



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 29TH DAY OF APRIL 2021

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

C.S. No.107 of 2005

M/s.Mercantile Shipping Corporation  
Limited having their office at  
108, Aluthmawatha Road,  
Colombo - 15, Sri Lanka  
represented by its Power of Attorney Agent ...Plaintiff

Vs.

1. The Board of Trustees of the  
Port of Chennai,  
having its Administrative Office  
at Rajaji Salai, Chennai 600 001.  
represented by its Chairman.
2. Adoniss Limited,  
having its office at No.604, 6/F,  
Tower Lippo Center, Queens Way,  
Admiralty Hongkong.
3. M/s.J.M.Baxi & Co.,  
Partnership Firm,  
having its Branch Office at  
No.37, Rajaji Salai, Chennai 600 001.  
represented by its Branch Manager  
(D2 and D3 - impleaded as per  
order dated 10.11.2016 in  
A.No.5477 of 2016 and  
order dated 28.11.2016.) Defendants

Civil suit praying that this Hon'ble Court be pleased to pass a



judgment and decree against all the defendant jointly and severally:-

a) directing the Defendants jointly and severally to pay a sum of Rs. 1,55,09,703/(Rupees One Crore Fifty Five Lakhs Nine Thousand Seven Hundred and Three only) together with interest at 15% per annum from the date of plaint, till the date of payment;

b) for a declaration that the Plaintiff is entitled to claim a sum of Rs.18,79,330/-(Rupees Eighteen Lakhs Seventy Nine Thousand three hundred and thirty only), lying in deposit with the Chennai Harbour Branch of Indian Bank in T.D.R.No.0858306, A/c.No19167 jointly in the names of James Mackintosh & Co (P) Ltd and the Madras Port Trust which deposit was made pursuant to order in W.P.No.25094 of 2004 together with the interest accrued thereon and for a consequential direction that the said sum of Rs.18,79,330/-(Rupees Eighteen Lakhs Seventy Nine Thousand three hundred and thirty only), together with the accrued interest thereon be paid to the Plaintiff; and

c) for costs of the suit.

This suit having been heard on 19.03.2021 in the presence of Mr.Raghunathan, Advocate for the plaintiff herein and Mr.R.Karthikeyan, Advocate for the 1<sup>st</sup> defendant and Mr.K.Krishnaswamy, Advocate for the 2<sup>nd</sup> defendant and Dr. Sunitha Sundar Advocate for the 3<sup>rd</sup> defendant herein



referred to and upon perusing the evidence adduced therein and having stood over for consideration till this date and coming on this date before this court for orders in the presence of said advocates for the parties hereto and this court having observed that the first defendant alone is responsible for the claim of the plaintiff and the suit as against the second and third defendant is barred by limitation and no claim can be laid against the second and third defendants, it is ordered and decreed as follows:-

That the first defendant herein, do pay for the plaintiff herein, a sum of Rs.5,32,80,079/- (Rupees Five Crores Thirty Two Lakhs Eighty Thousand and Seventy Nine only) with further interest at the rate of 15% per annum on the sum of Rs.1,55,09,703/- ( Rupees One Crore Fifty Five Lakhs Nine Thousand Seven Hundred and Three Only) from this date till the date of payment.

2. That the plaintiff herein, shall be entitled to claim a sum of Rs.18,79,330/- (Rupees Eighteen Lakhs Seventy Nine thousand three hundred and thirty only) lying in deposit with the Chennai Harbour Branch of Indian Bank in T.D.R.No. 0858306, A/c.No. 19167 jointly in the names of James Mackintosh & Co Pvt Ltd and the Madras Port Trust which deposit was made pursuant to order in W.P.No.25094 of 2004 together with the interest accrued thereon be and is hereby declared and consequentially

directed, that the said sum of Rs.18,79,330/- (Rupees Eighteen Lakhs



Seventy Nine Thousand three hundred and thirty only), together with the accrued interest thereon be paid to the Plaintiff herein.

3. That the suit in C.S.No. 107 of 2005, be and is hereby dismissed as against the second and third defendant herein and there shall be no order as to costs of this suit.

4. That the plaintiff herein, be and is hereby specifically entitled to the fees and expenses of the witnesses, the legal fees and expenses incurred and for any other expenses incurred in connection with the judicial proceedings and also for recovery of the actual Court Fees paid into Court, as and when taxed by the taxing officer of this Court and noted in the margin thereof.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,  
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE  
29TH DAY OF APRIL 2021.

Sd/-

ASSISTANT REGISTRAR (Comm cases)

//Certified to be true copy//

Dated at Madras this the      day of      2021.

COURT OFFICER(O.S.)

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21/05/2021

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C.S. No.107 of 2005

ORDER

DATED : 29.04.2021

THE HON'BLE MR.JUSTICE  
C.V.KARTHIKEYAN

FOR APPROVAL: 26/07/2021

APPROVED ON: 27/07/2021



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.3.2021

Pronounced on : 29.4.2021

CORAM

**THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN**

C.S.No.107 of 2005

M/s.Mercantile Shipping Corporation  
Limited having their office at  
108, Aluthmawatha Road,  
Colombo - 15, Sri Lanka  
represented by its  
Power of Attorney Agent

Plaintiff

Vs.

1. The Board of Trustees of the  
Port of Chennai,  
having its Administrative Office  
at Rajaji Salai, Chennai 600 001.  
represented by its Chairman.
2. Adoniss Limited,  
having its office at No.604, 6/F,  
Tower Lippo Center, Queens Way,  
Hon'ble Admiralty Hongkong.
3. M/s.J.M.Baxi & Co.,  
Partnership Firm,  
having its Branch Office at  
No.37, Rajaji Salai, Chennai 600 001.  
represented by its Branch Manager  
(D2 and D3 - impleaded as per  
order dated 10.11.2016 in  
A No.5477 of 2016 and  
order dated 28.11.2016.)

