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A.Nos.138 and 479 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.02.2024

Pronounced on : 08.02.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Application Nos.138 and 479 of 2024

in

C.S.(Comm.Div.)No.4 of 2024

Value Shipping Limited

... Applicant in A.No.138/24
& Respondent in A.No.479/24

Vs.

Owners and parties interested in the
Vessel MV Nadhenu Purna
(IMO No.9339765)

... Respondent in A.No.138/24
& Respondent in A.No.479/24

Prayer in A.No.138/24: This application has been filed seeking interim arrest of the Vessel MV Navdhenu Purna flying an Indian Flag having IMO No.9339765 now lying at V.O.Chidambaranar Port, Tuticorin, together with her hull, tackle, engines, machinery, boats, bunkers, equipment, paraphernalia and all other appurtenances presently lying at the V.O. Chidambaranar Port, Tuticorin, pending disposal of the suit.



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Prayer in A.No.479/24:- This application has been filed seeking to vacate the order dated 08.01.2024 of the interim arrest of the Vessel MV Navadhenu Purna (IMO No.9339765) and allow the unconditional release of the said Vessel.

For Applicant/Plaintiff : Mr.Prathamesh Kamat
for Mr.Rahul M.Shankar

For Respondent/defendant : Mr.V.Raghavachari, Sr.Counsel
for Ms.Deepika Murali

COMMON ORDER

For the sake of convenience and clarity, the parties are referred to by their respective ranks in the main suit.

The issues that arise for consideration in these applications are as follows:-

(a) Whether the claim of the plaintiff is a maritime claim falling under Section 4 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (in short “the Admiralty Act, 2017”)?

(b) Whether the owners of the defendant vessel have committed breach of contract under



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Memorandum of Agreement (MoA) dated
31.10.2023?

(c) Whether the defendant is required to
furnish security to vacate the order of arrest dated
08.01.2024 passed against the defendant vessel?

2. The suit has been filed under the admiralty jurisdiction of this Court. The plaintiff had entered into a MoA dated 31.10.2023 with M/s.Arcadia Shipping Limited, the owner of the defendant vessel. Under the MoA, the plaintiff agreed to purchase the defendant vessel-MV Navdhenu Purna for a total consideration of USD 8.3 million. As per the terms and conditions of MoA, the plaintiff by way of security deposit lodged a deposit of 15% of the total sale consideration amounting to USD 1.245 million with the Escrow Agent, namely, Theo Sioufas Escrow Services LLP. On making the security deposit, an Escrow Agreement dated 09.11.2023 was entered into amongst the plaintiff, M/s.Arcadia Shipping Limited, owner of the defendant vessel, and Theo Sioufas Escrow Services LLP, the Escrow Agent.



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3. As per Clause 8 of the MoA dated 31.10.2023, the owners of the defendant vessel are required to obtain delivery documentation in the nature of statutory clearances, governmental permissions and certificates for legal transfer of ownership of the vessel in favour of the plaintiff.

4. According to the plaintiff, the owners of the defendant vessel committed breach of MoA dated 31.10.2023 by not complying with their requirements as per the terms and conditions contained therein. According to the plaintiff, the owners of the defendant vessel failed to obtain the statutory clearances, governmental permission and statutory certificates for legal transfer of ownership of the defendant vessel in favour of the plaintiff. According to the plaintiff, the owners of the defendant vessel repeatedly sought time for issuing the notice of readiness and also sought for extensions for postponing the cancellation date. In the MoA dated 31.10.2023, the date on which the notice of readiness has to be issued and cancellation date has been specifically fixed. According to the plaintiff, the owners of the defendant vessel have committed breach of Clause 5 of the MoA dated 31.10.2023 and



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therefore, they have rightly terminated the contract and rightly entitled to the suit claim comprising the following:-

- (a) The security deposit paid by the plaintiff at USD 12,45,000 (received subsequent to the order of arrest passed by this Court after deduction of USD 10000 towards fees payable to the Escrow Agent)
- (b) Interest on deposit -- USD 15,963.29/-
- (c) Expenses incurred by the plaintiff - USD 40,322.2/-
- (d) Loss of profit/business opportunity – USD 13,50,000/-
- (e) Legal costs - USD 2,00,000/-
- (f) Interest @ 8% per annum from the date of filing of the suit till payment/realization.

5. According to the plaintiff, the default/breach of the owners of the defendant vessel is evident from the following:-

Sl. No.	Date	Particulars	Extension whether granted or not
1.	21.11.2023	Respondent through its brokers addressed an email to the plaintiff, 3 days prior to the original cancellation date (i.e., 25th November 2023) to extend the cancellation date upto 7th December 2023. <u>Reason for extension:</u> The reason offered was to complete the	The said extension was granted by the plaintiff vide its email dated 27th November 2023 upto 7th December 2023.



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Sl. No.	Date	Particulars	Extension whether granted or not
		procedure of Class and Flag from IRS and DG Shipping. <u>Submission:</u> By this time, the defendant vessel was in fact under arrest under the orders of this Hon'ble Court. This fact was suppressed by the respondent while it was seeking extensions for other reasons.	
2.	05.12.2023	Respondent through its email to the plaintiff seeks a second extension of the cancellation date upto 15th December 2023. <u>Reason for extension:</u> Floods in Chennai causing delay in obtaining Class Extension Certificate from DG Shipping Office. <u>Submission:</u> Class Extension Certificates are issued by IRS i.e. Classification Society and not DG Shipping as falsely urged by the respondent.	The said extension was granted by the plaintiff vide its email dated 5th December 2023 upto 15th December 2023.
3.	09.12.2023	Respondent through its email to the plaintiff seeks extension of the cancellation date upto 21st December 2023. <u>Reason for extension:</u> Not received single voyage permission from IRS and time required to pursue IRS to issue 3 months extension. <u>Submission:</u> Single Voyage extension is not granted by IRS as it is a mere classification Society which is concerned with the validity of the Certificates of the vessel depending upon the condition of the vessel.	The said extension was rejected by the plaintiff vide its email dated 13th December 2023. Respondent was put to notice that if NOR was not issued before 15th December 2023, the plaintiff would place written notice for cancellation of the MOA and reserves its right to claim loss and damages.
4.	14.12.2023	Respondent through its email to the plaintiff, inter alia, seeks their co-operation, informs the plaintiff that permissions from IRS is not within their control.	



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Sl. No.	Date	Particulars	Extension whether granted or not
		<u>Submission:</u> Any prudent ship owner would know that the functioning and the time required for carrying out a statutory dry dock which is necessary for revalidating the Classification Certificate issued by IRS. A ship owner much less of an Indian Flagship cannot be heard to say that it does not know or have an estimation of the function of IRS and the average time taken for validation of Certificates.	
5.	16.12.2023	In a span of few days, the respondent through its email to the plaintiff once again seeks 4th extension till 26th December 2023 to enable IRS to issue a single voyage permission to China. <u>Submission:</u> The email is entirely misleading and attempts to hoodwink the plaintiff and now this Hon'ble Court. IRS is merely a classification society. It does not issue a single voyage permission. Unless the vessel is brought to the condition as necessary and to the satisfaction of the classification society, the classification society would not renew the validation certificate. It is only thereafter that the DG Shipping (not the IRS) would issue a single voyage permission.	The plaintiff by its email dated 17th December 2023 cancels the MOA on account of the default of the respondent in terms of Clauses 5 and 14 of the MOA and sought refund of the security deposit with interest and other costs and damages from the respondent.
6.	21.12.2023	The plaintiff vide its email to the respondent calls upon the owner of the respondent vessel to issue a Joint Written instructions to Escrow Agent for release of the security deposit of 15% of the sale price i.e. USD 1245000 Million.	



