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

JUDGE'S ORDER NO.253 OF 2017
IN
COMMERCIAL ADMIRALTY SUIT (LODGING) NO.665 OF 2017

Global Integrated Bulkers Pte. Ltd.)
A Company incorporated under the Laws)
of Singapore and having its office at 1,)
North Bridge Road, #19-04/05, High)
Street Centre, Singapore – 179094) ...Plaintiff

....Versus....

- 1). Cargo Of 14,072.337 Mts Of)
Limestone, discharged from m.v.)
DONG TANH and currently lying at)
Haldia Dock Complex, Kolkata Port)
and within the Admiralty jurisdiction)
of this Hon'ble Court.)
)
2). Sun Jin C & S Company Limited)
A Company incorporated under the)
Laws of Korea and having its office)
at Banwol Industrial Complex)
18-14 12 Haeon – Ro, 31, Beon -)
Gil, Danwon – Ku Ansan – Si,)
Gyeonggi – Do, Korea.)
)
3). Hindustan National Glass And)
Industries Limited, A Company)
incorporated under the Companies)
Act, 1956 and having its office at 2nd)
Red Cross Place, Kolkata – 700 001.) ...Defendants

Mr.Ashwin Shanker with Mr.Bimal Rajasekhar and Ms.Ridhi Nyati for
the Plaintiff.

Mr.Krishnaraj Thacker with Mr.Prathamesh Kamat, Mr.Hussain Dholkawala and Ms.Aditi Maheshwari i/b Ganesh & Co. for the Defendant Nos.1 and 3.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 27TH NOVEMBER, 2017
PRONOUNCED ON : 19TH JANUARY, 2018

JUDGMENT :-

1. The plaintiff has filed the Judge's Order No.253 of 2017 *inter-alia* praying for arrest of the defendant no.1 cargo of 14,072.337 Mts of limestone, discharged from m.v. DONG TANH presently in the port and harbour at Kolkatta, in the State of West Bengal and seeks a further order that in the event of the defendants depositing in this Court the sum of US\$ 332,007.76 together with interest on the principal amount of US\$ 282,007.76 at the rate of 12% p.a. from the date of institution of the suit till payment / realization, together with poundage or furnishing a security to the satisfaction of the Admiralty Registrar, High Court, Bombay in the sum of US\$ 332,007.76 together with interest on the principal amount of US\$ 282,007.76 at the rate of 12% p.a. from the date of institution of the suit till payment / realization etc. the said warrant of arrest shall not be executed against the defendant no.1 cargo. The plaintiff has filed commercial admiralty suit against the defendants *inter-alia* praying for an order and decree to pay to the plaintiff a sum of US\$ 332,007.76 together with interest on the principal amount and for arrest of the defendant

no.1 cargo. Some of the relevant facts for the purpose of deciding this Judge's Order are as under :

2. It is the claim of the plaintiff that the plaintiff is the disponent owner of the vessel m.v. DONG TANH. Dong Do Marine JSC time chartered the vessel to Dooyang Limited. The said Dooyang Limited time chartered the vessel to Amaranthe Shipping Pte. Ltd. The said Amaranthe Shipping Pte. Ltd. time chartered the vessel to Global Integrated Bulkers Pte. Ltd. (defendant no.1). By a voyage charterparty dated 2nd June, 2017, the plaintiff chartered the vessel m.v. DONG TANH to the defendant no.2 for carriage of the defendant no.1 cargo. It is the case of the plaintiff that the plaintiff instructed the head owner of m.v. DONG TANH to issue the original Bill of Lading No.DP/CEB-001 dated 23rd August, 2017 with the defendant no.2 as the shipper and defendant no.3 as the consignee. The Bill of Lading incorporated all the terms of the charterparty dated 2nd June, 2017 and bound all holders thereof to the terms of the charterparty.

3. It is the case of the plaintiff that on 5th September, 2017, the defendant no.1 cargo was discharged at Haldia port. It is the case of the plaintiff that an amount of US\$ 282,007.76 became due and payable to the plaintiff under the said charterparty dated 2nd June, 2017 which amount was initially due from the defendant no.2. The

defendant no.3 accepted the Bill of Lading with the knowledge of alleged encumbrance of the plaintiff. On 5th September, 2017, the plaintiff issued a notice of lien upon Haldia port.

4. It is the case of the plaintiff that on 23rd October, 2017, the Kolkatta Port Trust (Haldia Dock Complex) started threatening the plaintiff that it would force the agent to issue delivery order for delivery of cargo. According to the plaintiff, the defendant no.2 has been influencing the port trust to get involved in the contractual matters. On 14th November, 2017, the plaintiff approached this Court for arrest of the defendant no.1 cargo contending that the plaintiff has its contractual lien against the said cargo.

5. Mr.Ashwin Shanker, learned counsel for the plaintiff invited my attention to the Fixture Note (Voyage Charterparty) dated 2nd June, 2017 between the plaintiff and the defendant no.2 and more particularly the terms and conditions mentioned therein. Clause 25 of the said Fixture Note provided that any disputes out of the said Fixture Note was to be referred to arbitration in Singapore according to English Law. Clause 4 of the said document provided about the quantity of limestone in bulk and minimum 20,000 MT. Discharging ports mentioned in the said document was 1SB 1 SP HALDIA, ECI – AAAA. Under the said document, the freight payable was as per charterparty referred therein. Clause 29 of the said Fixture Note

provided “ Otherwise as per clean gencon CP 94”.

6. Learned counsel for the plaintiff invited my attention to various correspondence exchanged between the plaintiff and the defendants and also the notice invoking arbitration agreement. It is submitted that the Bill of Lading incorporated all the terms of the charterparty dated 2nd June, 2017 and bound all holders thereof to the terms of the charterparty. The Bill of Lading is liable for any claim under the said charterparty. It is the case of the plaintiff that an amount of US\$ 282,007.76 became due and payable to the plaintiff under the charterparty which was initially due from the defendant no.2. He submits that the said liability has been admitted by the defendant no.2 in various correspondence annexed at page nos.13, 26, 43, 52 and 55 of compilation of documents.

7. It is the case of the plaintiff that by virtue of the incorporation of the charterparty terms in the Bill of Lading, any holder of the Bill of Lading also became jointly and severally liable for the same. It is submitted that the defendant no.3 had accepted the Bill of Lading with the knowledge of encumbrance. He submits that the defendant no.1 cargo is an offending cargo in respect of maritime claim of the plaintiff having arisen and thus the plaintiff is entitled to seek arrest of the defendant no.1 to secure its claim. He submits that the plaintiff has a contractual lien under clause 8 of the charterparty

dated 2nd June, 2017 for all the amounts due under the charterparty. The plaintiff has validly exercised the lien against the defendant nos.2 and 3. The plaintiff is in control and possession of the defendant no.1 cargo. He placed reliance on the passage at page 282 to 283, 497 and 498 of Halsbury's Laws of England (Fifth Edition) Volume – 7 and would submit that the Bill of Lading in the present case incorporates all the terms of the charterparty dated 2nd June, 2017 including the lien clause.

