

**ORDER SHEET**  
**THE HIGH COURT OF SINDH KARACHI**

Admiralty Suit No. [-] 2 of 2024

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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1. For orders on CMA No.1868 of 2024.
2. For orders on Office Objection a/w reply as flagged.
3. For orders on CMA No.1869 of 2024.
4. For orders on CMA No.107 of 2024.

**14-09-2024**

Mr. Mazhar Imtiaz Lari, Advocate for the Plaintiff.

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1] Urgency granted.

2] The office objection is that the Power of Attorney produced for filing the suit is not in original and also not attested. Apparently, that Power of Attorney is executed by the Plaintiff in Singapore, and scanned and emailed to the Attorney at Karachi. Learned counsel states that since the Power of Attorney was executed yesterday, the process of attestation before the Embassy or High Commission at Singapore will take some time. Two weeks' time granted.

4] A caveat appears on the record by M/s. Ishtar Shipping Co. Ltd. and by Maersk A/S, filed under Rule 752 S.C.C.R (O.S.) against any arrest of **M.V. 'TSS AMBER'** viz. the Defendant No.1. The Applicants of the caveat claim to be operator/handling agent of the Defendant No.1 and apprehend its arrest on claims lodged against the Applicants by their customers. Learned counsel submits that the Plaintiff is not a customer of said Applicants and therefore the requirement in Rule 754 S.C.C.R. (O.S.) of prior service of the plaint upon them is not attracted. That submission requires consideration. In any case, notwithstanding the caveat, the Court can consider interim relief under Rule 731 S.C.C.R. (O.S.).

3] The Plaintiff is a company registered in Singapore, and owner of a vessel, M.V. 'A DAISEN', also registered in Singapore, which vessel was chartered by the Defendant No.3 (registered in the UAE) under a Time Charter dated 28-10-2023. For the hire charges payable by the Defendant No.3 under said agreement, the Defendant No.2 issued to the Plaintiff an irrevocable letter of guarantee to pay on demand.

The case of the Plaintiff is that for the 6<sup>th</sup> hire of M.V. 'A DAISEN', the Defendant No.3/charterer sent voyage instructions designating Hodeida, Port of Yemen, as the next loading port; that the Plaintiff refused such instructions as it considered the voyage dangerous during the erstwhile Red Sea crisis; that when said parties were unable to resolve the issue, the Plaintiff terminated the Time Charter on 23-01-2024; however, the agent of the Defendant No.3 did not cooperate with the Plaintiff for the port clearance of M.V. 'A DAISEN', then at the port of Djibouti; that as a result, said vessel was detained at said port until 29-01-2024 when the Plaintiff directed the master of vessel to leave the port without port clearance. The Plaintiff has therefore invoked the Admiralty jurisdiction of this Court under section 3(2)(h) of the Admiralty Jurisdiction of High Courts Ordinance, 1980 [**the Ordinance**] for a claim against the Defendants 2 and 3 for loss suffered due to detention of M.V. 'A DAISEN' first at the port of Djibouti, and then due to an arrest at a port in India at the instance of the Defendant No.3. Whether a claim for loss on the latter arrest is maintainable here, is a question that I leave open for the time being.

Section 3(2)(h) of the Ordinance envisages a claim arising out of an agreement to the use or hire of a ship. In that regard the Plaintiff has brought an action in rem against another vessel under section 4(4)(b) of the Ordinance, namely M.V. 'TSS AMBER', viz. the Defendant No.1 which is presently at Port Qasim, Karachi. Therefore, an application is made under Rule 731 of the S.C.C.R. (O.S) for the arrest of the Defendant No.1.

Admittedly, the Defendant No.1 (M.V. 'TSS AMBER') which is sought to be arrested, is registered to the Defendant No.2 who was not party to the Time Charter. The liability of the Defendant No.2, if any, ensues upon a separate letter of guarantee and not directly under the Time Charter. Therefore, it is questionable whether the action against the Defendant No.2 would also be covered under section 3(2)(h) of the Ordinance.

As regards the case against the Defendant No.3, it appears that the action in rem under section 4(4)(b) of the Ordinance against a ship, not being the ship that was under charter, is available if such ship was beneficially owned as respects majority shares by the person who would be liable on an action in personam. In that regard, learned counsel relies upon a print from the website of Defendant No.2 which portrays that it is the part of the Saba Group, 'Saba' being part of the name of the Defendant No.3, and from that it is being inferred that the Defendant No.1 is beneficially owned by the Defendant No.3. That is hardly material to demonstrate that majority shares of the Defendant No.2 (registered owner of the vessel) are held by the Defendant No.3. Therefore, the Plaintiff does not make out a *prima facie* case for the arrest of the Defendant No.1. CMA No. 1869/2024 is dismissed.

SHABAN\*

JUDGE