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6. The plaintiff categorically contends that the time is essence of MoA dated 31.10.2023. Hence, according to them, they are entitled for the balance suit claim, after deduction of USD 1235000 (USD 1245000-10000), which they have received pursuant to the orders passed by this Court on 24.01.2024.

7. This Court, based on the pleadings and the documents filed along with the plaint, granted an order of arrest of the defendant vessel on 08.01.2024 in A.No.138 of 2024. The arrest warrant on the defendant vessel has also been executed immediately thereafter. The owners of the defendant vessel entered appearance on behalf of the defendant vessel and they have filed a counter affidavit in A.No.138 of 24 and they have also filed an application in A.No.479 of 2024 seeking to vacate the order of arrest of the defendant vessel granted by this Court in favour of the plaintiff on 08.01.2024.

8. The defendant contends as follows:-

(a) They have not committed breach of contract as alleged by the plaintiff.



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(b) All efforts were made by the owners of the defendant vessel to obtain statutory clearances, governmental permission and certificates for the legal transfer of ownership of the defendant vessel in favour of the plaintiff.

(c) There was no delay on the part of the owners of the defendant vessel in obtaining all statutory clearances. The owners of the defendant vessel had sought for extension of the cancellation date only due to the delay owing to governmental inaction and the reasons were beyond their control. According to them, extensions sought for by them were on bonafide grounds. They have disclosed the details of the same in the counter affidavit.

(d) The owners of the defendant vessel has diligently pursued in obtaining the clearance and permission from the governmental authorities and the plaintiff was always kept informed of all efforts undertaken by them towards the same. The plaintiff has bypassed the efforts taken by the owners of the defendant vessel by indirectly reaching out to the authorities, thereby derailing the efforts taken by the owners of the defendant vessel to obtain clearance and permission from the governmental authorities at the earliest.



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(e) The owners of the defendant vessel, presently are facing financial distress and they are also attempting to sell the defendant vessel to a third-party, thereby depriving the plaintiff of a security to recover its dues.

9. According to the owners of the defendant vessel, MoA dated 31.10.2023 and the Escrow Agreement dated 09.11.2023 have to be read together and therefore, as per Clause 19 of the Escrow Agreement, neither of the party will be held liable for inadequate performance to the extent caused by a condition that was beyond the parties control. According to the owners of the defendant vessel, governmental inaction is also a force majeure condition as per clause 19 of the Escrow Agreement and therefore, the owners of the defendant vessel cannot be held liable on account of governmental inaction for not issuing the certificates/clearances on time.

10. According to the owners of the defendant, the claim of the plaintiff is not a maritime claim falling under Section 4(1)(r) of the Admiralty Act, 2017. The MoA dated 31.10.2023 is merely an



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agreement to sell and not a contract of sale. According to the owners of the defendant vessel, as per Clause 8 of MoA, an addendum to the existing MoA will have to be executed to reflect the particulars of delivery documentation to be handed over to the plaintiff in respect of the legal transfer of ownership and to register the vessel under the flag of the plaintiff's nominated flag State. Therefore, according to the owners of the defendant vessel, only upon execution of addendum, actual transfer of ownership of the defendant vessel will take place and a *right in rem* could have been possibly enforced by the plaintiff. Since the MoA dated 31.10.2023 was terminated by the plaintiff, even prior to its execution, the plaintiff has no right or authority to file this admiralty suit and seek arrest of the defendant vessel.

11. According to the owners of the defendant vessel, the MoA was unilaterally cancelled by the plaintiff on 17.12.2023 and in effect the sale had fallen through and the addendum as stated in Clause 8 of the MoA never came to be executed by and between the parties. According to the owners of the defendant vessel, without having a subsisting contract of sale in place with regard to the vessel, there could not arise any dispute



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between the parties within the scope and ambit of maritime claim and the plaintiff has miserably failed in establishing with its maritime claim specifically under Section 4(1)(r) of the Admiralty Act, 2017.

12. According to the owners of the defendant vessel, the grievance of the plaintiff specifically pertains to the refund of security deposit lying with a third-party/Escrow Agent in Singapore. Since the same has already been recovered by the plaintiff, as on date, the plaintiff does not even have an actionable claim, maritime or otherwise, against the owners of the defendant vessel or its vessel. The plaintiff has been unable to prove that there was a proven negligence on the part of the owners of the defendant vessel for the delay in obtaining the required clearances and permissions pertaining to the vessel. The plaintiff has not satisfied the requirements of Clause 14 of the MoA dated 31.10.2023 to seek compensation as claimed in the suit. Without any pleading or evidence produced by the plaintiff, the defendant shall not be liable to compensate the plaintiff for any of its alleged loss of profit, legal costs and other expenses, as the same is outside the purview of the MoA, which binds the parties.



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13. Heard Mr.Prathmesh Kamat, learned counsel, assisted by Mr.Rahul M.Shankar, learned counsel for the plaintiff; and Mr.V.Raghavachari, learned Senior counsel, assisted by Ms.Deepika Murali, learned counsel for the owners of the defendant vessel.

14. The learned counsel for the plaintiff drew the attention of this Court to the various clauses contained in the MoA dated 31.10.2023 and in particular, he referred to Clauses 5, 14 & 18. Relying upon the said clauses, the learned counsel for the plaintiff would submit as follows:-

(a) If the seller anticipated despite due diligence that the vessel is not ready for delivery, it was required to notify the plaintiff in writing, the date when they anticipate the vessel to be ready. In such an event, the clause provides the plaintiff an option either to extend the date of cancellation under the MoA or to cancel the MoA itself. The original date under the terms of MoA for cancelling the MoA was 25.11.2023.

(b) Under Clause 5(d) of the MoA, the cancellation, failure to cancel or even acceptance of the new cancelling date by the plaintiff is always without prejudice to its rights to claim damages from the owners



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of the defendant vessel and as per Clause 14, if the vessel is not ready by the original cancellation date, i.e., 25.11.2023. Thus, Clause 5(d) read with Clause 14 reserves the right of the plaintiff to claim damages irrespective of whether it extends the cancellation date or cancels the MoA itself.

(c) Clause 14 also contemplates that failure of the defendant to issue notice of readiness by the cancelling date or failure to be ready to complete the legal transfer of ownership of the vessel in favour of the plaintiff, the plaintiff is entitled to seek due compensation from the owners of the defendant vessel for all expenses with interest, which is a result of negligence of the owners of the defendant vessel whether or not the plaintiff cancels the agreement.