Defendants



**Prayer:-** This suit filed under Order VII Rule 1 of the Code of Civil Procedure read with Order IV Rule 1 of the Original Side Rules. praying for a judgment and decree against the defendants for,

a) directing the Defendants jointly and severally to pay a sum of Rs. 1,55,09,703/(Rupees One Crore Fifty Five Lakhs Nine Thousand Seven Hundred and Three only) together with interest at 15% per annum from the date of plaint, till the date of payment;

b) for a declaration that the Plaintiff is entitled to claim a sum of Rs.18,79,330/-(Rupees Eighteen Lakhs Seventy Nine Thousand three hundred and thirty only), lying in deposit with the Chennai Harbour Branch of Indian Bank in T.D.R.No.0858306, A/c.No19167 jointly in the names of James Mackintosh & Co Pvt Ltd and the Madras Port Trust which deposit was made pursuant to order in W.P.No.25094 of 2004 together with the interest accrued thereon and the Defendant and for a consequential direction that the said sum of Rs.18,79,330/(Rupees Eighteen Lakhs Seventy Nine Thousand three hundred and thirty only), together with the accrued interest thereon be paid to the Plaintiff; and

c) for costs of the suit.

For Plaintiff : Mr.S.Raghunathan

D1 : Mr.R.Karthikeyan

D2 : Mr.K.Krishnaswamy

D3 : Dr.Sunitha Sundar

### **JUDGMENT**



under the Laws of Republic of Sri Lanka had instituted the present Suit originally against the Board of Trustees of the Port of Chennai seeking a judgment and decree for payment of a sum of Rs.1,55,09,703/- together with interest at the rate of 15% per annum from the date of the plaint till the date of payment and also for a declaration that the plaintiff is entitled for a sum of Rs.18,79,330/- which is lying in deposit in Indian Bank, Harbour Branch, which had been deposited pursuant to an order in W.P.No.25094 of 2004 with accrued interest and also for costs of the suit.

2. The first defendant, who was the sole defendant, filed written statement. In the written statement, they stated that the suit was bad for non-joinder of necessary parties viz., the Charterers of the Ship and the Stevedores, who were engaged to unload the cargo from the ship.

3. Thereafter, the plaintiff filed Application No.5477 of 2016 to implead Adoniss Limited, a Company registered in Hong Kong and M/s.J.M.Baxi & Company a registered Partnership Company as second and third defendants. This Application was ordered on 10.11.2016.

4. In the plaint, the plaintiff stated that they carry on business as ship owners and are the owners of the vessel M.V.MERCS HENDALA registered at the Port of Colombo. This vessel carrying the cargo of 410 pieces of timber logs called at Chennai Port for discharging the cargo on



first defendant and the cargo was discharged from 17.05 hours on 6.8.2004 and the discharge of cargo continued also on 7.8.2004. The operations were conducted with the help of a shore crane bearing No.S-7 belonging to the first defendant, Madras Port Trust and the labour was provided by the office of the the second defendant. The Stevedores were provided by the 3rd defendant. At around 7.55 am on 8.8.2004, the crane provided by the first defendant collapsed after overturning and fell on the port side of the vessel causing extensive damage which also resulted in the death of one of the Stevedore labourer. The plaintiff claimed that the crane collapsed because the bottom of the pedestal structure of the crane was corroded and the crane which was installed in the year 1984 was in a very bad condition and had suffered several cracks and heavy corrosion. The plaintiff claimed that the collapse of the crane was only due to the negligence on the part of the first defendant and failure to maintain the equipment in good condition. The first defendant had an obligation to provide a crane of good condition. They also had an obligation to ensure the safety, health and security of the port users and their members. The Master of the vessel addressed a letter to the first defendant on 8.8.2004 informing them about the damage caused to the vessel. A Surveyor was appointed to examine the reason for the collapse of the crane and to assess the nature and extent of damages.



refused to participate in the survey. A Report was filed by the Surveyor stating that the cause for the collapse of the crane was the lack of maintenance and the poor condition of the crane. The first defendant sent a reply on 9.8.2004 denying their liability and they alleged that the plaintiff and the third defendant were liable for the cause of the accident. They also assessed the damages caused to the crane at Rs.18,79,330/- and called upon the plaintiff to deposit the said sum before granting permission for the sailing of the vessel.

5. The plaintiff further claimed that it was the first defendant who is liable for the damage caused to the vessel, but, the first defendant stated that they would not grant clearance for the vessel to sail unless a sum of Rs.18,79,330/- was deposited by the plaintiff. The plaintiff filed W.P.No.25094 of 2004 seeking a direction against the first defendant to grant sailing clearance of the vessel and an order was passed directing the plaintiff to deposit a sum of Rs.18,79,330/- in joint fixed deposit. This was without prejudice to the rights of the parties to agitate their respective issues. The plaintiff deposited the said sum. The vessel, then, sailed out of Chennai on 4.9.2004. The plaintiff claimed that they had suffered a monetary loss owing to the collapse of the crane and the vessel had to sail to Colombo to carry out major repairs. The Charterers also sought off hire charges and the Charterer declined to pay Port Charges and other charges.



The crew members had to be shifted to other accommodation in Chennai during the stay of the vessel in Chennai. The plaintiff had given details of the expenses incurred by them. They also claimed that they had to carry out minor repairs in Chennai amounting to U.S. Dollars 19798.57 equivalent to Rs.9,10,734.22. The plaintiff also had to spend U.S. Dollars 1,03,174.88 for carrying out major repairs in Colombo. The plaintiff had thus spent a total sum of Rs.57,56,778.70 towards repairs. They also spent a further sum when the vessel berthed at Colombo. They were also deprived of the use of the vessel from 10.8.2004 to 2.11.2004 and lost the hire charges amounting to Rs.77,18,800/-. Claiming that the first defendant was mainly responsible for the said loss, the suit had been filed seeking recovery of a sum of Rs.1,55,09,703/- together with interest and also for a declaration that they are entitled for return of the sum of Rs.18,79,330/- together with accrued interest which amount they had deposited pursuant to the orders in W.P.No.25094 of 2004. The plaintiff also claimed the costs of the suit.