8. In his alternate submission, it is submitted by the learned counsel for the plaintiff that the plaintiff has a statutory lien conferred by section 60 of the Major Port Trusts Act, 1963. The plaintiff has validly exercised the said statutory lien against the defendant nos.2 and 3 under the provisions of the said Major Port Trusts Act, 1963. The plaintiff has a right to proceed against the defendant no.1 cargo *in rem* under the Admiralty Law. He submits that the rights of the plaintiff of exercising lien validly on the defendant no.1 cargo is under threat of being wrongfully defeated by interference of the port induced by the defendant no.3. It is submitted by the learned counsel for the plaintiff that under the Admiralty Law, since the defendant no.1 cargo is the offending cargo i.e. cargo in relation to which the claim arose, the cargo is directly connected to the cause of action and thus can be arrested. In support of this submission, learned counsel placed

reliance on an unreported judgment of this Court in case of **Pacific Gulf Shipping (Singapore) Pte. Ltd. vs. S.R.K. Chemicals Ltd. & Anr.** in Notice of Motion (Lodging No.74 of 2017 in Commercial Admiralty Suit (Lodging) No.51 of 2017 and in particular paragraphs 6, 8 and 10.

9. It is submitted by the learned counsel that since the Bill of Lading incorporated the charterparty dated 2nd June, 2017, the plaintiff can enforce its rights under the charterparty against the defendant no.2. He submits that all the charterparty in the chain, it is charterparty to which the plaintiff is a party, was incorporated in the Bill of Lading and all claims and liens arises under the said specific charterparty.

10. It is submitted by the learned counsel that even the client does not admit that the property in goods had been validly passed from the defendant no.2 to the defendant no.3 as required under section 1 of the Bills of Lading Act. He submits that the defendant no.3 has not asserted on oath all its holder of the original Bill of Lading. If the property in the goods has passed from the defendant no.2 to the defendant no.3 in the manner prescribed, the defendant no.3 became, subject to all liabilities jointly and severally liable under the Bill of Lading.

11. Learned counsel for the plaintiff placed reliance on section

1 of the Indian Bills of Lading Act, 1856 and on pages 315 to 317 from Halsbury's Laws of England (Fifth Edition), Volume – 7 in support of his submission that the plaintiff is entitled to claim lien on the defendant no.1 vessel.

12. It is submitted by learned counsel that the defendant no.3 was fully aware of the encumbrance or lien on the defendant no.1 cargo before making any payments for it. The defendant no.3 was told specifically by the plaintiff about the claims and liens on the cargo. The defendant no.3 had negotiated and obtained a discount in the price from the defendant no.2 in view of there being an encumbrance on the said cargo. He submits that the defendant no.2 has concealed these facts from this Court.

13. Learned counsel for the plaintiff placed reliance on various provisions of the said charterparty dated 2nd June, 2017 and would submit that the defendant no.2 had various options under the said charterparty. There were several discrepancies in the documents submitted by the defendant no.2. The defendant no.3 would have waived the discrepancies in exchange for reduction in the price. He submits that the defendant no.3 has concealed the amendments to the letter of credit. No actual proof of payment had been submitted.

14. It is submitted by the learned counsel for the plaintiff that the price declared to the Customs by the defendant no.3 is less than

the contractual price which would indicate that the defendant no.3 had negotiated a better price and had taken the benefit of expenses of encumbrance. The plaintiff has very good chances of succeeding in the suit. He submits that whether there is privity of contract between the plaintiff and the defendant no.3 i.e. the effect of incorporation of terms of the charterparty dated 2nd June, 2017 into Bill of Lading or not is a triable issue. He submits that his client is entitled to proceed against the cargo irrespective of any such privity is also a matter of interpretation of contract and is a triable issue. If the defendant no.1 cargo is allowed to be released, the plaintiff will not have any property to be proceeded against. The plaintiff can proceed only against the defendant no.1 cargo, which is the only assets available in respect of which the claim had arisen. The plaintiff is entitled to proceed against the said cargo *in rem* for its claim.

15. Learned counsel for the plaintiff placed reliance on the judgment of the Supreme Court in case of **Videsh Sanchar Nigam Limited vs. M.V. Kapitan Kud & Ors., (1996) 7 SCC 127** and in particular paragraphs 13 and 14. He submits that the claims made by the plaintiff is a liquidated debt. Even if the claim of the plaintiff is considered as an unliquidated debt, the plaintiff can still apply for interim relief. He submits that the defendant nos.2 and 3 are in bad financial shape admittedly and thus the arrest of the defendant no.1

cargo is necessary to secure the maritime claim of the plaintiff.

16. Learned counsel for the plaintiff placed reliance on the provisions of the Admiralty Court Act, 1861, judgment of the Calcutta High Court in case of **Liberty Commodities Ltd. vs. LMJ International Ltd. & Anr., (2004) ILR 2 Cal.492** and the judgment of this Court in case of **Mansel Limited vs. The Bunkers on Board the Ship M.V. Biovanna Iulian & Ors.,** in Appeal No.319 of 2015 and in particular paragraph 21 thereof. He placed reliance on the paragraphs 4.69 and 4.70 of the passages from the Commentary on “Admiralty Jurisdiction & Practice by Nigel Meeson”. He also placed reliance on few paragraphs from the Commentary on Admiralty And Maritime Law by Thomas J. Schoenbaum.

17. Learned counsel for the plaintiff placed reliance on the judgment of the Federal Court of Appeal in case of **Phoenix Bulk Carriers Limited vs. Kremikovtzi Trade also known as Kremikovski Trade (2007) 1 SCR 588**, the judgment of the Federal Court of Appeal in case of **Kremikovtzi Trade also known as Kremikovski Trade vs. Phoenix Bulk Carriers Limited (2006) FCA 1**, a passage from the Commentary of Carver On Bills Of Lading, the judgment delivered by the High Court of South Africa exercising its Admiralty jurisdiction in case of **Taxfield Shipping Limited vs. The Cargo Currently Laden on Bord The MV New**

Market & Ors. delivered on 13th April, 2006, the judgment of the Supreme Court in case of **Liverpool & London S.P. & I Association Ltd. vs. M.V. Sea Success I & Anr. (2004) 9 SCC 512.**

18. Mr.Thacker, learned counsel appearing for the defendant nos.1 and 3 submits that the defendant no.3 had purchased and imported defendant no.1 cargo from the defendant no.2. In support of this submission, he placed reliance on various documents annexed at Exhibits “A” to “D” to the affidavit in reply such as Import Purchase Order, Letter of Credit, Bill of Entry for Home Consumption and E Receipt for Customs Duty Payment. He submits that arrest of cargo is not permissible in Admiralty jurisdiction. The Admiralty jurisdiction of this Court is founded on arrest of ship or vessel. There is no statutory provision or provision in the Arrest Conventions which contemplates arrest of cargo. It is submitted by the learned counsel that there is no privity of contract between the plaintiff and the defendant no.3 and thus the defendant no.3 is not liable for any purported claims made by the plaintiff. The plaintiff has already instituted arbitration proceedings in Singapore against its contractual party i.e. against the defendant no.2 for recovery of its purported claims which forms the subject matter of this suit. The plaintiff is thus not entitled to seek arrest of the defendant no.1 cargo which belongs to the defendant no.3 in support of the purported claims of the plaintiff against the

defendant no.2.