15. The learned counsel for the plaintiff also drew the attention of this Court to the various correspondences exchanged between the plaintiff and the owners of the defendant vessel and vice versa, and would submit that the owners of the defendant vessel had committed breach of contract by seeking for several extensions for the performance of the contract and despite granting the same, having not fulfilled their



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part of the contract, the plaintiff was constrained to terminate the contract and claim for refund of the security deposit amount as well as claim for damages and interest.

16. The learned counsel for the plaintiff also submits that the claim made by the plaintiff in the suit is a maritime claim falling under Section 4(1)(r) of the Admiralty Act, 2017, as the dispute arises out of the contract for sale of a vessel.

17. The learned counsel for the plaintiff, after referring to the various correspondences exchanged between the parties, would submit that the defendant has committed breach of contract by not fulfilling their part of the contract in executing a bill of sale in favour of the plaintiff. The learned counsel for the plaintiff submits that as seen from the documentary evidence placed on record, the plaintiff has been able to prove that there has been a proven negligence on the part of the defendant for the delay in obtaining the required clearances and permissions pertaining to the vessel. He would further submit that the arrest of the defendant vessel has been obtained by the plaintiff, only to



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seek security of its suit claim pending disposal of the suit. He would submit that the owners of the defendant vessel are not presently in sound financial condition and therefore, unless and until security is furnished by the defendant to the satisfaction of the plaintiff, the defendant vessel cannot be released from arrest.

18. The learned counsel for the plaintiff would submit that eventhough the security deposit has been refunded to the plaintiff by the Escrow Agent pursuant to the orders passed by this Court, the owners of the defendant vessel are still liable to pay the following sums of money to the plaintiff as detailed hereunder:-

Sl.No.	Particulars	Amount in USD
1.	Fees deducted from Security Deposit and charged by Escrow Agent	10000
2.	Interest on deposit @ 9% (from 15.11.2023 till 31.01.2024 – 77 days)	23637.29
3.	Expenses incurred by the plaintiff	40,322.2
4.	Loss of profit/business opportunity	1350000
5.	Legal costs incurred till date	122000
6.	Interest @ 8% from the date of filing of the suit till payment/realization	

19. The learned counsel for the plaintiff would also submit that the contention of the defendant that the delay was on account of force



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majeure events is entirely misplaced. Being a ship owner carrying on business for several years, the owners of the defendant vessel knows fully well the amount of time taken for obtaining statutory and government clearances. The owners of the defendant vessel cannot plead force majeure clause contained in Clause 19 of the Escrow Agreement for the purpose of avoiding payment of compensation to the plaintiff. Further, he would submit that the MoA dated 31.10.2023 and Escrow Agreement dated 09.11.2023 are two different contracts and since the MoA does not contain a force majeure clause, the owners of the defendant vessel cannot plead force majeure for avoiding the payment of the suit claim. The learned counsel for the plaintiff would also submit that there was no misrepresentation on the part of the plaintiff as alleged by the owners of the defendant vessel. According to him, the name and flag of the defendant vessel was never changed at the behest of the plaintiff. Even now, according to him, the defendant vessel is under the ownership of M/s.Arcadia Shipping Limited and the ownership of the said vessel was never transferred to the plaintiff.



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20. The learned counsel for the plaintiff would submit that the test that an admiralty court follows at the time of arrest or vacating the order of arrest is whether the plaintiff has “a reasonably arguable best case”. He would also submit that there was no necessity for the plaintiff to satisfy the requirements of Order XXXVIII Rule 5 of CPC, 1908, for an admiralty suit. He would submit that seeking arrest of the defendant vessel is a statutory right under the Admiralty Act, 2017, whereas the attachment under Order XXXVIII Rule 5 of CPC is a discretionary relief.

21. The learned counsel for the plaintiff would further submit that the plaintiff is entitled to security deposit pending disposal of the suit, and for obtaining security, the plaintiff has to make out a reasonably arguable best case. Therefore, according to him, at this prima facie stage, it is sufficient for the plaintiff to show that they are justified in making the claims as sought for in the plaint.

22. The learned counsel for the plaintiff also drew the attention of this Court to the amount of security which the defendant will have to furnish for obtaining the release of defendant vessel from arrest. He



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would further submit that the legal costs/expenses incurred for enforcement of maritime claim is also a maritime claim, which the plaintiff is entitled to claim in the suit. According to him, the entire suit claim is a maritime claim and therefore, the admiralty suit has been properly filed.

23. The learned counsel for the plaintiff would further submit that the dispute cannot be referred to arbitration at this stage even before the owners of the defendant vessel furnishes security to the extent of the suit claim. Being an *action in rem*, the suit claim against the defendant vessel is not an arbitrable dispute. He would submit that only after the owners of the defendant vessel furnishes security to the extent of the suit claim to the satisfaction of the plaintiff, the defendant vessel can be ordered to be released from arrest and the parties can be directed to go for arbitration as per the arbitration agreement contained in the MoA.

24. In support of his submissions, the learned counsel for the plaintiff drew the attention of this Court to the following authorities:-



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Instalment Supply Limited Vs. STO, Ahmedabad and

Ors [1974 (4) SCC 739];

MV Golden Pride Vs. GAC Shipping (India) Private

Limited & Ors [2023 SCC Online Bom 967];

Videsh Sanchar Nigam Limited Vs. MV Kapitan Kud

& Ors [1996 (7) SCC 127];

Raj Shipping Agencies Vs. Barge Madhaava &

Another [2020 SCC Online Bom 651];

Vision Projects Technologies Private Limited Vs.

OSV Crest Mercury in I.A.No.17189 of 2021 in

C.A.S(L)No.13462 of 2021, dated 26.07.2022;

Songa Venue, High Court of Singapore [2021 (2) LLR

365];

Patrick Stevedores No.2, Vs. Ship, Federal Court of

Australia [1997 FCA 631];

Chrisomar Corporation Vs. MJR Steels Private

Limited & Another [2018 (16) SCC 117]; and

Siem Offshore Redri AS Vs. Altus Uber [2018 SCC

Online Bom 2730]



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WEB COPY 25. Per contra, the learned counsel for the respondent/defendant would submit as follows:-

(a) The owners of the defendant vessel had sought for extensions only due to the delay owing to the governmental inaction and reasons beyond their control. He drew the attention of this Court to the various correspondences exchanged between the parties and would submit that as seen from the same, the owners of the defendant vessel have diligently pursued in obtaining clearances and permissions from the governmental authorities and the plaintiff was also kept informed of all the efforts taken by them towards the same.

(b) Both the MoA and Escrow Agreement have to be read in conjunction and therefore, the force majeure clause contained in the Escrow Agreement applies to the MoA as well. Only due to the reasons beyond the control of the defendant, there was a delay in getting the government clearances. Therefore, the owners of the defendant vessel cannot be held liable to pay the suit claim.

