2025:BHC-OS:18577

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 1285 OF 2025
IN
EXECUTION APPLICATION NO. 623 OF 2024

Valimohamed Hasher Khakhra ...**Applicant**
V/s.
M. V. Labitra Carmel IMO 8739114 and Ors. ...**Respondents**

Mr. Kunal Damle with Mr. Rupesh Lanjekar for the Applicant.
None for the Respondents.

CORAM : ABHAY AHUJA, J.
DATE : 10th OCTOBER, 2025

ORAL JUDGMENT

1. This Interim Application seeks a direction to the Prothonotary & Senior Master to release the amount of Rs. 1,03,07,839.73/- along with interest as per the judgment and order dated 22nd February, 2022, passed in Admiralty Suit No. 64 of 2015 in favour of the Applicant, which is lying in this Court with respect to the sale proceeds of M. V. Labitra Kharisma and M. V. Betul SSA, which were owned by the very same ship owner viz. Jaisu Shipping Company Pvt. Ltd. and sold in auction in Admiralty Suit No. 12 of 2014 and Admiralty Suit No. 36 of 2014.

2. Mr. Damle, learned Counsel appearing for the Applicant submits that earlier, by order dated 22nd February, 2022, Suit in favour of the Applicant was decreed in terms of prayer Clause (a), except that interest on principal sum of Rs. 50,42,325/- from date of the Suit till payment or realisation would be at the rate of 12% per annum and it was directed that the decree be drawn up after giving credit to a sum of Rs.9,09,000/- admittedly received by the Plaintiff.

3. Mr. Damle submits that thereafter the decree was drawn up and as per the decree, the Defendants No. 1, 3 and 4 have been directed to pay to the Plaintiff a sum of Rs. 67,25,549.67 for debt and Rs. 43,81,435.06 for interest at the rate of 12% per annum on the sum of Rs. 50,42,325/- from the date of filing of the Suit i.e. 29th November, 2014 till 22nd February, 2022 and the sum of Rs. 1,09,855/- for costs of the Suit including Advocates fees quantified at Rs.15,000/- aggregating to Rs. 1,03,07,839.73, after giving credit of Rs. 9,09,000/- admittedly received by the Plaintiff along with interest at the rate of 12% per annum till payment and/or realisation.

4. Mr. Damle submits that although the decree relates to a claim of 12 Invoices in respect of supply of fresh water to vessel M. V. Labitra

Carmel, which was the Defendant No. 1 in Admiralty Suit No. 64 of 2015, however, since after auction of the said vessel, the amount of Rs. 25,00,000/- received as sale proceeds was for satisfaction of the claim of the Mumbai Port Authority as the said claim ranked in priority as maritime lien and therefore, this Interim Application has been filed to make the claim against the sale proceeds of the other two vessels viz. M.V. Labitra Kharisma and M. V. Betul SSA, owned by the very same ship owner i.e. the Defendant No.3 in this Suit viz. Jaisu Shipping Company Pvt. Ltd.

5. Referring to the report of the Master & Assistant Prothonotary of this Court in compliance of the order dated 12th April, 2024 in the Execution Application No. 623 of 2024, Mr. Damle submits that the two reports: one in the case of M.V. Labitra Kharisma and other in the case of M. V. Betul SSA clearly indicate that there are sufficient amounts lying with the Prothonotary & Senior Master to satisfy the decree of the Plaintiff.

6. Referring to another report of the Master & Assistant Prothonotary, learned Counsel submits that pursuant to the order dated 9th May, 2024, the Master & Assistant Prothonotary has clearly stated in

the report that no Suits and claims have been found to have been filed against the vessels M. V. Labitra Kharisma and M. V. Betul and against the sale proceeds thereof till date viz. 24th July, 2024.

7. This Court had earlier raised a query to Mr. Damle, as to the law under which the Applicant/Decree Holder is permitted to seek disbursal from other Suit accounts where the proceeds are lying after sale of vessels owned by the same ship owner, Mr. Damle has in response relied upon the following two decisions in support to submit that if the Plaintiff is unable to satisfy the decretal claim from the concerned vessel or sale proceeds, the same does not preclude the Plaintiff from making claims to the sale proceeds of other vessel(s) of the owners of the vessel in question, in execution of any decree that the Plaintiff may obtain against the owners, if the Plaintiff is unable to satisfy its decretal claim from the subject vessel or its sale proceeds:-

i) Monte Ulia (Owners) Vs. Banco and Ors (Owners)[1]
ii) Praxis Energy Agents SA Vs. M. T. Pratibha Neera[2]

8. I have considered the submissions by Mr. Damle and also the decisions relied upon by him.

1 1970(2) WLR (Court of Appeal) 335
2 MANU/MH/0882/2018

9. In the case of *Monte Ulia (Owners) Vs. Banco and Ors (Owners) (supra),* the Court of Appeal of which Lord Denning M. R. was a member, His Lordship has observed in placitum B on page 342, that if the Plaintiffs eventually get judgment against her owners (ship owner) they will of course at that stage be able to execute the judgment against any of the property of the Defendants, including the other ships of their fleet, then belonging to them. The observations of M. R. Lord Denning in placitum H on page 341 and placitum A and B at page 342 of the said decision, are usefully quoted as under:-