19. It is submitted that the plaintiff does not have any right or lien in respect of the defendant no.1 cargo. The alleged exercise of the purported lien is wholly wrong, illegal and invalid. He submits that the plaintiff does not have possession of the defendant no.1 cargo. After discharge from vessel m.v. DONG TANH, the defendant no.1 cargo was stored at the licensed plot of the defendant no.3 at Haldia Dock Complex. The defendant no.3 is in exclusive possession of the same ever since. Haldia Dock Complex recovers the license fees for the plot where the defendant no.1 cargo is present lying from the account of the defendant no.3. Learned counsel placed reliance on the copies of Plot Application Import Form and the Offer Letter dated 9th September, 2017 issued by the Calcutta Port Trust.

20. It is submitted by the learned counsel that the cargo in respect of which the plaintiff seeks arrest belongs to the resident of India. He submits that the admiralty action for arrest of Indian cargo is not maintainable. The defendant no.3 is a limited company with substantial assets and if any decree is passed in the suit filed by the plaintiff against the defendant no.3, the same can be enforced against such assets.

21. It is submitted by the learned counsel that the claim of the plaintiff is for demurrage which is in the nature of unliquidated

damaged and is disputed by the defendant no.2. He submits that no interim relief can be prayed in a claim for unliquidated damages.

22. It is submitted by the learned counsel that pursuant to an import purchase order, the defendant no.3 had purchased the limestone from the defendant no.2. By and under voyage charterparty dated 2nd June, 2017, a vessel M.V. IONNA D subsequently substituted by M.V. DONG THANH was chartered to the defendant no.2. The defendant no.2 shipped the defendant no.1 cargo by vessel. On completion of loading operations, on behalf of the Master of the Vessel, his agent issued Bill of Lading dated 23rd August, 2017. The same Bill of lading was issued by Dong Do Maritime JSC, the head owner of the vessel. The property in the defendant no.1 has passed to the defendant no.3 by virtue of consignment under the Bill of Lading.

23. It is submitted that it is admitted by the plaintiff in its solicitor's letter dated 26th October, 2017 that the defendant no.3 is the holder of Bill of Lading. The defendant no.3 has challenged the invocation of the Admiralty jurisdiction of this Court by the plaintiff for arrest of cargo. The Admiralty jurisdiction of this Court can be invoked only in an action in rem against the vessel or in an action *in rem* against the cargo where the claim against the cargo is secured by maritime claim. In absence of an action against the vessel or a claim

against the cargo to which maritime lien is attached, the Admiralty jurisdiction of this Court cannot be invoked. No action *in rem* as sought to be raised by the plaintiff against the defendant no.1 can be maintainable in view of the fact of the alleged claims of the plaintiff is based on the alleged contractual lien and the alleged statutory lien which are admittedly not the maritime claim. The purported claims of the plaintiff against the cargo is not connected with any vessel.

24. It is submitted that the plaintiff has not initiated any action *in rem* against the vessel. It is submitted that without there being a maritime claim against the vessel, the plaintiff cannot invoke Admiralty jurisdiction of this Court for its purported maritime claim against the cargo. None of pre-independence legislation or Arrest Convention of cargo provides for assumption of jurisdiction of Admiralty Court. He submits that Admiralty (Jurisdiction & Settlement of Maritime Claims) Act, 2017 which is noticed extensively by the Supreme Court in case of **Chrisomar Corporation vs. MJR Steels Pvt. Ltd., 2017 SCC OnLine SC 1104** confers Admiralty jurisdiction on High Court to bear and determine the question of maritime claim only against any vessel.

25. Learned counsel for the defendant nos.1 and 3 submits that the action *in rem* cannot be maintained independently against the cargo. The plaintiff must have maintained any action *in rem* against

the vessel. An action in rem solely against the cargo can be maintainable only for the enforcement of maritime claim and nothing else. In support of the aforesaid submission, learned counsel placed reliance on an unreported judgment of this Court in case of **M/s.Greenwich Maridian Logistics (India) Pvt. Ltd. vs. M/s.Sapphire Kitchenware Pvt. Ltd** and also a judgment of this Court in case of **Pacific Gulf Shipping (Singapore) Pte. Ltd. vs. S.R.K. Chemicals Ltd. & Anr.** in Notice of Motion (Lodging No.74 of 2017 in Commercial Admiralty Suit (Lodging) No.51 of 2017. He submits that this Court has categorically held that an action in Admiralty jurisdiction has to be against the ship or its owner. If a shipper, receiver or consignee residing or carrying on business within the ordinary original civil jurisdiction, against them without a vessel being party to the suit can be filed only in the ordinary original jurisdiction of a Civil Court. The only exception carved out by this Court is of a maritime lien where the vessel could be arrested irrespective of the personal liability of the owner.

26. Learned counsel for the defendant nos.1 and 3 placed reliance on the judgment of this Court in case of **Peninsula Petroleum Ltd. vs. Bunkers on Board the Vessel m.v. Geowave Commander & Ors., 2014 SCC OnLine Bom. 1895.** He submits that the Admiralty jurisdiction is founded on the arrest of the ship and is

directed against the ship. Unless and until the owner of the ship is liable for claim, the Admiralty jurisdiction of this Court cannot be invoked. There can be no action *in rem* without the arrest of the ship because i.e. the foundation of the Admiralty jurisdiction. Learned counsel for the defendant nos.1 and 3 distinguished the judgment of the Supreme Court in case of **Videsh Sanchar Nigam Limited** (supra). He submits that even if the alleged contractual lien of the plaintiff is enforceable against the defendant no.3, such contractual lien does not entitle the plaintiff to invoke Admiralty jurisdiction under the Arrest Convention. No such alleged contractual lien would fall within the scope of maritime liens. The plaintiff thus cannot maintain the present suit *in rem* against the defendant no.1 in Admiralty jurisdiction of this Court on account of the alleged contractual lien.