(c) Having obtained the refund of the security deposit from the Escrow Agent with the cooperation of the owners of the defendant vessel



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subsequent to the filing of the suit, the plaintiff is not entitled to pursue with the suit as the remaining sums of money claimed by them is not a maritime claim falling under Section 4 of the Admiralty Act, 2017.

(d) The suit claim is not a maritime claim as the MoA executed by and between the parties is merely an agreement to sell and not a contract of sale. Therefore, the suit claim does not fall under Section 4(1)(r) of the Admiralty Act, 2017, and hence, it is not a maritime claim.

(e) The plaintiff has been unable to prove that there has been proven negligence on the part of the owners of the defendant vessel for the delay in obtaining the required clearances and permissions pertaining to the vessel. The delay in obtaining clearances and permissions for the defendant vessel was because of the governmental inactions and it is a force majeure event. Despite the owners of the defendant vessel diligently complying with all applicable laws and regulations, there was a delay in obtaining clearances only on account of the governmental inactions. The plaintiff has also not pleaded in the plaint or in the affidavit proving negligence on the part of the owners of the defendant vessel, which is a requirement under Clause 14 of the MoA dated 31.10.2023. They have not substantiated the same with any piece of



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evidence. Therefore, no liability arising out of the said clause can be attributed to the defendant. Therefore, there exist no prima facie case against the defendant. No consideration ever flowed to the defendant as the security deposit was maintained with the Escrow Agent, which has since been released back to the plaintiff. Since the MoA was terminated by the plaintiff prior to the execution of Addendum, the plaintiff never had any *right in rem* or authority under the MoA to proceed against the vessel.

(f) Since 25.10.2023, the defendant vessel has been at Tuticorin Port and has not left for any voyages or has not been hired for any other charters. The plaintiff is well aware of the same and while there was absolutely no threat for the vessel to sail away as alleged, the plaintiff has fabricated a false sense of urgency, suppressed material facts and obtained the order of arrest from this Court on 08.01.2024.

(g) The vessel's details in the Equasis database have also been renamed from MV Navdhenu Purna to Marigold, and the flag country has been changed from India to Panama and these changes were effected from 01.10.2023. Further, the plaintiff's name – Value Shipping Limited, China, has been shown as the registered owner of the vessel since



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31.10.2023, i.e., from the date of the MoA. Without taking physical delivery of the vessel or making the payment of the agreed sale price, modifying the name of the vessel or that of the owner and flag details of the vessel is a blatant misrepresentation and is in bad faith and is in breach of the terms of MoA dated 31.10.2023.

(h) The owners of the defendant vessel are facing irreparable loss and hardship due to the malafide case of the plaintiff and misrepresentation of the narrative of events before this Court. Till date, for every day of the vessel being without a charter, the defendant will be losing USD 10000-15000 per day.

(i) The plaintiff is entitled only to receive the security deposit lying with the Escrow Agent and since the same has already been refunded, there exist no prima facie case in its favour in the nature of *right in rem* or actionable claim against the defendant. If the plaintiff wishes to adjudicate the matter any further, the remedy lies under Clause 16 of the MoA dated 31.10.2023 being arbitration conducted in accordance with the English Law under the aegis of the London Maritime Arbitration Association. Therefore, the plaintiff has failed to make out a case for securing any of its claims.



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26. In support of the respondent/defendant's contention that the suit claim is not a maritime claim as it arises merely out of an agreement to sell and not a contract of sale, the learned Senior counsel for the defendant places reliance of a decision of the Hon'ble Supreme Court in ***Instalment Supply Limited Vs. STO, Ahmedabad and others [(1974) 4 SCC 739]***

DISCUSSION:-

27. The claimant exercising maritime claim seeks arrest of a ship either for the purpose of obtaining security for the suit claim or to execute a decree against the owners of the defendant vessel.

28. In the instant case, the arrest of the defendant vessel has been sought for by the plaintiff to obtain security for the satisfaction of the suit claim. The plaintiff has also acquired jurisdiction to file the suit before this Court under the admiralty jurisdiction, since the defendant vessel is lying at the port of Tuticorin which is within the admiralty jurisdiction of this Court.



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29. The Commercial Courts Act, 2015, has made special amendments in respect of costs involving commercial disputes and has presented itself as a possible solution to the problem of imposing realistic costs in ordinary civil suits. In an ordinary civil suit, the costs awarded is very different from the actual realistic costs and due to the same, frivolous and vexatious litigations could not be curbed. Only to avoid such an eventuality, amendments have been made by the legislature to Sections 35 and 35(A) of the Civil Procedure Code and the said amendments are applicable only to Commercial Courts Act, 2015, where the Commercial Division of this Court is having the power to impose realistic costs on the offender.

30. The following are the undisputed facts insofar as the case on hand is concerned:-

(a) M/s.Arcadia Shipping Limited/the applicant in A.No.479 of 2024 is the owner of the defendant vessel.

(b) The plaintiff, as a purchaser, has entered into a Memorandum of Agreement (MoA) dated 31.10.2023 with M/s.Arcadia Shipping Limited, the owner of the defendant vessel, agreeing to purchase the



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defendant vessel.

WEB COPY (c) The plaintiff, Theo Sioufas Escrow Services LLP, Singapore/the Escrow Agent, and the owners of the defendant vessel, have jointly entered into an Escrow Agreement dated 09.11.2023.

(d) The plaintiff had made a security deposit as per the terms and conditions of the MoA dated 31.10.2023 of USD 12,45,000/- with the Escrow Agent on 15.11.2023. The said amount covers 15% of the total consideration, which is USD 8.3 million.

(e) The original cancellation date fixed under the MoA dated 31.10.2023 was 25.11.2023. The cancellation date is the date before which the notice of readiness for delivery of vessel by the owners of the defendant vessel will have to be issued to the plaintiff.

(f) As per Clause 8 of the MoA dated 31.10.2023, M/s.Arcadia Shipping Limited, the owner of the defendant vessel, will have to obtain all governmental clearances and permissions from the classification society and other statutory authorities prior to the date of cancellation and issue notice of readiness of the defendant vessel to the plaintiff.

(g) By email dated 21.11.2023, the owners of the defendant vessel through their brokers sought for extension of the cancellation date upto



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07.12.2023 from 25.11.2023. The reason given by them was that they had to complete the procedure of Class and Flag from IRS (Indian Register of Shipping) and DG shipping. The extension sought for by the owners of the defendant vessel on 21.11.2023 was granted by the plaintiff through its email dated 27.11.2023 to the owners of the defendant vessel upto 07.12.2023.

(h) The second extension was also sought for by the owners of the defendant vessel through their email dated 05.12.2023 seeking a second extension of the cancellation date from 07.12.2023 to 15.12.2023. The reason for the second extension given by the owners of the defendant vessel was that the floods in Chennai was causing the delay in obtaining Class Extension Certificate from the DG shipping office. The second extension was also granted by the plaintiff through its email dated 05.12.2023 and the cancellation date was extended upto 15.12.2023 from 07.12.2023.