6. The first defendant filed a written statement and as stated above, they had taken a stand that the suit was bad for non joinder of the Charterer of the vessel and the Stevedores of the vessel. They denied the averments in the plaint that the crane collapsed owing to bad condition and negligence of the first defendant. They claimed that the cargo, namely, logs had to be pulled, dragged and then loaded on to the crane and the crane can be used



only to raise the logs from the ship and place it on the shore. It had been stated that the ship was 37 years old and was not designed to carry wooden loges. It was also stated that the Stevedores misused the shore crane to drag and to pull the wooden logs from the coaming beam which, according to the first defendant, was in violation of the provisions of Dock Workers (Safety, Health and Welfare) Regulations 1990. It was stated that two logs had been loaded for being dragged and hoisted. It was the duty of Stevedores to see that no person was standing in the danger zone while unloading the cargo. Further, even the Master of the vessel was not present to supervise the unloading of the cargo. It was claimed that safety regulations were violated and due to improper handling of the crane for purposes which the crane should not be used, the crane suffered damages because of such mishandling. It was also pointed out that out of 410 pieces of timber logs, 367 pieces had been unloaded by the crane. It was stated that to expedite the unloading, the Stevedores dragged two or more logs at a time by the shore crane. It was, therefore, claimed that the crane did not fall due to corrosion but due to excess weight of the logs loaded for carrying from the ship to the shore. It had been stated that 367 timber logs had been lifted within 36 hours. The first defendant denied all allegations stated in the plaint. They also stated that the surveyor report is not a fact finding report and it had



plaintiff should have ensured that the vessel was insured. They also claimed that a sum of Rs.18,79,330/- had been collected only towards labour and salvage charges. In fact, the first defendant denied the entire claim of the plaintiff and sought for dismissal of the suit and also sought for a further direction to receive a sum of Rs.18,79,330/- which was lying in deposit in Indian Bank, Harbour Branch.

7. The second defendant filed their written statement. It had been stated that the suit is barred by limitation. It was stated that the accident occurred on 8.8.2004, but, the second defendant had been impleaded by an order of the court on 10.1.2008 and therefore, the proceedings against second defendant commenced only on service of suit summons with the amended plaint on 26.10.2010. It was, therefore, stated that the suit is barred by law of limitation as against the second defendant. The second defendant denied any negligence on their part with respect to the collapse of the crane. The second defendant relied on the extracts from the surveyor report dated 9.8.2004, in which it had been stated that the crane was structurally weak and had serious flaws due to which it collapsed. They also relied on an affidavit filed by the plaintiff in W.P.No.25094 of 2004. They also relied on the surveyor report dated 7.9.2004 in which also it had been stated that the crane had extensive corrosion, structural wastage and consequent weakness.



suit against the second defendant. They also claimed that if at all any dispute has arisen, it should have been referred to arbitration in accordance with the agreement between the plaintiff and the second defendant. They also stated that the primary duty of the Master of the vessel was to be present at the time of discharge of the cargo and give necessary instructions to the Stevedores, who were engaged in the loading of the logs in the crane. The second defendant sought for dismissal of the suit as against them.

8. The third defendant filed a written statement. They claimed that they are neither a necessary nor a proper party to the suit. They stated that the crane collapsed only because of the weakness in the pedestal structure which was heavily corroded. The third defendant claimed that they were only an agent acting on behalf of the second defendant and they cannot be held personally liable for any loss said to have been sustained by the plaintiff. They denied that the crane collapsed due to the negligent manner in which the discharge operations were carried out by the Stevedores of the third defendant. They stated that the role of the Stevedores are very limited. They also stated that the first defendant issued a notice dated 21.1.2005 stating that the third defendant was reckless and negligent in handling the crane. After that, no further action was taken. They also stated that an inquiry was conducted by the Enquiry Department of the second defendant



to come to a clear conclusion as to the cause of the accident. They stated that if the crane was maintained properly, the accident could have been avoided. The claim of the plaintiff seeking the suit amount jointly and severally against all the defendants was disputed by this defendant, who denied their liability and sought for dismissal of the suit.

9. A reply statement was filed by the plaintiff for the written statements filed by the defendants. The plaintiff again reiterated the fact that the crane had collapsed only due to the negligent manner in which it was maintained and they also stated that the Stevedore laborers are not employees of the first defendant. They also denied that the wooden logs were stocked under the coaming beams and the vessel was 37 years old and was not designed to carry wooden logs. They also denied the claim of the first defendant that the crane was in a good condition. They also disputed the claim of the first defendant with respect to the claim of Rs.18,79,330/- lying in fixed deposit. They denied all averments in the written statements of the first, second and third defendants. They claimed that the second and third defendants were impleaded only on the basis of the averment made by the first defendant in the written statement. They reiterated that the suit should be decreed as prayed for.

10. On the basis of the pleadings, the following issues were framed:-



*2. Whether the fall of the crane on the vessel M.V.MERCS HENDELA while being used for stuffing the timber logs in the vessel due to heavy corrosion at the bottom of the pedestal structure was due to the joint negligence of the First, Second and Third Defendant?*





Surveyor of the Port Trust to Master of the Ship dated 9.8.2004.

Disbursement accounts alongwith vouchers in respect of port charges and other expenses were marked as Ex.P6 series and the invoices /vouchers for temporary repairs carried out in Chennai were marked as Ex.P7 series. The notice from the plaintiff to the first defendant was examined as Ex.P8. Reports of the Surveyor were marked as Exs.P11 and P12. Advocate notice issued by the plaintiff dated 16.10.2014 was marked as Ex.P13.

13. The first defendant marked Exhibits D1 to D8. Ex.D2 was a copy of the Charter Party Agreement. Ex.D4 was a copy of the Test Certificate dated 17.12.2003 and Ex.D6 was a copy of another Test Certificate dated 23.1.2004. Ex.D7 was the Report of the Enquiry Committee dated 17.8.2004. The letter from the Ministry of Shipping dated 19.8.1998 was marked as Ex.D8. The second defendant marked the Board Resolution as Ex.D9.

14. Heard arguments advanced by Mr.S.Raghunathan, learned counsel appearing for the plaintiff, Mr.R.Karthikeyan, learned counsel appearing for the first defendant, Mr.K.Krishnaswamy, learned counsel appearing for the second defendant and Dr.Sunita Sundar, learned counsel appearing for the third defendant.

