in the commentary on Admiralty Jurisdiction and Practice, Fourth Edition by Nigel Meson and John A. Kimbell, which is reproduced hereinabove, there is no limit to the category of persons who may have an interest in the property under arrest or the proceeds of sale and one of the category is adverse imant against the property under arrest or the proceeds of sale. The applicants are falling in this category and therefore, the applicants as interveners in a suit which is filed in rem would be relevant for the purpose of deciding a suit, more particularly, when the owners of the defendant vessel have abandoned the vessel by not contesting the suit filed by opponent no.1.

.....

16. In the facts of the case as the Admiralty Suit is in rem, consideration of interest of the parties seeking to be intervener may receive a liberal consideration. Following the decision of **Bank of Sharjah** (supra), the discretion of the court could be conceived as wider, once a subsisting interest is showing, a person able to establish a reasonable degree of interest in the property or the subject matter of Admiralty Suit that is the sale consideration in the facts of the case by the applicants,

the applicants are required to be allowed to become party and intervene.”

56. I am conscious that, in the aforesaid case, the Gujarat High Court had noted that there was no effective contest on behalf of the registered owner of the vessel as the owner of the vessel had remained unrepresented. In the case at hand, erstwhile registered owner of the vessel had admitted the claim of the plaintiff. However, it would be rather difficult to conceive a qualitative difference between the two situations. In effect, there is no contest to the plaintiff’s claim.

57. Under Rule 1086, the only qualification to seek intervention is “to have interest” in the vessel or sale proceeds. However, it does not imply that any busybody or intermeddler who claims to have some semblance of interest in the vessel or sale proceeds can be permitted to intervene. That would defeat the very object of the proceedings in rem. The existence of interest in the vessel or the sale proceeds can be primarily examined on the touchstone as to whether the claim, the proposed intervener espouses, falls within the ambit of a maritime claim. If the test of being a maritime claimant or maritime lien holder is satisfied, in my view, it would be rather difficult to decline the prayer for intervention on the count that such intervener does not have any interest

in the vessel or the sale proceeds, unless there are extraordinary and overwhelming circumstances which bear upon the exercise of discretion.

58. The broad submission of Mr. Pratap that a party, who ranks lower in priority, cannot be permitted to intervene in a suit instituted by a party who ranks higher cannot be accepted, unreservedly. As noted above, this Court has already dealt with such submission in the case of *MV Karnika* (supra). That cannot be the sole barometer on which the entitlement to intervene can be tested. A party who ranks lower in priority may be in a position to demonstrate that the plaintiff is entitled to a decree only to the extent of a genuine and justifiable claim. It is for this reason in *MV Karnika* (supra) this Court had clarified that an intervener would be entitled to raise only those defences, which are appropriate to his character as the competing maritime lien holder/claimant.

59. The submission of Mr. Pratap that the claimants who rank lower in priority can only intervene at the stage of determination of priorities and pay out, in my considered view, does not properly account for the consequences the prescription of the order of priority of maritime claims

entails. Under Section 10(1) the order determining the *inter se* priority is in the nature of a waterfall mechanism. Maritime lien has the first priority. Registered mortgages and charges of same nature on the vessel stand second. Thereafter follow all other claims. Clause (a) sub-section (2) of Section 10 provides that if there are more claims that one in any single category of priority, they shall rank equally. The order of priorities thus implies that if the proceeds realised upon the sale of the Vessel fall short of the claim of a claimant higher in rank, the claimant lower in rank would get nothing. In other words, if a claimant standing higher in priority gets a decree for a sum in excess of its lawful entitlement and is paid out, nothing would remain for distribution to a decree-holder who ranks lower in priority. Therefore, the submission that a maritime claimants who ranks lower in priority can only be permitted to intervene at the stage of determination of priorities and pay out cannot be acceded to as at that stage it is neither open to a person having interest in sale proceeds or for that matter, even the Court, to question the legality and validity of the decree passed in favour of a claimant, who ranks higher in priority.

60. In the light of the aforesaid view, which this Court is persuaded to take, I do not deem it necessary to delve deep into the submission canvassed by Mr. Seervai that a 'possessory lien' stands on a higher footing than the claim of a mortgagee. First and foremost, in the facts of the case, whether Global Radiance is entitled to claim possessory lien for the reason that it had placed the crew on board the defendant – Vessel, is in itself debatable. The existence of possessory lien would be a matter for adjudication. Likewise, the question as to whether, in the face of the enactment of Admiralty Act, 2017, which is an Act to consolidate the law relating to Admiralty Jurisdiction, the juridical concept of 'possessory lien', which draws support and sustenance from the common law, can still be enforced, is a matter which can not be legitimately examined in an application for intervention. Thus, I deem it appropriate to keep the claim based on possessory lien open for adjudication at an appropriate stage in the suit.

61. The conspectus of aforesaid consideration is that both Global Radiance and Termoil Ltd. have a maritime claim against the sale proceeds of defendant – Vessel. *Prima facie*, those claimants rank lower in priority than that of the claim

of the plaintiff as a mortgagee. Yet, in the peculiar facts of the case, which have progressively emerged, namely, the plaintiff has obtained a consent order, albeit in a proceeding *in personam*, and had instituted proceedings in various jurisdictions to recover the very same amount, which is the subject matter of the suit claim, and the erstwhile registered owner has fully conceded the claim of the plaintiff rendering the suit virtually uncontested, the applicants – maritime claimants can be said to have such interest as to permit them to intervene in the suit to demonstrate that the plaintiff is entitled to a decree to the extent its claim is genuine and sustainable, or that, in view of the developments in the proceedings in other jurisdictions, the claim in this suit is not at all sustainable. I am, therefore, inclined to allow the intervention applications.

IA/4907/2022

62. As the Court has reached to the conclusion that the intervention applications deserve to be allowed, the applicants therein are required to be impleaded as party defendants to the suit. Thus, the consideration of the application for a summary judgment under Order XIII-A of the Code of Civil Procedure, 1998 deserves to be deferred as

the newly impleaded defendants deserve an opportunity to oppose the application for summary judgment, if they wish to.

63. Hence, the following order:

: O R D E R :

- (i) Intervention Application (L) No.38845 of 2022 and Intervention Application No.1262 of 2023 stand allowed.
- (ii) Global Radiance Ship Management PTE Ltd., the applicant in IA(L)/38845/2022 and Termoil Ltd., the applicant in IA/1262/2023, are permitted to intervene in Commercial Admiralty Suit No.41 of 2022.
- (iii) The plaintiff shall amend the plaint and implead Global Radiance Ship Management PTE Ltd. and Termoil Ltd., as party defendants to the suit within a period of two weeks from today and serve copies of the plaint and accompanying documents on the applicants – defendant Nos.2 and 3.
- (iv) The applicants – defendant Nos.2 and 3 shall file written statement within a period of 30 days of being served with the copy of the plaint.

- (v) It is clarified that the applicants – defendant Nos.2 and 3 are 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 to raise only those defences, which are appropriate to their character as the competing maritime claimants.
- (vi) The hearing in Interim Application No.4907 of 2022 stands deferred.
- (vii) The plaintiff shall serve copy of IA/4907/2022 on defendant Nos.2 and 3 within a period of two weeks.
- (viii) Defendant Nos.2 and 3 are at liberty to file an affidavit-in-reply to the application for summary judgment within a period of 30 days from the date of service of the application.
- (ix) Rejoinder, if any, be filed within a period of two weeks thereafter.
- (x) IA/4907/2022 be thereafter listed before the regular Court.

[N. J. JAMADAR, J.]