(i) A third extension was also sought for by the owners of the defendant vessel through its email dated 09.12.2023, under which, they had sought for extension of cancellation date from the plaintiff upto 21.12.2023. The reason given for the third extension was that they have



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not received the single voyage permission from the IRS and they require further time to pursue IRS to issue 3 months extension. The third extension sought for by the owners of the defendant vessel was rejected by the plaintiff through its email dated 13.12.2023. The owners of the defendant vessel were also put on notice by the plaintiff that if the notice of readiness is not issued before 15.12.2023, the plaintiff would place written notice for cancellation of the MoA and reserves its right to claim loss and damages.

(j) A fourth extension was also sought for by the owners of the defendant vessel through its email dated 16.12.2023 seeking extension of the cancellation date upto 26.12.2023 to enable them to obtain permission from the IRS for issuance of a single voyage permission to China. The plaintiff by its email dated 17.12.2023 cancelled the MoA on account of default of the owners of the defendant vessel in terms of Clauses 5 and 14 of the MoA dated 31.10.2023 and sought for refund of the security deposit with interest and other costs and damages.

(k) The plaintiff by its email dated 21.12.2023 calls upon the owners of the defendant vessel to issue joint written instructions to the Escrow Agent for release of the security deposit of 15% of the sale price,



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i.e., USD 12,45,000/- to the plaintiff.

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(I) Only after filing of the suit and obtaining an order of arrest of the defendant vessel, pursuant to the orders passed by this Court on 24.01.2024 in A.No.138 of 2024, the plaintiff was able to obtain refund of the security deposit amount of USD 12,35,000/- (USD 12,45,000 - USD 10000 towards Escrow Agent fees) from the Escrow Agent by following the procedure as contemplated under the MoA dated 31.10.2023.

31. The aforesaid extensions sought for by the owners of the defendant vessel will clearly demonstrate the failure on the part of the owners of the defendant vessel to deliver the defendant vessel to the plaintiff within the stipulated time as fixed under the MoA dated 31.10.2023. The plaintiff had also granted two extensions to the owners of the defendant vessel for completing the statutory formalities in terms of the MoA dated 31.10.2023. However, despite the same, the owners of the defendant vessel had sought for further extensions in the form of third and fourth extensions. In view of the same, the plaintiff has ultimately cancelled the MoA dated 31.10.2023 through its email dated



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16.12.2023 on account of the default of the owners of the defendant vessel in terms of Clauses 5 and 14 of the MoA dated 31.10.2023 and had also sought for refund of the security deposit amount with interest and other costs and damages from the owners of the defendant vessel.

32. Admittedly, only due to the fact that the owners of the defendant vessel were unable to obtain the governmental permissions and statutory clearances as agreed upon in the MoA dated 31.10.2023, the owners of the defendant vessel had repeatedly sought extensions from the plaintiff for fulfilling their part of the obligations under the MoA dated 31.10.2023.

33. The MoA dated 31.10.2023 is an agreement entered into between the owners of the defendant vessel and the plaintiff, under which, the owners of the defendant vessel(M/s.Arcadia Shipping Limited) have agreed to sell the defendant vessel to the plaintiff, whereas the Escrow Agreement dated 09.11.2023 has been entered amongst the plaintiff, owners of the defendant vessel and Theo Sioufas Escrow Services LLP, Singapore, to secure the sale consideration and to protect



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the interest of both the plaintiff and the owners of the defendant vessel.

The object of the Escrow Agreement dated 09.11.2023, as seen from the same, makes it clear that the said agreement has been entered into only for the purpose of operating and releasing the funds either to the plaintiff or to the owners of the defendant vessel as per the terms and conditions of the MoA dated 31.10.2023. Clause 18 of the MoA dated 31.10.2023, on a prima-facie consideration, makes this Court to conclude that the Escrow Agreement dated 09.11.2023 cannot be read in conjunction with the MoA dated 31.10.2023. The arbitration agreement in the MoA dated 31.10.2023 and the arbitration agreement in the Escrow Agreement dated 09.11.2023 are different and the seat of the arbitration is also different and this would show that both the MoA dated 31.10.2023 and the Escrow Agreement dated 09.11.2023 are independent contracts. Therefore, the contention of the owners of the defendant vessel that the MoA dated 31.10.2023 and the Escrow Agreement dated 09.11.2023 have to be read together is rejected by this Court.

34. Admittedly, the force majeure clause is not available in the MoA dated 31.10.2023 and it is available only in the Escrow Agreement



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dated 09.11.2023. Therefore, the owners of the defendant vessel cannot take the plea of “force majeure” as a defence for the suit claim, since the MoA does not permit the owners of the defendant vessel to take such a plea. When the MoA stipulates a cancellation date, before which the notice of readiness will have to be issued by the owners of the defendant vessel, necessarily the owners of the defendant vessel are bound by the same. The plaintiff need not also wait endlessly for the completion of sale by the owners of the defendant vessel, that too, when they have already made a security deposit covering 15% of the total sale price with the Escrow Agent.

35. The relevant clauses in the MoA dated 31.10.2023, that are required to be considered by this Court for deciding these applications, are set out hereunder:-

5. Time and place of delivery and notices:-

(a) The vessel shall be delivered and taken over safely afloat at a safe and accessible berth or anchorage at / in one safe port / safe anchorage in Colombo, Sri Lanka (state place/range) in the Sellers' option. In case the Escrow Account cannot be opened and ready to receive the deposit



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before 3rd November, Sellers only could tender the NOR three (3) banking days after the Escrow Agent inform both parties the Escrow Account is ready for receive the fund, and the cancelling date will be logically extended to 6 banking days after the Escrow Agent inform both the parties the Escrow account is ready for receive the fund.

Notice of readiness shall not be tendered before 6th November 2023

Cancelling date : 25.11.2023

(b) The sellers shall keep the buyers well informed of the vessel's itinerary and shall provide the buyers with twenty (20), appropriate ten (10), five (5) and three (3) days' notice of the date the sellers intend to tender notice of readiness and of the intended place of delivery and the place of delivery to be declared by the sellers together with the said 10 days' notice.

When the vessel is at the place of delivery and physically ready for delivery in accordance with this agreement, the sellers shall give the buyers a written notice of readiness for delivery.

(c) If the sellers anticipate that notwithstanding the exercise of the due diligence by them, the vessel will not be ready for delivery by the cancelling date they may notify the buyers



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in writing stating the date when they anticipate that the vessel will be ready for delivery and proposing a new cancelling date. Upon receipt of such notification, the buyers shall have the option of either cancelling this agreement in accordance with Clause 14 (sellers' default) within three (3) banking days of receipt of the notice or of accepting the new date as the new cancelling date, if the buyers have not declared their option within (3) banking days of receipt of the sellers' notification or if the buyers accept the new date, the date proposed in the Sellers' notification shall be deemed to be the new cancelling date and shall be substituted for the cancelling date stipulated in line 79.

If this agreement is maintained with the new cancelling date all other terms and conditions hereof including those contained in Clause 5(b) and 5(d) shall remain unaltered and in full force and effect.

(d) Cancellation, failure to cancel or acceptance of the new cancelling date shall be entirely without prejudice to any claim for damages the buyers may have under clause 14 (sellers' default) for the vessel not being ready by the original cancelling date.