15. Mr.S.Raghunathan, learned counsel appearing for the plaintiff, in

the course of his arguments, took the court through the facts of the case and



was emphatic in his submission that the damage to the vessel was caused only on account of collapse of the shore crane on 8.8.2004. The learned counsel submitted that the proximate cause for the collapse of the crane was the negligent manner and the bad condition in which the crane had been maintained by the 1st defendant. He further submitted that the first defendant, in its written statement, had shifted the blame on the third respondent, who had been employed by the second defendant. The learned counsel also pointed out the provisions of the Dock Works (Safety, Health and Welfare) Regulations 1990 and stated that it was the first defendant, who was responsible for the safety and security of all persons who use the berthing facility offered by the first defendant. The learned counsel also took the court through the evidence and pointed out the reports of the survey, marked as Exs.P11 and P12 and stated that the said reports had been established by examining PW3. He also stated that DW1 had admitted that he was an Assistant Executive Engineer, in charge of repairs and maintenance of Tugs, Pilot Launches belonging to the first defendant and had admitted that he had not inspected the crane either prior to the accident or subsequent to the accident. The learned counsel submitted that the first defendant had not examined any witness, who had been in charge of the maintenance of the crane. The first defendant also did not come forward to



the Safety Committee, who had submitted the Report Ex.D7. The crane operator was also not examined. The learned counsel stated that, therefore, the obligation was only on the first defendant to be liable for the claim of the plaintiff. The learned counsel pointed out that on the date of incident, the crane was 21 years old and should have been replaced even in the year 2003 itself. This was in accordance with the terms prescribed under Ex.D8. The learned counsel also stated that the amount lying in deposit of Indian bank had to be paid only to the plaintiff since it had been deposited under the directions of this court as a condition for permitting the vessel to sail from the Port of Chennai. The learned counsel also pointed out the bills/vouchers filed as documents to substantiate the repairs to the vessel and finally stated that the plaintiff is entitled to the relief in the plaint.

16. Mr.R.Karthikeyan, learned counsel appearing for the first defendant, however, denied the liability of the first defendant. The learned counsel stated that the ship itself was a very old ship of 37 years and the cargo namely the timber logs had been placed in the coaming Beam since the ship could not be used for transport of logs. The learned counsel further stated that the logs had to be lifted from the center of the hatch and thereafter positioned away from the center and dragged and then placed on the crane. However, since the Stevedores wanted to complete the operation

as expediently as possible, more weight than the crane can hold was loaded



on the crane. It was stated that for that reason the JIB portion of the crane got cut and fell on the deck of the vessel. He stated that the entire unloading operation was being supervised by the official of the second and the third defendants and therefore, stated that they should be held responsible for the loss. The learned counsel also pointing out the invoices filed and submitted that they do not relate to actual repair of the ship. The learned counsel questioned the genuineness of the documents filed by the plaintiff towards expenses incurred in carrying out repairs to the vessel. The learned counsel submitted that the first defendant was entitled for return of the amount deposited under the directions of this court because the crane also suffered damage. The learned counsel also pointed out the evidence of PW1, who had stated that he did not inspect the crane before commencing the operation of unloading of the logs. The learned counsel submitted that the first defendant was not responsible for any damages or claim made by the plaintiff. The learned counsel submitted that the suit should be dismissed.

17. Mr. K.Krishnasamy learned counsel appearing for the second defendant submitted that the suit is barred by law of limitation. He further submitted that the suit should have been filed within a period of three years from 8.8.2004. The second defendant was impleaded as party only on



and therefore, the suit is barred under Section 21 of the Limitation Act, 1963. The learned counsel also placed reliance on the survey report, Exhibits P11 and P12 to contend that the accident was only due to the poor state and maintenance of the crane by the first defendant. The learned counsel took the court through the cross examination of DW1 made on behalf of the second defendant and pointed out the admissions made relating to the negligent manner in which the crane was maintained. The learned counsel also pointed out that the second defendant cannot be held liable as Charterer of the ship and urged that the court should dismiss the suit.

18. Dr.Sunita Sundar, learned counsel appearing for the third defendant also was very emphatic in her submissions that the third defendant was not liable for the claim of the plaintiff. She would further submit that the third defendant was only an Agent of the second defendant. The learned counsel placed reliance on clause 55 of the Charter Party Agreement, Ex.D2. The learned counsel also reiterated that the third defendant had been served with suit summons only on 26.10.2010 and therefore stated that the suit was barred by limitation under section 21 of the Limitation Act 1963. The learned counsel further submitted that the collapse of the crane was only due to the failure on the part of the first defendant to maintain the crane in good order and condition. The learned counsel also submitted that as the crane was used beyond the period of its life, it should



have been replaced in the year 2003. The learned counsel finally stated that the suit should be dismissed as against the third defendant.

19. I have carefully considered the materials available on record and the arguments advanced by the learned counsel appearing for the parties.

20. **Issue No.1:-** This issue relates to whether the first defendant had failed to carry on the necessary services it had to provide under section 35(2)(c) of the Major Port Trust Act, 1963. Under section 35(2)(c) of the Act and section 35(2)(h) of the Major Port Trust Act, 1963, the Port Trust was required to provide necessary services, infrastructure, facilities, equipments and appliances for loading unloading the ships and transhipping the goods and vessels passing through the Chennai Port. Thus, when the vessel M.V.MERCS HENDALA carrying a Cargo of 410 pieces of timber logs called at Chennai Port, the first defendant alone had the authority to permit the berthing of the vessel. Accordingly, the vessel was permitted to be berthed in South Quay No.3 Berth by the first defendant.

21. It is also to be pointed out that under Section 35(2)(c), the first defendant alone had to provide necessary services, facilities and equipments for unloading of cargo. In this regard, the first defendant made available a shore crane bearing No.S-7. Thus, it is seen that the plaintiff had no other alternative except to berth at the Quay allotted by the first defendant and also had no alternative but to use the shore crane as provided by the first



defendant. It can be reasonably expected that the shore crane provided by the first defendant would be in good condition. The Survey Report however, says that parts, particularly the base or pedestal of the crane were corroded in nature. It is also seen that the crane provided was more than 21 years old and it should have been replaced within a period of 20 years. This was not done. Ex.D8 dated 19.8.1998 very categorically stated that with respect to cranes, the normal life norm is 20 years.