27. It is submitted that there is no privity of contract between the plaintiff and the defendant no.3 in view of the fact that the plaintiff is not a party to the Bill of Lading. The plaintiff thus cannot seek to enforce any clause / condition of the Bill of Lading against the defendant no.3, including the charterparty incorporated therein. He submits that the Bill of Lading has been issued by “Master of the M.V. Dong Thanh – Capt.Le Phi Kianh” and bears the signature of “Agent for and on behalf of the Master of the vessel”. There is no mention of the plaintiff in array of parties as stated on the Bill of Lading. The Bill

of Lading is a shipping owners' Bill of Lading having been issued by the Master of the vessel, who is an agent of the ship owner. The Bill of Lading is a contract of carriage between the shipper and consignee named therein with the shipowner i.e. Dong Do. The plaintiff cannot enforce any term of the Bill of Lading contract independently. If the plaintiff seeks to enforce any term of the Bill of Lading, it must do so through the ship owner Dong Do. The ownership has changed from the defendant no.2 to the defendant no.3 on issuance of the Bill of Lading by reason of consignment in favour of the defendant no.3. The plaintiff has no case of lien as a contractual lien does not survive a change in the ownership.

28. Learned counsel for the defendant nos.1 and 3 relied upon the following judgments :-

- i). **Wehner & Ors. vs. Dene Steam Shipping Company & Ors.**
- ii). **Wilston S.S. Co. Ltd. vs. Andrew Weir & Co. Ltd. (1925) 22 LLR 521,**
- iii). **The Starsin – (2003) 1 LLR 571 – (para 173)**

29. Insofar as reliance placed on the section 1 of the Bills of Lading Act, 1856 by the plaintiff is concerned, it is submitted by the learned counsel for the defendant no.3 that the defendant no.3 is the named consignee in the Bill of Lading and does not derive title by

negotiation but on issue of Bill of Lading. Section 1 of the Bills of Lading Act does not take argument of the plaintiff any further as the liabilities that are associated with the Bill of Lading can only be asserted by a party to the Bill of Lading i.e. this case the ship owner. The section does not contemplate a situation where a non party to the Bill of Lading can exercise any rights under the Bill of Lading.

30. Insofar as the passages from the Halsbury's Laws of England at pages 282, 283, 315, 317, 497 and 498 of Halsbury's Laws of England (Fifth Edition) Volume – 7 by the plaintiff is concerned, it is submitted by the learned counsel for the defendant no.3 that these expressions make it clear that the reason for incorporation of a charterparty in a Shipowner's Bill of Lading is to give the Shipowner a contractual lien for dead freight, demurrage etc. and to enable the Shipowner to enforce the rights under the charterparty which it could not otherwise have by reason of not being party thereto. He submits that reliance placed by the plaintiff on this expression from Halsbury's Laws of England is totally misplaced.

31. Insofar as reliance placed by the plaintiff on “Carver on Bills of Lading” is concerned, it is submitted by the learned counsel for the defendant no.3 that the said extract is based on the judgment in case of (i) **Mente & Co. Inc. vs. Isthmian SS Co.-36, F. Supp. 278**, (ii) **Matsushita Electric Corp of America vs. The Aegis Spirit**.

(the Aegis Spirit) – 414 F. Supp. 894 (1976) and (iii) **Pacol Ltd. & Ors. vs. Trade Lines Ltd. & Ors. (1982) 1 LLR 456.** He submits that these American judgments cannot be relied upon as they are based on American statutes though the judgment in case of **Pacol Ltd. & Ors.** (supra) is by a English Court, the said judgment would also not assist the case of the plaintiff. In his alternate submission, it is submitted that even if it is held by this Court that the plaintiff is entitled to exercise its right of the contractual lien against the defendant no.3, there is no subsisting lien in the facts of this case. In order to exercise the contractual lien, one must give notice of exercising the lien stating the amount for the lien is exercised and retained the possession of the goods. No notice of exercise of lien however, has been issued by the plaintiff either to the defendant no.2 or the defendant no.3.

32. There is no pleading in the plaint that the plaintiff has issued a notice of lien either upon the defendant no.2 and the defendant no.3. No such alleged notice of lien is disclosed in the compilation filed by the plaintiff. No such declaration of lien is also claimed in the arbitral proceedings instituted by the plaintiff against the defendant no.2. It is submitted that the contractual lien unlike maritime is founded on the possession of the property. It is not averred by the plaintiff that the plaintiff is in possession of the

defendant no.1 cargo. Reliance is placed on the letter sent by the head owner by email annexed at page 105 of the compilation. It is submitted that the said letter clearly confirms that the head owner had delivered the cargo to the order of receivers i.e. the defendant no.3. The defendant no.3 had applied to the port and was allotted the port for storage of the defendant no.1. The license charges are being debited from the account of the defendant no.3 in respect of the said plot. It is not the case of the plaintiff that the plaintiff is incurring any expenses for the storage of the defendant no.1 after discharge from the vessel. There is no reply from the plaintiff or its lawyer to the Port's email on 26th October, 2017, wherein the port had stated that there was no question of exercising the lien once discharged cargo was stored at the plot allotted to the defendant no.3.

33. Learned counsel for the defendant no.3 placed reliance on paragraphs 17.1, 17.23, 17.24 and 17.28 from the commentary on "Gencon Clause 8" lien clause similar to the clause relied upon by the plaintiff.

34. Insofar as the extract from paragraph 557 of Halsbury's Laws of England (Fifth Edition) Volume – 7, page 499, relied upon by the plaintiff relating to "duration of and loss of lien" is concerned, learned counsel for the defendant no.3 submits that the footnote in respect of the said paragraph relied upon by the plaintiff clearly states

that “unless the warehouse belongs to him or is hired by him ...”

Reliance is placed on the judgment in case of **Lehman Timber (2012) 2 LLR 73.**

35. It is submitted that none of the pre independence statutes or the Arrest Conventions provide for any claim in respect of cargo. Similarly none of the pre independence statutes or the Arrest Conventions provide for any right to proceed *in rem* against the cargo. The claim of the plaintiff for the dead freight and load port demurrage arose under the charterparty and is against the defendant no.2 in respect of which the plaintiff has already instituted the arbitration against the defendant no.2 in Singapore. The plaintiff does not have any claim against the defendant no.3 and thus is not entitled to proceed against the defendant no.1 cargo which is a property of the defendant no.3. The plaintiff does not comply with the ownership test under the Arrest of Convention, 1999 for the enforcement of the maritime claim.