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(e) Should the vessel become an actual, constructive or compromised total loss before delivery the deposit together with interest earned if any, shall be released immediately to the buyers whereafter this agreement shall be null and void.

8. Documentation:-

The place of closing: In the office of Sioufas Singapore or a remote closing, but, both buyers and sellers executed documents have to be at the Escrow Agent office to be exchanged. In exchange for the payment of the deposit and the balance, sellers to provide all delivery documentation that buyers reasonably require to support the legal transfer of ownership and to register the vessel under the flag of buyers' nominated flag state. Such documentation to be specified in an addendum to the agreement (Addendum) subsequent to an agreement/signature of this agreement.

13. Buyers' default:-

should the deposit not be lodged in accordance with Clause 2 (deposit), the sellers have the right to cancel this agreement, and they shall be entitled to claim compensation for their losses and for all expenses incurred together with interest.



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Should the purchase price not be paid in accordance with Clause 3 (payment), the sellers have the right to cancel this agreement, in which case the deposit together with interest earned, if any shall be released to the sellers. If the deposit does not cover their loss, the sellers shall be entitled to claim further compensation for their losses and for all expenses incurred together with interest.

14. Sellers' default:-

Should the sellers fail to give notice of readiness in accordance with Clause 5(b) or fail to be ready to validly complete a legal transfer by the cancelling date the buyers shall have the option of cancelling this agreement. If after notice of readiness has been given but before the buyers have taken delivery, the vessel ceases to be physically ready for delivery and is not made physically ready again by the cancelling date and new notice of readiness given, the buyers shall retain their option to cancel. In the event that the buyers elect to cancel this agreement, the deposit together with interest earned, if any, shall be released to them immediately.

Should the sellers fail to give notice of readiness by the cancelling date or fail to be ready



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to validly complete a legal transfer as aforesaid they shall make due compensation to the buyers for their loss and for all expenses together with interest if their failure is due to proven negligence and whether or not the buyers cancel this agreement.

18. Entire Agreement:-

The written terms of this agreement comprise the entire agreement between the buyers and the sellers in relation to the sale and purchase of the vessel and supersede all previous agreements whether oral or written between the parties in relation thereto.

Each of the parties acknowledges that in entering into this agreement, it has not relied on and shall have no right or remedy in respect of any statement, representation, assurance or warranty (whether or not made negligently) other than as is expressly set out in this agreement.

Any terms implied into this agreement by any applicable statute or law are hereby excluded to the extent that such exclusion can legally be made. Nothing in this clause shall limit or exclude any liability for fraud.



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36. As seen from Clause 5(c) of the MoA dated 31.10.2023, if the owners of the defendant vessel anticipate despite due diligence that the defendant vessel will not be ready for delivery by the cancelling date, they may notify the plaintiff in writing stating the date when they anticipate that the vessel will be ready for delivery and proposing a new cancellation date. The said clause also provides the plaintiff an option either to extend the date of cancellation under the MoA or to cancel the MoA itself. As per the MoA, the original date fixed as the cancellation date was 25.11.2023. Under Clause 5(d) of the MoA dated 31.10.2023, it has also been made clear that the cancellation, failure to cancel or acceptance of the new cancellation date, shall be without prejudice to the rights of the plaintiff to make a claim for damages. Clause 14 of the MoA dated 31.10.2023 also contemplates that failure of the owners of the defendant vessel to issue notice of readiness by the cancelling date or failure to be ready to complete the legal transfer of the vessel, entitles the plaintiff to seek due compensation from the owners of the defendant vessel for all expenses with interest, if the failure is due to proven negligence and whether or not the plaintiff cancels the MoA.



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37. As observed earlier, the owners of the defendant vessel had sought for four extensions from the plaintiff for extending the cancellation date. The first two extensions sought for by the owners of the defendant vessel was acceded to by the plaintiff. But, however, the third and fourth extensions were rejected and ultimately, the plaintiff, by its email dated 17.12.2023 to the owners of the defendant vessel, cancelled the MoA on account of the breach of contract committed by the owners of the defendant vessel and in the very same email, they have also sought for refund of security deposit with interest and other costs and damages. Thereafter, the plaintiff, by its email dated 21.12.2023, called upon the owners of the defendant vessel to issue joint written instructions to the Escrow Agent for release of the security deposit of 15% of the sale price, i.e., USD 12,45,000/- made by the plaintiff in accordance with MoA dated 31.10.2023. According to the plaintiff, despite a written request, no joint written instructions were issued by the owners of the defendant vessel to the Escrow Agent to enable the plaintiff to obtain refund of the security deposit made by the plaintiff. Admittedly, only after the defendant vessel was arrested by the orders of this Court on 08.01.2024 and subsequent to the directions given by this



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Court on 24.01.2024, the owners of the defendant vessel cooperated with the plaintiff to enable the plaintiff to obtain refund of the security deposit amount minus USD 10000, which was adjusted by the Escrow Agent for the payment of their escrow fees.

38. In any of the extensions sought for by the owners of the defendant vessel, they have not blamed the plaintiff for any delay. As per the MoA dated 31.10.2023, the original cancellation date was fixed as 25.11.2023. Only on 17.12.2023 through their email to the owners of the defendant vessel, the plaintiff had cancelled the MoA, since the owners of the defendant vessel were repeatedly seeking extension of time of the cancellation date giving one reason or the other, which, according to the plaintiff, is a breach of contract committed by the owners of the defendant vessel.

39. This Court, on a prima-facie consideration, based on the available materials, will have to accept the contention of the plaintiff. The reasons for seeking extensions of the cancellation date by the owners of the defendant vessel, on a prima-facie consideration, reveal the



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negligence on the part of the owners of the defendant vessel to take required measures to obtain requisite permissions from the Classification Society and other Statutory Authorities. Therefore, the owners of the defendant vessel cannot shirk its responsibility by blaming either the classification society or the statutory authorities for its failure to obtain all the necessary permissions on time. The argument of the learned Senior counsel for the owners of the defendant vessel that the delay was on account of the plaintiff's intervention with the statutory authorities behind the back of the owners of the defendant vessel or the plaintiff's origin (Chinese) was the reason for the delay is entirely misplaced. As a buyer, the plaintiff has no connection with validating the Class of the vessel. The classification society validates the certificates of the vessel depending upon the condition of the vessel and not the one who buys the vessel.

40. The contention of the owners of the defendant vessel that changing the name of the flag by the plaintiff has caused the owners of the defendant vessel irreparable loss, is completely misplaced for the following reasons:-



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(a) The plaintiff, admittedly, is not yet the owner of the defendant vessel. Admittedly, no bill of sale (document of title) was issued in favour of the plaintiff by the owners of the defendant vessel to enable the registry to transfer the ownership of the defendant vessel in favour of the plaintiff.

(b) The alleged change, as is evident from the date of Equasis Report produced by the owners of the defendant vessel, is as on 10.01.2024, i.e., after the date of cancellation of the MoA and post the orders of arrest (08.01.2024) granted by this Court.