22. It is an admitted position that the crane provided by the first defendant was 21 years on the date of the accident. Further reference can also be drawn to Section 42 of the Major Port Trust Act, 1963 which states about the powers of the first defendant. Moreover, under section 48 of the said Act the first defendant was authorised to allot and recover charges for the services rendered which charges are prescribed by the Tariff Authority for Major Ports as constituted under Chapter VA of the said Act. Under Section 33 of the Customs Act, the plaintiff is required to unload the imported goods only at such places as approved in the Notification issued under Section 8 of the Customs Act. The provisions contained in Chapter VI of the Customs Act also make restrictions and conditions subject to which the Ship owners can load and unload the goods within the notified customs area. No goods other than the goods which had been included in



of the Major Port Trust Act and Customs Act, the first defendant had a duty to provide appliances for unloading and the plaintiff had no alternative but to berth and thereafter unload cargo in the quay allotted by the 1<sup>st</sup> defendant using the shore crane supplied by the first defendant. If the crane collapses or anything happens, then it was the first defendant, who was responsible for such collapses. DW1, during his cross examination on behalf of the plaintiff, had also admitted that he had not personally inspected the crane at the time of the accident. During his further cross examination on behalf of the second defendant, he had been directed to produce documents and on such directions, he produced Ex.D8 and he had stated in his evidence as under:-

*"I have produced the Government of India, Ministry of Shipping Letter dated 19/8/1998 which fixes the life norms for Electrical Wharf Crane and the photo copy of same is marked as Ex.D8. (It has been produced as per the undertaking offered by the witness.) S7 Crane is a Electric Wharf crane. Ex.D8 is applicable to S7 Crane also. As per Ex.D8, Ministry Letter Electric Wharf Crane life period of Electric Wharf Crane is 20 years. Ex.D8 is binding on the first defendant.*



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*Trust can extend the usage of Electric Warf Crane beyond its life span of 20 years?*

*A: No."*

23. DW1 was further cross examined and he has stated as under:-

*"Ex.D4 to EX.D8 are shown to the witness.*

*Q: The safety authority is also not informed that S7 crane is being used beyond its life span of 20 years, fixed by Ex.D8?*

*A: Yes, they were not informed.*

*Q: What do you do with the Electric Wharf Crane after its life span is over?*

*A: After revamping and getting the competent certificate from competent authorities, Crane is being used for cargo handling.*

*Q: The procedure mentioned above does it find a place in EX.D8?*

*A: No."*

24. During the course of cross examination by the third defendant, DW1 has stated that he was not present at the time of the incident. The relevant portion of such admission is extracted hereunder for ready



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*"Q: Apart from the enquiry report which is done long after the accident do you have any contemporaneous records to prove that the third defendant had misused the shore crane?*

*A: I am not aware since I was working in some other department.*

*Q: Do you have contemporaneous records during the discharge of the cargo to indicate that the Master of the Vessel was neither present nor supervised the unloading of the cargo?*

*A: I am not aware since I was working in some other department. I have not produced the contemporaneous records prepared by the traffic department during the operations of the cargo from the vessel. "*

25. An analysis of evidence of DW1 would clearly show that he did not have any direct knowledge about the condition of the crane or about the incident. However, he very fairly admitted that the crane was beyond its lifespan. It is evident that the first defendant had provided a crane which was more than 20 years old and even according to Ex.D8 which is an official document issued by the Ministry of Shipping, it had run out its lifespan and should have been condemned. Therefore, I have no hesitation



in holding that the first defendant had failed to carry out necessary services as directed under Section 35(2)(c) of the Major Port Trust Act, 1963 and this issue is answered against the first defendant.

**26. Issue Nos.2 and 3:-** These issues relate to the probable reason for the fall of the crane and impliedly whether the use for shifting timber logs was a reason and whether it was due to the heavy corrosion at the bottom of the pedestal structure or it was due to negligence on the part of the second and third defendants and whether the first defendant as owner of the crane had foregone their obligations to provide a safe and secure crane. It had been held on issue No.1 that the first defendant had failed to carry out its obligation as provided under section 35(2)(c) of the Major Port Trust Act, 1963. The first defendant also had an obligation to comply with the provisions of Dock (Safety, Health and Welfare) Regulations 1990. The first defendant had contended that the safety of the crane had been duly certified by the competent person as provided under Regulations 41 and 51 and sub clause (2) of the said Regulations. However, the said competent person was not examined as witness in the court. The witness, who was examined in the court, did not know anything about the certificate issued. The certificate, which had been issued, had been marked as Exs. D4 and D6. However, they have not been proved in the manner known to law. The report of the surveyor had been marked as Exs.P11 and P12.



27. PW3, the Chief Manager (Operations) of the Surveyor had been examined on behalf of the plaintiff. In his chief examination, PW3 had marked Ex.P10, preliminary report dated 9.8.2004 and Ex.P11 the final report dated 11.8.2004. Photographs had been annexed with Ex.P11.

28. PW3, during his cross examination on behalf of the first defendant had stated as under:-

*"From the photographs it could be seen that shore crane was broken from the bottom and lying on the ship. The upper portion of the crane is called JIB. At the top tip of the JIB, the plumb and hook will be there. The top JIB portion has fallen into the sea after the accident. The bottom and the JIB length is more than the breadth of the vessel. The bottom of the crane collapses the JIB normally falls into the sea."*

29. During the cross examination of DW1 made on behalf of the second defendant, he had stated as under:-

*"Q: When was S7 Crane purchased by the Port Trust?*

*A: It was purchased in the year 1983. I am basing the*

*Statement on the records but I have not filed the same*

*before this Hon'ble Court.*



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*Q: What is the maximum capacity of load that S7 Crane could lift?*

*A: The safe working load is 10 tons.*

*Q: What is the life period of S7 Crane?*

*A: The life period of S7 is 20 years as per the norms fixed by the Ministry of Shipping.*

*Q: You have not filed in Court the proof of purchase the Crane in 1983, the safe working load and the 20 years life period of S7 Crane into this Hon'ble Court ?*

*A: Yes. We have not filed.*

... ..