36. It is submitted that the defendant no.2 ceased to be the owner of the defendant no.1 when the Bill of Lading was issued in the name of the defendant no.3 as the consignee. The defendant no.2 was liable for the plaintiff's claim and was the owner of the defendant no.1 when the plaintiff's alleged claim for the dead freight and demurrage at load port arose. Since the defendant no.2 is no more

the owner of the defendant no.1 when the arrest is sought, even if the plaintiff has maritime claim against the defendant no.1, such claim cannot be enforced against the defendant no.1 since there has been a change in the ownership of the defendant no.1.

37. Insofar as the alleged statutory lien claimed by the plaintiff under section 60 of the Major Port Trusts Act, 1963 is concerned, it is submitted by the learned counsel for the defendant no.3 that section 60 of the Major Port Trusts Act, 1963 does not create any statutory lien in favour of the plaintiff. The said provision only provides for the mode for exercise of pre existing lien by the agent or the shipowner. A notice under section 60 of the Major Port Trusts Act must be given by the Master or the owner of the vessel. The plaintiff could not have issued any notice of claiming statutory lien under such provision as the plaintiff is admittedly neither the Master nor the owner of the vessel. The defendant no.1 cargo has been discharged into the custody of the defendant no.3 and stored at the plot of the defendant no.3. The port has already denied the claim of any statutory claim of the plaintiff under the provisions of the Major Port Trusts Act.

38. Learned counsel for the defendant no.3 distinguished the judgment in case of **Phoenix Bulk Carriers Ltd.** (supra) relied upon by the plaintiff on the ground that the said Canadian judgment is in backdrop of a statutory provision under Canadian law which permits

cargo arrest. No such provisions exists in any of the legislations nor do any International conventions contemplate arrest of cargo. He submits that this Court in case of **Pacific Gulf Shipping (Singapore) Pte. Ltd.** (supra) has held that such Canadian law cannot be imported as a part and parcel of Indian law to permit cargo arrest.

39. Insofar as the judgment delivered by the High Court of South Africa in case of **M.V. New Market** (supra) relied upon by the plaintiff is concerned, it is submitted by the learned counsel for the defendant no.3 that in the facts of that case, the head owner's and the owner's contractual lien over the cargo was successfully exercised on account of the Bill of Lading being the shipowner's Bill of Lading. The Bill of Lading being issued on behalf of the Master of vessel, functioned as contract of carriage between the head owner and the cargo interests. In this case, the plaintiff being a charterer seeking to enforce the alleged contractual lien against the defendant no.1 under the shipowner's Bill of Lading on the basis of incorporation of the charterparty to which the plaintiff is a party. It is submitted that the said judgment of the High Court of South Africa in case of **M.V. New Market** (supra) thus would not assist the case of the plaintiff.

40. Insofar as reliance placed on passages from "Admiralty and Maritime Law – Thomas J. Schoenbaum" by the plaintiff is concerned, it is submitted by the learned counsel for the defendant

no.3 that the said extract deals with the maritime garnishment and attachment and action pursuant to statutory regulations of American Law, which is at variance with the common law. The statutes have no similar provisions. Insofar as the allegations of the plaintiff about the alleged financial condition of the defendant no.3 levelled across the bar and in the written submissions is concerned, it is submitted by the learned counsel for the defendant no.3 that such allegations cannot be considered in the absence of any submission in the plaint. The paper cutting produced by the plaintiff of the year 2016 have no bearing on the present financial condition of the defendant no.3. He submits that similar allegations made in respect of the contract between the defendant no.2 and the defendant no.3 that the said transaction is not a genuine transaction is concerned, it is submitted that the plaintiff has not raised any such allegations in the plaint. The defendant no.2 has obtained for freight payable rather than the freight pre-paid bill which is merely a commercial decision of the defendant no.2 and thus no inference can be drawn based on such commercial decision that the transaction between the defendant no.2 and the defendant no.3 was not a genuine transaction or was full of discrepancies.

41. After conclusion of arguments of both the parties on 6th December, 2017, learned counsel for the defendant no.3 filed an

additional submissions placing copies of certain emails dated 5th December, 2017 and 28th November, 2017 between the shipowner and the plaintiff respectively and has contended that the email dated 29th November, 2017 sent by the plaintiff would clearly establish that it does not have the right to exercise any lien over the cargo and it is for that reason that it has requested the shipowner to exercise lien for the plaintiff. It is contended in the said additional submission that there is no privity of contract between the plaintiff and the defendant no.3 is established in view of the email dated 28th November, 2017 sent by the plaintiff. In response to the said additional submission made by the defendant no.3, the plaintiff also filed further written submissions on 8th December, 2017 and explained the email dated 28th November, 2017 and various other emails exchanged between the plaintiff and others.

REASONS AND CONCLUSIONS :

42. The short question that arises for consideration of this Court in this Judge's Order is whether the plaintiff can apply for arrest of the defendant no.1 cargo in respect of the plaintiff's alleged claims arising out of the claim for demurrage as and by way of an action *in rem*, though the plaintiff was not a party to the Bill of Lading which was between the defendant no.2 and the defendant no.3.

43. The question also arose in this matter is whether there

was privity of contract between the plaintiff and the defendant no.3 for seeking arrest of the defendant no.1 cargo or otherwise and whether the Admiralty jurisdiction of this Court can be invoked only in an action *in rem* against the vessel or also action against the cargo and only when the claim against the cargo is secured by the maritime claim. It is not in dispute that the plaintiff is not a party to the Bill of Lading dated 23rd August, 2017 between the defendant no.2 as the shipowner and the defendant no.3 as the consignee. The case of the plaintiff is that by a voyage charterparty dated 2nd June, 2017, the plaintiff had chartered the vessel m.v. DONG TANH to the defendant no.2 for carriage of the defendant no.1 cargo. The plaintiff in the plaint has claimed an amount of US \$ 282,007.76 under the charterparty.

44. It is the case of the plaintiff that the said amount was initially due from the defendant no.2. However, since the defendant no.3 has accepted the Bill of Lading with the knowledge of the alleged encumbrances of the plaintiff and in view of the fact that the Bill of Lading has alleged to have incorporated the terms of the charterparty dated 2nd June, 2017, the defendant no.3 become liable to the claims of the plaintiff. It is also the claim of the plaintiff that the defendant no.1 cargo is thus an offending cargo in respect of the alleged maritime claim of the plaintiff thus based on the said Bill of

Lading allegedly incorporating all the terms of the charterparty dated 2nd June, 2017.