(c) The documents issued by DG Shipping/Mercantile Marine Department, which are placed on record before this Court, would reveal that as on 22.01.2024, M/s.Arcadia Shipping Limited continues to be the registered owner of the defendant vessel. The plaintiff also does not claim that they have become the owner of the defendant vessel. Therefore, the contention of the owners of the defendant vessel that at the request of the plaintiff, change of name and flag of the defendant vessel has happened, has to be rejected by this Court.



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41. The plaintiff has filed this admiralty suit by exercising maritime claim as per Section 4(1)(r) of the Admiralty Act, 2017. The maritime claims are enumerated in Section 4 of the Admiralty Act, 2017. Section 4(1)(r) of the Admiralty Act, 2017, deals with disputes arising out of a contract of sale of the vessel. Therefore, the argument of the owners of the defendant vessel that since the MoA is only an agreement to sell and not a contract for sale and the suit claim is not a maritime claim, has to be rejected by this Court.

42. The learned Senior counsel for the owners of the defendant vessel also placed reliance on the judgment of the Hon'ble Supreme Court in ***Instalment Supply Limited's case (cited supra)*** in support of their stand that since the suit claim arises out of an agreement of sale, it is not a maritime claim. The MoA dated 31.10.2023 would clearly reveal that it is a contract entered into between the plaintiff and the owners of the defendant vessel, by which, the owners of the defendant vessel have agreed to sell the vessel to the plaintiff as per the terms and conditions contained in the MoA dated 31.10.2023. In fact, in the decision referred to supra, it has been clearly held that the term "contract of sale" includes



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an agreement to sell, which is known as an executory contract of sale, while a sale is known as an executed contract of sale. The term “contract of sale” thus includes both actual sales and agreement for sale.

43. The Division Bench of the Bombay High Court in ***M.V. Golden Pride (cited supra)*** has also held that the term “arising out of” in Section 4(1) of the Admiralty Act, 2017, are words of wide amplitude and there is no reason to give any restricted meaning to the said words. This Court, after giving due consideration to the said decision, is of the view that the Bombay High Court is right in holding that the term “arising out of ” in Section 4(1) of the Admiralty Act, 2017, are words of wide amplitude and that there is no reason to give any restricted meaning to the said words. The plaintiff, who has invested huge sums of money for purchasing the defendant vessel, has been made to run from pillar to post to seek remedy. The plaintiff exercising maritime claim against the owners of the defendant vessel is justified and certainly the said claim falls under Section 4(1)(r) of the Admiralty Act, 2017.



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44. There is no necessity for the plaintiff to satisfy the requirements of Order XXXVIII Rule 5 of CPC for an admiralty suit.

Arrest of a vessel is a statutory right provided under the Admiralty Act, 2017, for maritime claims falling under Section 4 of the Admiralty Act, 2017, whereas the attachment sought to be obtained under Order XXXVIII Rule 5 of CPC is a discretionary relief. The yardstick for instituting an admiralty suit and seeking arrest of a vessel is different from that of seeking attachment under Order XXXVIII Rule 5 of CPC.

45. As held by the Hon'ble Supreme Court in ***M.V.Kapitan Kud's case(cited supra)***, the test, that an Admiralty Court follows at the time of grant of arrest or vacating the order of arrest, is whether the plaintiff has “a reasonably arguable best case”. When, it is not in dispute that the plaintiff had paid 15% of the total sale consideration as security deposit as per the MoA dated 31.10.2023, and it is also an admitted fact that extensions were sought for by the owners of the defendant vessel seeking extension of the cancellation date on account of the delay in obtaining statutory permission/statutory certificates, this Court, on a prima-facie consideration, is of the considered view that only due to the breach of



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contract committed by the owners of the defendant vessel, the plaintiff had to terminate the MoA dated 31.10.2023. Therefore, the plaintiff has made out a reasonably arguable best case to substantiate its suit claim.

46. After filing of the suit and after the orders of arrest of the defendant vessel passed by this Court on 08.01.2024, the plaintiff, pursuant to the directions given by this Court on 24.01.2024, has obtained refund of the security deposit amount from the Escrow Agent. However, the Escrow Agent has also collected USD 10000 towards their fees. The receipt of USD 10000 by the escrow agent is also not disputed by the owners of the defendant vessel, as seen from the pleadings available on record.

47. The learned counsel for the plaintiff would submit that owners of the defendant vessel are liable to pay the plaintiff the following sums of money on account of breach of contract committed by the owners of the defendant vessel:-

(i) USD 10000 deducted by the Escrow Agent from and out of the security deposit amount towards escrow agent's fees.



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(ii) Interest of USD 23637.29 on the security deposit, which the plaintiff is entitled to claim from the owners of the defendant vessel, as they have breached the MoA dated 31.10.2023 and failed to fulfil their obligation of delivering the vessel.

(iii) The expenses of USD 40322 incurred by the plaintiff as provided in paragraph No.30 of the plaint.

(iv) Though the plaintiff has claimed legal costs of USD 2,00,000 in the suit, but, during the course of submissions made by the learned counsel for the plaintiff, they have restricted their claim to USD 1,22,000, which are the legal expenses actually incurred by the plaintiff till date (out of which, USD 87,000 is the sum paid by the plaintiff towards the Court fees, and the balance is towards advocates fees and expenses incurred for pursuing the claim).

48. The judgments relied upon by the learned counsel for the plaintiff also makes it prima-facie clear that interest and legal costs along with the principal amount has also got to be treated as a maritime claim. Admiralty Court grants arrest to secure the maritime claim. This would also include interest and legal costs. The plaintiff has also provided



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invoices, which includes costs towards Court fees, advocate fees and other expenses incurred till date by the plaintiff. The plaintiff has admittedly paid approximately USD 87,000 by way of Court fees for filing the present suit.

49. The Hon'ble Supreme Court in *Chrisomer Corporation's case (cited supra)* also makes it clear that interest and legal costs are also a maritime claim. The Admiralty Court grants arrest of a vessel to secure a maritime claim, which would also include interest and maritime costs. However, in addition to the refund of the security deposit amount together with interest and costs, the plaintiff has also claimed compensation from the owners of the defendant vessel for the alleged loss of profit. This claim is made on account of breach/failure on the part of the owners of the defendant vessel in adhering to the obligation in the MoA dated 31.10.2023. However, no material evidence has been placed on record in these interlocutory applications by the plaintiff to establish their case that they are entitled for the loss of profit from the owners of the defendant vessel.



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50. Admittedly, the MoA dated 31.10.2023 contains an arbitration agreement, which will come into effect only after the owners of the defendant vessel furnishes security for the suit claim or to the extent of amount directed by this Court. The present suit is an *action in rem* and only after the security is furnished by the owners of the defendant vessel as per the directions of this Court, the *action in rem* will become an *action in personam* and the parties will have to go for arbitration in accordance with the arbitration agreement contained in the MoA. The loss of profit can be proved only through oral and documentary evidence. At this interlocutory stage, that too, when there is no material available on record to substantiate the plaintiff's claim that they had suffered loss of profit, the question of directing the owners of the defendant vessel to furnish security for the loss of profit amount as claimed in the suit, will not arise. The loss of profit if at all suffered by the plaintiff can be redressed only in the arbitration as per the arbitration agreement available in the MoA dated 31.10.2023 by letting in oral and documentary evidence. Therefore, this Court is not directing the owners of the defendant vessel to furnish security for the loss of profit claim made by the plaintiff.