*Q: Did the Port Trust pass any Order in writing extending the usage of S7 Crane beyond its life period which expired in 2003?*

*A: I am not aware. I have not seen any such Order."*

30. The facts of the case reveal reveal that the vessel M.V.MERCS HENDALA called at Chennai Port carrying 410 pieces of timber logs and had been allotted South Quay Berth No.3 on 6.8.2004 and the discharge of cargo commenced from 17.05 hours on 6.8.2004. The specific crane was



lifespan. DW1 has also admitted that the crane was corroded at the base/pedestal and it was evident to the naked eyes. Therefore, it is seen that the crane had been used beyond its period of life span.

31. The wooden logs had been discharged by using the said crane. On 8.8.2004 in the morning at about 7.55 AM, the crane collapsed on the port side of the vessel causing heavy and extensive damage and also loss of life and this could not have happened unless there was corrosion on the bottom of the pedestal structure of the crane. This is an issue which should have been settled at the time of survey. Unfortunately, the first defendant, for reasons best known to them, did not participate in the survey. As a matter of fact, they also did not produce the complete document which was marked as Ex.D7. The said document produced in court is incomplete. No reliance can be placed on the said document unless it is available in full before the court.

32. With regard to the survey report filed by the plaintiff particularly the report dated 11.9.2004, PW3 had been examined to speak about the report. The survey reports have been marked as Exs.P11 and P12. On the other hand, the first defendant, who had the responsibility to clear the issue as to whether they were responsible or not for the collapse of the crane did not file any document and was not in a position to speak about the incident.

DW1 was in charge of the operations at the time of the incident, but, he was



not officially present at the time of the particular incident. He only spoke from the records. He admitted that the crane was beyond the period of lifespan of 20 years. He tried to avoid giving direct answers on the said issue. However, on compulsion and on direction of the court, he produced Ex.D8, letter from the Ministry of Shipping dated 19.8.1998 wherein the Ministry of Shipping had stipulated the lifespan of a crane as only 20 years. DW1 had admitted that the crane in question was beyond the period of lifespan.

33. Once the first defendant had provided a crane which was beyond its lifespan, then they had failed to comply with their obligations to ensure safety and security of the persons and members who use the Port. This obligation of the first defendant was absolute. The Dock Workers (Safety, Health and Welfare) Act 1986 and its Regulations 1990 are very specific in this regard. Once the plaintiff had established that the crane collapsed causing extensive damage, the burden shifted to the first defendant to see that the crane was in good and working condition and was not corroded as claimed by the plaintiff. That burden has not been discharged by the first defendant. As a matter of fact, they produced a witness, who did not know anything about the incident. The witness admitted that the particular authority who issued the certificates, Exs.D4 and D6 was available.

However he was not examined. The first defendant also did not take care to



examine the crane operator, who actually operated the crane. The crane driver was also available, but, he was not examined as witness. None of the responsible persons from the first defendant was examined as witness. The burden, which the first defendant ought to have discharged, could have been discharged only by examining the said witnesses. They cannot shift the blame on the second and third defendants. That shifting of blame can be done only when they discharge their initial burden to establish that the crane was in a good and working condition.

34. DW1, who actually stated that at the time of accident, he was the Assistant Executive Engineer and was in charge of repairs and maintenance of Tugs, Pilot Launches belonging to the first defendant, admitted in his evidence that he had not inspected the crane. The first defendant relied on Exs.D4 to D6. But, the competent person to speak about such documents was not examined. As a matter of fact, it is seen from the records that the plaintiff had issued a notice dated 16.10.2014 marked as Ex.B13 calling upon the first defendant to produce the certificate issued by the Chief Inspector for Dock Safety on 26.11.2002 in favour of one V.M.Vairavan, who is said to have examined the said crane and issued Test Certificate on 17.12.2003.

35. The plaintiff also called upon the first defendant to produce the



and also the annexures to the Report of the Enquiry Committee dated 17.8.2004 marked as Ex.D7. None of these documents were produced.

Naturally an adverse inference as against the first defendant will have to be drawn under section 114(g) of the Indian Evidence Act 1872 which provides that if a party is called upon to produce a document and does not produce such document, then a reasonable presumption can be drawn that the document had not been produced only because it would speak adverse to the party who had to produce such a document.

36. In this case, the first defendant was in possession of the document for which notice, Ex.P13 has been issued calling upon the first defendant to produce such document. They have not denied that they were in possession of the document. However, they still did not produce the document. As a matter of fact, they should have atleast produced the annexures to Ex.D7 dated 17.8.2004, but they have not given any reason as to why the the annexures were not produced. An incomplete document can never be examined by the court. It has to be rejected by the court.

37. It is also pointed out that the crane was owned by the first defendant. Naturally the maintenance of the same was an obligation of the first defendant. The plaintiff had no option except to use the crane given by the first defendant for discharging the cargo. Therefore, since the first

defendant failed to provide a crane which was in a good condition, not only



did the plaintiff suffer damages but one of the workmen also unfortunately died. When this is the case, the negligence of the first defendant stares in the face of the first defendant. I have no hesitation in holding that the first defendant had provided a crane which had run its life time. Therefore, the fitness of the crane had not been proved in the manner known to law by examining the persons who issued the certificate particularly Exs.D4 and D6. In such circumstances, no other conclusion can be reached except to hold that the first defendant was directly responsible for the collapse of the crane. Owing to the collapse of the crane, the vessel suffered damages. For compensating the plaintiff, the expenses incurring owing to the repairs of such damages, the first defendant alone has to be held responsible. Therefore, Issue Nos. 2 and 3 are answered against the first defendant.