45. A perusal of the documents produced by the defendant no.3 on record for consideration of this Judge's Order indicates that pursuant to an import purchase order, the defendant no.3 has purchased limestone from the defendant no.2. The defendant no.2 had shipped the defendant cargo by vessel. The agent on behalf of the master of the vessel thereafter issued a Bill of Lading dated 23rd August, 2017 i.e. by Dong Do Marine time JSC, head owner of the vessel. A perusal of the letter dated 26th October, 2017 which is forming part of the record, which was addressed by the solicitor's of the plaintiff indicates that the plaintiff has clearly admitted that the defendant no.3 was the holder of the Bill of Lading. The defendant no.3 has also placed on record a copy of the Letter of Credit, Bill of Entry for Home Consumption and also Customs E-Receipts to the affidavit in reply filed by the defendant nos.1 and 3. A perusal of the record further indicates that the claim of the plaintiff is in respect of the dead freight, load port demurrage, under water cleaning of the vessel and the amount on account of a hire price at which NGO had to be arranged on account of the long stay of the vessel.

46. It is not in dispute that the defendant no.3 thereafter applied for a license plot from Calcutta Port Trust for storing the

defendant no.1 cargo at the Haldia Dock Complex. The record further indicates that the defendant no.3 is in exclusive possession of the said plot for quite some time after discharge of the defendant no.1 cargo from the vessel m.v. DONG TANH and that the said Haldia Dock Complex has been recovering the license fees for the said plot from the defendant no.3. The said port has acknowledged these facts in the correspondence.

47. The plaintiff however, has made a claim based on the alleged contractual and the statutory lien against the defendant no.1 cargo. It is clear from the record that the claims against the cargo made by the plaintiff are not connected with any other vessel and thus the claim of the plaintiff cannot be considered as an action in rem against the vessel. In my view, since there is no maritime claim made by the plaintiff against the vessel, the Admiralty jurisdiction of this Court against the defendant no.1 cargo cannot be invoked for its purported maritime claim against the cargo.

48. The Supreme Court recently in case of **Chrisomar Corporation vs. MJR Steels Pvt. Ltd., (2017) SCC OnLine SC 1104** has construed the provisions of The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 and has held that the Admiralty jurisdiction of a High Court is to hear and determine any question on a maritime claim only against any vessel.

49. This Court in case of **M/s.Greenwich Maridian Logistics (India) Pvt. Ltd.** (supra) has considered the issue whether an Admiralty Court can entertain a suit filed by a shipowner or carrier against a consignee without a vessel being a party to the suit. This Court held that an action in Admiralty jurisdiction has to be against the ship or its owner. It is held that the jurisdiction of the Admiralty court is specific and if any controversy does not arise within specific jurisdiction of the Admiralty Court, the Admiralty Court cannot entertain any such situation like a Court of Ordinary Original Civil Jurisdiction. This Court in the said judgment also considered the judgment of the Supreme Court in case of **M.V. Elisabeth vs. Harwan Investment & Trading (P) Ltd., 1993, Supp. (2) SCC 433** and also the judgment of the Supreme Court in case of **Liverpool & London S.P. & I Association Ltd.** (supra) and held that the action in Admiralty jurisdiction has to be against the ship or its owner. It is also held that since the shipowner, receiver, consignee would be residing or carrying on business within the ordinary original civil jurisdiction, action against them without the vessel being a party to the suit can be filed only in the ordinary original civil jurisdiction of the Civil Court. It is an admitted position that this suit filed by the plaintiff is not invoking the ordinary original civil jurisdiction of this Court but has filed invoking the Admiralty jurisdiction. It is also not in dispute

that the vessel has not been joined as a party defendant to this suit and no relief against the said vessel has been claimed in the suit.

50. This Court in the said judgment carved out an exception in case of maritime lien when vessel could be arrested irrespective of the personal liability of the owner. The arrest of the vessel is *sine qua non* for attracting an Admiralty jurisdiction of this Court. In my view the said judgment of this Court in case of **M/s.Greenwich Maridian Logistics (India) Pvt. Ltd.** (supra) which is delivered after adverting to the judgment of the Supreme Court in case of **M.V. Elisabeth** (supra) and in case of **Liverpool & London S.P. & I Association Ltd.** (supra) squarely apply to the facts of this case. I am respectfully bound by the said judgments.

51. In my view since the claim of the plaintiff is not a maritime claim and the plaintiff does not have any maritime lien against the defendant no.1 and the defendant no.3, the plaintiff cannot invoke an Admiralty jurisdiction of this Court. In my view, learned counsel for the defendant no.3 is right in his submission that all maritime liens are maritime claims but all maritime claims are not maritime liens.

52. Insofar the judgment of this Court in case of **Pacific Gulf Shipping (Singapore) Pte. Ltd.** (supra) delivered on 1st September, 2017 is concerned, the plaintiff had filed the notice of motion in Commercial Admiralty Suit *inter-alia* praying for the reliefs in respect

of certain quantity of salt kept as a security and lying at an open yard at Kutch in Gujarat in lieu of arrested cargo laden / to be laden on board the vessel and for damages towards the expenses incurred by the applicant for store of the goods. The notice of motion was filed on the basis that the arrest order obtained in respect of the cargo, for release of which security was kept was wrongful and was obtained by an *ex-parte* order passed by this Court. The defendant no.1 had given a security for release of the said cargo and thereafter had applied for release of the said security by filing such notice of motion.

53. This Court in the said judgment held that the arrest of cargo in connection with the claim unconnected with it would be the matter of substantive law and not just procedural issue. It is the matter pertaining to the jurisdiction. It must be shown that the Admiralty Court does have such jurisdiction either with reference to a statute or authority of deciding a case before Court. This Court accordingly held that the arrest of cargo could be continued for some more time subject to the plaintiff securing the defendant for the costs resulting thereby. In my view, the judgment in case of **Pacific Gulf Shipping (Singapore) Pte. Ltd.** (supra) does not take a different view and supports the case of the defendants and not the plaintiff.

54. Insofar as the judgment of the Calcutta High Court in case

of **Liberty Commodities Ltd.** (supra) is concerned, the suit was filed for arrest of the vessel. There was no issue as to whether the cargo should be arrested or not. The said judgment thus would not assist the case of the plaintiff.

55. This Court in case of **Peninsula Petroleum Ltd.** (supra) had considered the claims made by the plaintiff invoking Admiralty jurisdiction for arrest of bunkers on board a vessel alleging that the term “property” in Rule 946 of the Bombay High Court (Original Side) Rules, 1980 and in the Letters Patent of 1823 and 1865 had permitted such arrest. This Court in the said judgment held that even though the plaintiff had maritime claim for supply of accessories for which a vessel could be arrested, bunkers simplicitor could not be arrested when there was no claim against the vessel and independent of the vessel. It is not in dispute that in this case also the plaintiff has not made any claim against the vessel but has purported to have made claim against the defendant no.1 cargo independent of the claim against the vessel. In the said judgment in case of **Peninsula Petroleum Ltd.** (supra), this Court held that the arrest of cargo or freight can be only to the limited extent of the amount payable on the cargo or freight to the owner and when a person who has a claim against the owner of the ship brings an action *in rem*, he could also apply for and obtain arrest of the cargo

on board. It is held that the arrest of cargo is only permissible in aid of a claim against the owner of the vessel which is commenced *in rem* by arrest of the vessel.