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51. Admittedly, the suit is a commercial dispute falling under the Commercial Courts Act, 2015. The costs regime in an ordinary civil suit, is different from a commercial suit, where realistic costs are imposed both under Section 35 and Section 35A of the CPC as applicable to the Commercial Courts Act, 2015. If realistic costs are not imposed, the object of the Commercial Courts Act will get defeated. When, on a prima facie consideration, this Court is satisfied that the owners of the defendant vessel have committed breach of the MoA dated 31.10.2023, necessarily realistic costs has to be fixed by this Court for the purpose of directing the owners of the defendant vessel to furnish security to satisfy the suit claim. Therefore, considering the nature of the suit and considering the fact that the suit claim is a huge one, this Court is of the considered view that (a) the claim made by the learned counsel for the plaintiff during the course of his submissions that the plaintiff will have to be paid legal costs of USD 1,22,000, which includes USD 87,000 towards the Court fees for filing the suit, is a reasonable one and has to be accepted by this Court.

(b) As sufficient details have been given in paragraph No.30 of the plaint for claiming USD 40322 towards expenses, which they have



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incurred, this Court, after a prima facie consideration, accepts the same.

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(c) The claim of USD 10000 towards escrow agent's fees is also supported by an invoice raised by the Escrow Agent and therefore, the said claim also has to be accepted by this Court.

(d) Similarly, interest claim at 9% per annum on the principal sum amounting to USD 23637.29 on account of breach of the contract committed by the owners of the defendant vessel, is also as per Clause 14 of the MoA dated 31.10.2023 and it is a reasonable claim and therefore, the same has also got to be accepted for the purpose of furnishing security.

52. The plaintiff has also filed documents before this Court to show that the owners of the defendant vessel are facing financial crisis. The balance sheet of the owners of the defendant vessel for the last few years have also been produced by the plaintiff, which, on a prima facie consideration, will reveal that the owners of the defendant vessel are not in a sound financial position. It is also noticed that the defendant vessel was earlier arrested by the orders passed by this Court at the instance of another plaintiff and the vessel was subsequently released. All these



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factors also necessitate a direction being issued by this Court to the owners of the defendant vessel to furnish security.

53. Eventhough the MoA dated 31.10.2023 contains an arbitration agreement, the dispute cannot be referred to arbitration unless the *action in rem* is converted into an *action in personam* by the furnishing of security to secure the suit claim. As per the settled law, the Bombay High Court in ***Siem Offshore Redri's case (cited supra)*** has rightly held that an *action in rem* gets converted into an *action in personam* on happening of three essential pre-requisites; (i) the owner entering appearance pursuant to an arrest; (ii) the owner submitting to the jurisdiction of the Court; and (iii) the owner furnishing entire security to the satisfaction of the Court to the claim in the suit.

54. A ship arrested under the admiralty jurisdiction may be ordered to be released; (a) at the request of of the plaintiff before appearing in person or a vakalat is filed by the defendant; or (b) on the defendant paying into the Court the amount claimed in the suit; (c) on the defendant giving such security for the amount claimed in the suit, as the Court may



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direct; or (d) on any other ground that the Court may deem just.

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55. It is also settled law that mere existence of an arbitration agreement is not a bar to the Admiralty Court granting arrest and proceeding further till the owners of the defendant vessel furnish security for the suit claim or furnish security as per the directions of the Court to secure the claim of the plaintiff. In the instant case, as seen from the documents available on record, the plaintiff has made out a reasonably arguable best case and therefore, it is prima facie evident that the claim of the plaintiff is a justified one. The Hon'ble Supreme Court in ***Videsh Sanchar Nigam Ltd. (cited supra)*** also makes it clear that the test, that an Admiralty Court follows at the time of grant of arrest or vacating the order of arrest, is whether the plaintiff has “a reasonably arguable best case”. Having satisfied the said test, the plaintiff is entitled to secure the suit claim as detailed hereunder:-

(a) USD 10000 towards the escrow agent's fees;

(b) interest of USD 23637.29 on the security deposit, which the plaintiff is entitled to claim from the owners of the defendant vessel, as they have breached the MoA and failed to fulfil their obligation of



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delivering the vessel under the MoA within the stipulated time;

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(c) The expenses of USD 40322 that the plaintiff incurred, particulars of which are provided in paragraph No.30 of the plaint;

(d) Legal costs of USD 1,22,000, which are the legal expenses said to have been actually incurred by the plaintiff and supported by documents, out of which, USD 87,000 is the sum paid by the plaintiff towards the Court fees and the balance is towards advocates fees and expenses incurred for pursuing the claim.

(e) Totally, the owners of the defendant vessel will have to furnish security to the tune of USD 1,95,959.29, equivalent to Rs.1,62,64,621/- (1 USD – Rs.83, exchange rate prevailing on 07.02.2024)

56. The issues framed by this Court in the opening paragraph of this common order is answered in the following manner:-

(a) The claim of the plaintiff is a maritime claim falling under Section 4 of the Admiralty Act, 2017.

(b) The owners of the defendant vessel have committed breach of contract under the MoA dated 31.10.2023.



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(c) The owners of the defendant are required to furnish security to the extent as directed by this Court in this order to release the defendant vessel from arrest.

57. In the result, these applications are disposed of with the following directions:-

(a) The owners of the defendant vessel / the applicant in A.No.479 of 2024 shall submit a Fixed Deposit receipt drawn in any schedule Bank favouring the Registrar General of this Court for a sum of USD 1,95,959.29, equivalent to Rs.1,62,64,621/- to the credit of this suit; and

(b) the said Fixed Deposit shall also be renewed periodically without fail by the applicant in A.No.479 of 2024; or

(c) in the alternative, they shall furnish a bank guarantee favouring Registrar General of this Court for the aforesaid sum till the disposal of the suit.

(d) The security as aforesaid shall be furnished by



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the owners of the defendant vessel within a period of two weeks from the date of receipt of a copy of this order.

(d) On complying with the aforementioned conditions within the stipulated date, the defendant vessel is ordered to be released from arrest and the order of arrest granted by this Court on 08.01.2024 in A.No.138 of 2024 shall stand vacated and the Registry is permitted to issue a release warrant as per the Admiralty Rules of this Court.

58. Any observation made by this Court in this common order is only a prima-facie observation based on the documents available on record. It is always open to the owners of the defendant vessel to disprove the claim of the plaintiff through oral and documentary evidence during trial. Post the suit for filing of written statement by the defendant on 01.03.2024.

08.02.2024

Index: Yes/no
Speaking order/non-speaking
Neutral citation : Yes/no
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ABDUL QUDDHOSE, J.

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