**38. Issue No.4:-** The first defendant had stated that they would not permit the vessel to sail away from the Port of Chennai since the crane had suffered damages and they estimated the damages at Rs.18,79,330/- and called upon the plaintiff to deposit the said amount before the vessel can be permitted to leave. Therefore, the plaintiff had been forced to file W.P.No.25094 of 2004 seeking a direction against the first defendant to permit the vessel to sail to carry out the repairs. An order was passed by this court directing to deposit a sum of Rs.18,79,330/-. That amount was



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39. This particular issue was whether the plaintiff was entitled to return of the suit amount. It is seen that the crane had collapsed owing to the negligent manner in which it was maintained by the Port Trust. The plaintiff, who were owners of the ship over which the crane collapsed cannot be made responsible if the crane was maintained badly by the first defendant. The first defendant was the owner of the crane. They had a responsibility to maintain the crane. They are the only persons who can maintain the crane. This court had directed deposit of the amount without prejudice to the rights of the plaintiff to raise necessary claim in appropriate proceedings. The appropriate proceedings are the institution of this suit. The plaintiff cannot be held responsible for the collapse of the crane or for the loss incurred by the first defendant owing to the collapse of the crane. Therefore, this issue is answered in favour of the plaintiff holding that the plaintiff is entitled for the sum together with accrued interest.

40. **Issue Nos.5 to 7:-** These issues have been vehemently contested by the learned counsel for the first defendant. Some of the bills had been pointed out claiming that there is no reference that the bills/invoices produced actually relate to the expenses towards repairing the vessel.

41. It is not in dispute that the vessel had suffered extensive damage.

When the vessel suffered damages, despite the repair expenses, when the



vessel had been berthed at the Port of Chennai, it could not sail further. At that interregnum period, the sailors and other crew members of the vessel will have to be accommodated in the shore. When the repairs are carried out to the vessel, for safety reasons, the sailors and crew will have to be accommodated in places in and around the Port Trust. The expenses for that will have to be met by the plaintiff. The expenses towards repairs of the ship will have to be met by the plaintiff. The expenses towards purchase of spare parts and other necessary equipments, for the repair of the ship will have to be borne by the plaintiff. During the repair work, the ship will have to be continuously berthed in the Quay of the first defendant. Therefore, the plaintiff necessarily had to pay berth charges. This additional expense is the direct result of damages caused to the vessel. If the vessel had not suffered, it would have continued the voyage and it would also have earned hire charges for the plaintiff. Owing to the fact that it suffered loss, it could not continue the voyage in accordance with the Charterer Agreement entered with the second defendant. The plaintiff had suffered loss on that ground also.

42. After carrying out the minor repairs at Chennai, the vessel had to sail to Colombo to carry out major repairs. In this regard, the plaintiff also examined the competent witnesses P.Ws.1 and 2. Even though they have been cross examined extensively, still the fundamental fact is that the vessel



had suffered damages and the repairs done cannot be either disputed or denied. These expenses suffered by the plaintiff was directly due to the collapse of the crane. The collapse of the crane was directly due to the lack of proper maintenance of the crane. The collapse of the crane was due to the usage of the crane beyond its lifespan. Naturally, the owner of the crane viz., the first defendant will have to compensate the loss incurred by the plaintiff. But for the fall of the crane over the vessel, the vessel could have continued its voyage as agreed with the second defendant. The claim of the plaintiff, is therefore, valid. They have not only suffered heavy expenses for repairing the vessel, but, also had to pay additional berth charges to the first defendant. They had to pay the expenses for the stay of the crew and sailors during the period of its berthing at Chennai Port. All these expenses could have been avoided if the plaintiff was provided a crane which was in a good condition. The first defendant should also remember that not only the plaintiff had suffered loss, but, there was also loss of life. The first defendant cannot shift the blame on the second and third defendant. The expenses met by the plaintiff has been extracted hereunder:-

|                                                                                        |                       |
|----------------------------------------------------------------------------------------|-----------------------|
| <i>Charges paid towards berth hire charges, Pilotage fees, port dues and cold move</i> | <i>Rs.8,91,646.00</i> |
| <i>Expenses incurred for Note of Protest</i>                                           | <i>Rs.630.00.00</i>   |
| <i>Additional light dues paid to the Customs Department for</i>                        | <i>Rs.6864.00</i>     |



|                                                                                                            |                       |
|------------------------------------------------------------------------------------------------------------|-----------------------|
| <i>Charges paid towards berth hire charges, Pilotage fees, port dues and cold move</i>                     | <i>Rs.8,91,646.00</i> |
| <i>the extended stay</i>                                                                                   |                       |
| <i>Cost of fresh water charges</i>                                                                         | <i>Rs.11,400.00</i>   |
| <i>Expenses incurred towards boarding, lodging and conveyance for the representatives of the plaintiff</i> | <i>Rs.94,035.25</i>   |
| <i>Fees paid to the MMD</i>                                                                                | <i>Rs.12,000.00</i>   |
| <i>Expenses incurred for the inspection by MMD officials</i>                                               | <i>Rs.22,127.00</i>   |
| <i>Expenses incurred for film developing and printing</i>                                                  | <i>Rs.913.00</i>      |
| <i>Mobile Phone expenses</i>                                                                               | <i>Rs.2339.00</i>     |
| <i>Communication expenses</i>                                                                              | <i>Rs.9200.00</i>     |
| <i>Agency fee paid to J M Baxi &amp; Co</i>                                                                | <i>Rs.46,000.00</i>   |
| <i>Cost of bunkers (USD 16864)</i>                                                                         | <i>Rs.7,76,204.00</i> |

43. I have no hesitation to hold that the plaintiff is entitled to the suit claim towards loss of damages suffered owing to the collapse of the crane on the vessel.

44. Now, the liability of the second and third defendants will have to be examined. It is the contention of the second and third defendants that the suit is barred by limitation. It has been submitted on behalf of second and third defendants by pointing out Section 21 of the Limitation Act that any claim as against the second and third defendants should have been initiated



45. The date of the accident was 8.8.2004. A statutory notice had been issued on 31.12.2004. The statutory period has to be computed from the date of accident viz., 8.8.2004. The suit was filed on 4.2.2005. Thereafter, the plaintiff filed Application No.3304 and 3305 of 2006 on 10.1.2008 to implead the second and third defendants. The Applications were ordered on 10.1.2008. Suit summons to the second and third defendants were served on 26.10.2010. The cause of action had arisen on 8.8.2004. Thus, by any stretch of imagination, the suit is barred by limitation as against the second and third defendants. By any stretch of imagination, the calculation of three years had expired on 8.8.2007.