56. This Court in case of **M/s.Greenwich Maridian Logistics (India) Pvt. Ltd.** (supra) on the other hand after adverting to the judgment of the Supreme Court in case of **M.V. Elisabeth** (supra) and the judgment delivered by this Court in case of **Best Food International Pvt. Ltd. vs. Navbharat International Ltd. (2010) SCC OnLine Bom. 445** has categorically held that the Admiralty jurisdiction of the High Court is founded on the arrest of the ship and is directed against the ship. Unless and until the owner of the ship is liable for the claim, Admiralty jurisdiction of this Court cannot be invoked. There can be no action *in rem* without arrest of the vessel because that is the foundation of the Admiralty jurisdiction.

57. Insofar as reliance placed by the plaintiff on the passage from “Admiralty Jurisdiction & Practice by Nigel Meeson” is concerned, a perusal of the said passage clearly indicates that the said author had referred to the provisions in English Law after interpretation of the Supreme Court Act, 1981 which provisions are not binding on the parties and the Courts in India. Be that as it may, even in England, the arrest of cargo is permissible only if it is on the board a vessel and if there is a maritime lien attached. In my view,

reliance thus placed by the plaintiff on those passages would not assist the case of the plaintiff in any manner whatsoever.

58. Insofar as the submission of the learned counsel for the plaintiff that the plaintiff has a contractual lien under clause 8 of the charterparty dated 2nd June, 2017 between itself and the defendant no.2 is concerned, the copies of e-mail exchanged between the plaintiff and the defendant no.2 produced on record by the defendants referred in the e-mail dated 5th December, 2017 which were received by the defendant no.3 from the solicitors of the ship owner who had given vessel and chartered to the plaintiff and further written submissions filed by the plaintiff clearly indicates that the plaintiff in the said e-mail sent to the ship owner has admitted that the plaintiff did not have authority or right to exercise any contractual lien on the cargo and thus had called upon the owner to exercise lien. The plaintiff had also threatened the ship owner of arrest in case the ship owner not exercising the lien on the cargo. The demand of the plaintiff was specifically rejected by the ship owners through its solicitor's e-mail date 5th December, 2017 clearly admitting that the ship owner could not exercise the lien over the cargo as it no longer had any control over the cargo. The ship owner further informed the plaintiff that the ship owner was not entitled to exercise any lien over the cargo, as there was no outstanding amount due to the owner

under the demurrage or Bill of Lading and thus there was no basis to wrongfully detain the cargo.

59. Though the plaintiff filed further written submissions, the plaintiff could not dispute that the plaintiff had not contended that the plaintiff did have authority or right to exercise any lien on the cargo. In view of such stand already taken by the plaintiff in its e-mail addressed to the vessel owner thereby admitting that the plaintiff did not have any authority or right to exercise any lien on the defendant no.1 cargo and had called upon the vessel owner to exercise lien, the first submission of the plaintiff that the plaintiff had a contractual lien on the defendant no.1 cargo and has a claim against the defendant no.3 based on the Bill of Lading and charterparty does not survive and is accordingly rejected on this ground itself. The arguments urged by the learned counsel for the plaintiff are contrary to the admitted position in the said e-mail exchanged between the plaintiff and the vessel owner. The stand taken by the vessel owner clearly supports the case of the defendant no.3 that the vessel owner could not exercise lien over the cargo, as they no longer have control over the cargo and also on the ground that there was no outstanding amount due to the vessel owner under the charterparty or bill of Lading.

60. Be that as it may, the plaintiff being not a party to the Bill of

Lading cannot claim any alleged contractual lien against the defendant no.1 cargo of any nature whatsoever. The defendant no.2 ceased to be the owner of the defendant no.1 cargo in view of the admitted fact that the Bill of Lading was issued in the name of the defendant no.3 as the consignee. If there could be any claim of the plaintiff, the same could be against the defendant no.2 and not against the defendant no.3 or the defendant no.1 cargo. It is not in dispute that the plaintiff has already filed the arbitration proceedings against the defendant no.2. In my view, since the defendant no.2 is not the owner of the defendant no.1 cargo when the arrest is sought even if the plaintiff's claim can be considered as maritime claim which is not, such claim cannot be enforced against the defendant no.1 in view of the change of the ownership in respect of the defendant no.1 by the defendant no.2 in favour of the defendant no.3.

61. Insofar as reliance placed by the plaintiff on section 1 of the Bills of Lading Act, 1856 is concerned, it is an admitted position that the defendant no.3 is the named consignee in the Bill of Lading and does not derive title by negotiation but on the issue of Bill of Lading. The liabilities arising out of the said Bill of Lading can only be asserted by the party to the Bill of Lading under the provisions of law and more particular in the provisions of Bills of Lading Act, 1856 which would not permit a third party to the Bill of Lading to exercise

any rights under the Bill of Lading. In my view, reliance placed on section 1 of the Bill of Ladings Act, 1856 by the plaintiff thus would not assist the case of the plaintiff and is totally misplaced.

62. Insofar as the passage from Halsbury's Laws of England relied upon by the learned counsel for the plaintiff is concerned, I am inclined to accept the submission made by the learned counsel for the defendant no.3 that the reasons for incorporation of a charterparty in the ship owner's Bill of Lading is to give the ship owner a contractual lien for the dead freight lien etc. to enable the ship owner to enforce the rights under the charterparty which it could not otherwise have exercised by reason of not being a party thereto. In my view, the passage from Halsbury's Laws of England relied upon by the plaintiff thus would not forward the case of the plaintiff further and thus reliance placed thereon by the plaintiff is misplaced.

63. Insofar as reliance placed by the plaintiff on a passage from "Carver on Bills of Lading" is concerned, a perusal of the said passage indicates that the same is based on three American judgments and one judgment delivered by the English Court. Those judgments cannot be relied upon by the plaintiff as the same solely are based on the American and English statutes having different provisions. Be that as it may, since there is no subsisting lien against the defendant no.3 by the plaintiff and in view of the plaintiff not

having given any notice of exercising the alleged lien stating the amount for lien and for retaining the possession of the defendant no.1 cargo, the claim of the plaintiff of the contractual lien is totally misplaced. The plaintiff did not make any such claim in the arbitral proceedings instituted by the plaintiff against the defendant no.2. The plaintiff has not even averred that the plaintiff is in possession of the defendant no.1 cargo nor has even *prima-facie* established its alleged possession in respect thereof.