> "*I can see the force of this point, but I think that Mr. Willmer gave the right answer. When a plaintiff brings an action in rem, the jurisdiction is invoked, not when the writ is issued, but when it is served on the ship and the warrant of arrest is executed. The reason is because it is an in rem against the very thing itself: and does not take effect until the thing is arrested. This means that the practice is right. The plaintiff is entitled, as soon as his cause of action arises, to issue his writ in rem against the offending ship and all other ships which at that time, that is, at the dare of issue of the writ, belong to the same owner. That saves his time. Then he can wait until he finds the one ship which he thinks most suitable to arrest. Then he will serve her and execute a warrant of arrest against her. That having been done, he cannot go against the other ships and should strike them out of the writ.*
>
> *In my opinion, therefore, the judge was right in setting aside the service of the writ and warrant of arrest on all the vessels save the Banco. I would add, however, that, if the plaintiffs eventually get judgment against her owners (The Beagle Shipping Ltd.) they will of course at that stage be able to execute the judgment against any of the property of the defendants, including the other ships of their fleet, then belonging to them.*" *(emphasis supplied)*

10. Also in the case of *Praxis Energy Agents SA Vs. M. T. Pratibha Neera (supra),* this Court in paragraph 24 has extended the very same principle that the Plaintiff is not precluded from laying claim to the sale proceeds of other vessels or other assets of the owners of the ship in execution of any decree that the Plaintiff may obtain against the owners, if the Plaintiff is unable to satisfy its decretal claim from the subject vessel. Paragraph 24 of the said decision is usefully quoted as under:-

> "*24. <u>This of course does not preclude plaintiff from laying claim to the sale proceeds of the other vessel or other assets of the owners of M. T. PRATIBHA NEERA in execution of any decree that plaintiff may obtain against the owners if plaintiff is unable to satisfy its decretal claim from the vessel M.T. PRATIBHA NEERA and/or its sale proceeds.</u> Of course now that the owner of defendant is in liquidation, plaintiff may lodge its claim for the shortfall with Official Liquidator of the company.*
>
> *In respect of the unsatisfied portion of the decretal amount, plaintiff along with other unsecured creditors would rank pari-passu. In law, once the company is in liquidation, only such claimants would have charge over the vessel who has executed warrant of arrest prior to the date of admitting of winding up petition. Therefore, the submission that plaintiff would not be able to stake its claim against sale proceeds of other defendant is fallacious. Plaintiff cannot obtain decree against sister ship of the offending vessel at all. Question of other creditors being prejudiced or not do not arise in as much as that has no bearing on the additional defendant being impleaded. Once the company goes into liquidation, al the properties of the company including various vessels become the "properties available to all" other than such claimant who has executed warrant of arrest against any vessel prior to commencement of liquidation proceedings."*

(emphasis supplied)

11. From the above, it emerges that if a Plaintiff is not able to satisfy the decretal claim from the vessel to which it has made supplies or rendered services and the Plaintiff has a decree also against the owner of the said vessel, then the Plaintiff can satisfy the claim from proceeds of other vessels / ships in the fleet of such owner.

12. It is observed from the proceedings that M. V. Labitra Carmel, M.V. Labitra Kharisma and M. V. Betul SSA were all owned by the Defendant No.3 viz. Jaisu Shipping Company Pvt. Ltd. That the sale of vessel M.V. Labitra Carmel to which fresh water was supplied by the Plaintiff resulted in proceeds of only Rs. 25,00,000/- to which the Port Authority had a higher ranking claim and therefore, the Applicant has made a claim in respect of the outstanding decretal amount from the proceeds of M. V. Labitra Kharisma and M. V. Betul SSA. The reports of the Master & Assistant Prothonotary of this Court with respect to the balance lying to the accounts of M. V. Labitra Kharisma and M. V. Betul SSA owned by the very same ship owner viz. Jaisu Shipping Company Pvt. Ltd. indicate that there is a total of Rs. 3,51,84,100/- lying with the Prothonotary & Senior Master. Also report dated 24th July, 2024 indicates that the no Suits or claims have been found to be filed against the said two vessels or sale proceeds thereof. As submitted by Mr.

Damle, except Rs. 9,09,000/- that was received by the Plaintiff, no other amount has been received by the Plaintiff under the decree in question.

13. Accordingly, subject of course to any claim that may have been lodged / paid for after 24th July, 2024 from the proceeds of M. V. Labitra Kharisma and M. V. Betul SSA, this Court, in view of the law discussed above, hereby allows the Interim Application in terms of prayer Clause (a), which reads thus:-

> "a. That the registry/Prothonotary & Senior Master be directed to release an amount of Rs. 1,03,07,839.73/- along with interest as per Judgment and Order dated 22.02.2022 passed in Admiralty Suit No. 64 of 2015 in favour fo the present Applicant, which is lying in this Hon'ble court with respect to the sale proceeds of m.v. Labitra Kharisma and m.v. Betul SSA, which were auction sold in Admiralty Suit no. 12 of 2014 and Admiralty suit no. 36 of 2014, respectively."

14. The Interim Application accordingly stands allowed and disposed as above.

(ABHAY AHUJA, J.)

NIKITA YOGESH GADGIL Digitally signed by NIKITA YOGESH GADGIL Date: 2025.10.11 13:26:22 +0530