46. Section 21 of the Limitation Act, 1963 reads as under:-

**"21.Effect of substituting or adding new plaintiff or**

**defendant—**(1) Where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party:

Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to

have been instituted on any earlier date.



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(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff."

47. A reference can be made to ***Ramalingam Chettiar vs. T.K.Pattabiraman and another*** (2001) 4 SCC 96, wherein it has been held as under:-

*"Learned counsel for the respondent referred the proviso to [Section 21](#) of the Limitation Act and on the strength thereof argued that even if the application for impleadment of State of Tamil Nadu was allowed on 11.6.1979 the said order has to be understood as if impleadment of defendant no.2 was with effect from the date of filing the suit. There is no substance in the argument. [Section 21](#) of the Limitation Act contemplates two situations one under the substantive provision which provides that where after filing of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been brought on the day when he was added or substituted as a party in the suit. The second situation contemplated under the proviso*



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*to the substantive provision is where the court is satisfied that a new plaintiff or defendant was omitted to be added or substituted due to a mistake in good faith, the court may direct that the suit, as regards the newly added or substituted party, shall be deemed to have been instituted on any earlier date. Thus, under the proviso, if the court is satisfied, it can direct that the suit as regards newly added or substituted plaintiff or defendant shall be deemed to have been instituted on an earlier date. In such a case, the court after substituting or adding a party in the suit is required to pass a separate/further order that the suit as regards the newly added defendant or plaintiff shall be deemed to have been instituted with effect from the date the suit was laid. Merely adding or substituting a plaintiff or defendant by the court is not enough. In the absence of any order that the impleadment of newly added or substituted party shall take effect from the date of institution of a suit, the period of limitation so far as the newly added or substituted shall run from the date of their impleadment in the suit. We have looked into the records but do not find*



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*the Limitation Act that the impleadment of the State of Tamil Nadu would take effect from the date of institution of the suit. In the absence of such an order by the trial court, the suit filed by the respondent was barred by limitation as contemplated under [Section 59](#) of the Act."*

48. It is clear that the order dated 10.1.2008 impleading second and third defendant would not take effect from the date of instituting the suit, but, would take effect from the date of the said order. On the date of the order, the suit claim was barred as against the second and third defendants. Therefore, in accordance with the observations above, I hold that the first defendant alone is responsible for the claim of the plaintiff and the suit as against the second and third defendant is barred by limitation and no claim can be laid against the second and third defendants.

49. In view of the above discussion, with respect to Issue No.5, I hold that the first defendant alone is liable to compensate the plaintiff for the suit claim and with respect to issue Nos.6 and 7, I hold that the suit is barred by limitation as against the second and third defendant and they are not liable for the suit claim.

**50. Issue No.8:-** In the result,

(a) the suit is decreed with costs as prayed as against the first defendant; and



(b) the suit is dismissed as against the second and third defendant. No

order as to costs.

50. The Registry is delegated by the Court to determine the costs as per the Bill/Memo of Costs submitted by the plaintiff in accordance with Section 35 of C.P.C., as amended by the Commercial Courts Act, 2015. The plaintiff is specifically entitled to the fees and expenses of the witnesses, the legal fees and expenses incurred and for any other expenses incurred in connection with the judicial proceedings and also for recovery of the actual Court Fees paid into Court.

Sd./-C.V.K.J.

29/04/2021

//Certified to be true copy//

Dated at Madras this the      day of      2021.

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From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

**List of Witness:-**

P.W.1 - Captain M.L.D.Perera

P.W.2 - M.J.K.Perera

P.W.3 - B.Saibala

D.W.1 - G.S.Chitrappa

D.W.2 - H.P.Singh

**List of Exhibits:**



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1. Ex.P1 : Note of protest to Chairman, Port Trust of Chennai dated 8.8.2004
2. Ex.P2 : Letter from Master of Ship to the Chairman, Madras Port Trust dated 9.8.2004
3. Ex.P3 : Letter from Deputy Conservator, Chennai Port Trust to Master of the ship dated 9.8.2004
4. Ex.P4 : Copies of newspaper reports dated 9.8.2004, 10.8.2004 & 11.8.2004
5. Ex.P5 : Letter issued by the Mercantile Marine Department to the Master (Permission to sail) dated 31.8.2004
6. Ex.P6 : Disbursement accounts alongwith vouchers in respect of port charges & other expenses
7. Ex.P7 : Invoices/Vouchers for temporary repairs carried out in Chennai
8. Ex.P8 : Notice from the plaintiff to the first defendants alongwith acknowledgment card dated 31.12.2004
9. Ex.P9 : Authorisation letter dated 22.2.2013
10. Ex.P10 : Fax cover sheet and Report dated 9.8.2004
11. Ex.P11 : Final Report by Ericson & Richards dated 11.9.2004
12. Ex.P12 Final Report by Ericson & Richards dated 11.9.2004
13. Ex.P13 Notice issued by counsel for plaintiff to produce documents dated 16.10.2014

On the side of defendants

1. Ex.D1 Authorisation letter



2. Ex.D2 Charter Party Agreement dated 20.4.2004
3. Ex.D3 Authorization letter dated 1.4.2014
4. Ex.D4 Test Certificate No.CH/08/CWS/03 dated 17.12.2003
5. Ex.D5 Annual Statement dated 17.12.2003
6. Ex.D6 Test Certificate No.CH/08/CWS/04 dated 23.1.2004
7. Ex.D7 Report of Enquiry Committee dated 17.8.2004
8. Ex.D8 Letter from the Ministry of Shipping dated 19.8.1998
9. Ex.D9 Board Resolution dated 6.6.2016

Sd./-C.V.K.J.

29/04/2021

//Certified to be true copy//

Dated at Madras this the      day of      2021.

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