64. A perusal of the e-mail sent by the head owner annexed at page no.105 of the compilation produced by the plaintiff clearly indicates that it is confirmed by the head owner that the head owner had delivered the cargo to the owner of the receiver i.e. the defendant no.3. The defendant no.3 had applied to port for allotment of the land for storage of the said cargo and has been paying the license charges in respect of the said plot to the said port. The plaintiff has not produced any proof before this Court and has not even contended that the plaintiff has been incurring any expenses for storage of the defendant no.1 cargo after discharge from the vessel. The plaintiff has also not sent any reply to the e-mail dated 26th October, 2017 sent by the port rejecting the claim of the plaintiff for lien on the defendant no.1 cargo.

65. Insofar as the passage from Halsbury's Laws of England

relating to “duration of and loss of lien” relied upon by the plaintiff is concerned, the said passage also does not apply to the facts of this case and would not assist the case of the plaintiff. In my view, none of the of the pre independence statutes or the Arrest Conventions provide for any claim in respect of cargo or provide for any right to proceed *in rem* against the cargo. The plaintiff does not have any claim against the defendant no.3 and thus is not entitled to proceed against the defendant no.1 which is owned by the defendant no.3.

66. Insofar as the alleged statutory lien claimed by the plaintiff under section 60 of the Major Port Trusts Act, 1963 is concerned, the said provision only provided for mode or exercise of pre-existing lien of an agent or the ship owner. A notice under section 60 of the Major Port Trusts Act, 1963 has to be issued by the master or the owner of the vessel. The plaintiff is neither the master nor the owner of the vessel. A perusal of the record clearly indicates that the defendant no.1 cargo has been discharged by the defendant no.2 into the custody of the defendant no.3 and is in possession of the defendant no.3. The Port has already rejected the claim of the statutory lien of the plaintiff under the provisions of the Major Port Trusts Act, 1963. In my view, the plaintiff thus could not have issued any notice claiming any statutory lien under section 60 of the Major Port Trusts Act, 1963 or under any other provisions of law. The claim of statutory lien is

also is thus not maintainable and is rejected.

67. Insofar as the judgment of the Canadian Court in case of **Phoenix Bulk Carriers Limited** (supra) relied upon by the plaintiff is concerned, in my view, the said Canadian judgment is not applicable to the facts of this case and is clearly distinguishable in view of the fact that the statutory provisions considered by the Canadian Court under the Canadian Law specifically permitted arrest of the cargo in isolation, whereas no such provision exists in any of the Legislation applicable to the facts in this case in India nor any international convention contemplated arrest of the cargo simplicitor. This Court has already considered this issue and has held that the Canadian judgment cannot rely upon in India where the Admiralty jurisdiction is invoked and the claim is for arrest of cargo.

68. Insofar as the judgment of the High Court of South Africa in case of **M.V. New Market** (supra) is concerned, in that case the Bill of Lading was issued on behalf of the Master of vessel who functioned as a contract of carriage between the head owner and cargo interests. However in the facts of this case, the plaintiff claims to be the charterer and seeks to enforce the alleged contractual lien against the defendant no.1 under the Bill of Lading of the ship owner on the basis of the alleged incorporation of the charterparty to the plaintiff as a party. In my view, the judgment of the High Court of

South Africa in case of **M.V. New Market** (supra) thus would not even remotely apply to the facts of this case and is clearly distinguishable in the facts of this case.

69. Insofar as passage from “Admiralty And Maritime Law by Thomas J. Schoenbaum” relied upon by the learned counsel for the plaintiff is concerned, the learned author has made those comments based on the statutory regulations of American Law which regulations are different and are at variance with the common law. The statutes that are applicable to the matters governing the Admiralty jurisdiction in India are totally different. The said passage from Admiralty and Maritime law thus would not assist the case of the plaintiff.

70. Insofar as the alleged precarious financial condition of the defendant no.3 alleged by the plaintiff based on the paper cutting in the year 2016 is concerned, I am inclined to accept the submissions made by the defendant no.3 that the said paper cutting would not be the conclusive proof. The plaintiff has not made any such averments in the plaint about the alleged precarious financial condition of the defendant no.3.

71. I am thus not inclined to accept the submission of the plaintiff that the defendant no.1 is an offending cargo in respect of the alleged maritime claim of the plaintiff or that on that ground the plaintiff is entitled to seek arrest of the defendant no.1 to secure its

claim. There is no substance in the submission made by the learned counsel for the plaintiff that the defendant no.3 has admitted the claim of the plaintiff. The claim of the plaintiff that the Bill of Lading incorporated the charterparty is also without any basis for the purpose of making the claim against the defendant no.3 or otherwise.

72. Insofar as the submission of the learned counsel for the plaintiff that the price declared to the Customs by the defendant no.3 under the said Bill of Lading is less than the contractual price which would allegedly indicate that the defendant no.3 had negotiated better price and had taken the benefits of the expenses of the alleged encumbrances of the plaintiff on the defendant no.1 is without any basis. The allegations made by the plaintiff is even otherwise of no relevance and not even *prima-facie* demonstrated to be correct. There is no merit in the submissions made by the learned counsel for the plaintiff that the defendant no.3 was aware of any alleged encumbrances or lien of the plaintiff on the defendant no.1 cargo before making any payment for it to the defendant no.2.

73. Insofar as the judgment of the Supreme Court in case of the **Videsh Sanchar Nigam Limited** (supra) relied upon by the learned counsel for the plaintiff is concerned, in my view even if the alleged contractual lien of the plaintiff is enforceable against the defendant no.3, such contractual lien does not entitle the plaintiff to

invoke an Admiralty jurisdiction under the arrest convention. In my view, such alleged contractual lien of the plaintiff does not fall within the scope of the maritime lien. Admittedly the plaintiff has not invoked the jurisdiction of the ordinary original civil jurisdiction of the High Court but has invoked Admiralty jurisdiction to enforce such alleged contractual lien, which cannot be invoked. The entire claim of the plaintiff is thus *prima-facie* not maintainable in this Court exercising Admiralty jurisdiction.

74. For the reasons recorded aforesaid, I am of the view that the plaintiff has not made out any case for arrest of the defendant no.1 cargo. The judge's order thus filed by the plaintiff is thoroughly misconceived.

75. I therefore, pass the following order :-

a). Judge's Order No.253 of 2017 is dismissed with costs quantified at Rs.50,000/- which shall be paid by the plaintiff to the defendant no.3 within two weeks from today.

(R.D. DHANUKA, J.)

76. Mr.Ashwin Shanker, learned counsel for the plaintiff seeks stay of the operation of this order, which is vehemently opposed by Mr.Kamat, learned counsel for the defendant no.1 and 3. Since there

is no *ad-interim* stay granted by this Court, the question of granting any stay does not arise. The application for stay is accordingly rejected.

(R.D. DHANUKA, J.)