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C.S.(Comm.Div.)No.4 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2024

CORAM

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

C.S.(Comm.Div.)No.4 of 2022

Violet Ray Limited  
33-37 Athol Street, Douglas,  
IM1 1LB, Isle of Man  
Rep. By its Power of Attorney Agent  
Mr.R.Jaikumar

.. Plaintiff

-VS-

1.Northpoint Shipping Limited,  
Reg. Office: Room 302, 3/F,  
Kai Tak Commercial Building,  
317-319,  
Des Vouex Road Central,  
Sheung Wan Hong Kong.

2.Fenwick Shipping Services (UK) Limited,  
3 More London Riverside,  
London,  
SE1 2AQ.

.. Defendants



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**PRAYER:** Civil Suit is filed under Order IV Rule 1 of High Court

O.S. Rules and Order VII Rule 1 of CPC and the provisions of the Commercial Courts Act, 2015, praying:-

(a) to pay as damages of a sum USD 146836.54 equivalent to Rs.1,07,07,467.33/- (calculated at the rate of Rs.72.92 per USD as on 5<sup>th</sup> February, 2021), as compensation to the plaintiff for losses suffered by the plaintiff due to wrongful arrest and detention of the plaintiff's vessel MV Violet Ace on 8<sup>th</sup> September, 2017, and other claims listed above;

(b) for interest at the rate of 24% per annum from 8<sup>th</sup> September, 2017, on the aforesaid amount i.e. the date of the defendants wrongfully arresting and detaining the plaintiff's vessel MV Violet Ace, till the date of payment / realization, which as on date amounts to a sum of Rs.87,79,536/-; and

(c) to pay the plaintiff the costs of the suit.

For Plaintiff : Ms.Sharanya Vaidhyanathan

Defendants are set exparte



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### JUDGMENT

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The suit has been filed seeking for damages on account of the wrongful arrest of the plaintiff's vessel by name MV VIOLET ACE by the defendants.

2. The suit claim of USD 1,46,836.54/-, equivalent to Rs.1,07,07,467.33/- (calculated at the rate of Rs.72.92 per USD as on 05.02.2021) together with interest at 24% per annum from 08.09.2017 till the date of the plaint, comprises of the following:-

| <i><b>Sl.No.</b></i> | <i><b>Particulars</b></i>                                                | <i><b>Amount</b></i>   |
|----------------------|--------------------------------------------------------------------------|------------------------|
| 1.                   | Off-Hire (3.175 days X USD 22000)                                        | USD 69,850.00          |
| 2.                   | Brokerage (0.5%)                                                         | USD 349.25             |
| 3.                   | Victualing fee                                                           | USD 211.67             |
| 4.                   | Other fee                                                                | USD 74.08              |
| 5.                   | Fuel charge during off-hire                                              | USD 5825.13            |
| 6.                   | Additional port expenses                                                 | USD 30302.00           |
| 7.                   | Fees charged for vessel release work by Indian correspondent             | USD 1906.44            |
| 8.                   | Lawyer fees for vessel release and fees for court appointed commissioner | USD 4016.474           |
| 9.                   | <b>Total Amount</b>                                                      | <b>USD 1,11,836.54</b> |
| 10.                  | Legal Costs                                                              | USD 35000              |
| 11.                  | <b>Full Total Amount</b>                                                 | <b>USD 1,46,836.54</b> |

3. Apart from the above, the plaintiff has also claimed interest on



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Rs.1,07,07,467.33/- at 24% per annum from 08.09.2017 till 06.02.2021, which works out to Rs.87,79,536/-. The plaintiff has also claimed further interest at 24% per annum on the total suit claim and has also sought for the costs of the suit from the defendants.

4. The plaintiff is the owner of the vessel MV VIOLET ACE. The said vessel had arrived at the Port of Ennore on 08.09.2017. The said vessel was ordered to be arrested by this Court at the instance of the defendants herein on 08.09.2017 in A.No.5436 of 2017 in C.S.No.705 of 2017. It was an exparte order of arrest.

5. The plaintiff, who is the owner of the vessel MV VIOLET ACE and who was the first defendant in C.S.No.705 of 2017, had entered appearance in the said suit.

6. According to the plaintiff, after coming to know that there is no cause of action for filing the suit against MV VIOLET ACE, the plaintiffs in C.S.No.705 of 2017/the defendants herein had sought permission of this



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Court to withdraw the said suit and also sought for release of the vessel from arrest. The defendants herein had also filed a memo before this Court in C.S.No.705 of 2017 seeking permission of the Court for withdrawal of the said suit and for obtaining warrant of release to release the plaintiff's vessel from arrest. Based on the said memo, the suit was dismissed by this Court by order dated 11.09.2017. Warrant of release was also ordered and the vessel MV VIOLET ACE owned by the plaintiff was allowed to sail out of the Port of Ennore on 12.09.2017.

7. The plaintiff, who is the owner of the vessel MV VIOLET ACE, which was subjected to wrongful arrest in the said suit filed by the defendants herein, has pleaded that on account of wrongful arrest made at the instance of the defendants herein, they have suffered losses, for which, the present suit has been filed. Infact, as seen from the order dated 11.09.2017 passed by this Court in C.S.No.705 of 2017, the plaintiff herein was granted liberty to initiate legal action against the defendants herein for damages, in case they desire to file a suit for damages on account of wrongful arrest. Based on such liberty granted to them, the plaintiff has



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filed the present suit seeking for damages against the defendants herein, who are the plaintiffs in C.S.No.705 of 2017.

8. According to the plaintiff, the arrest obtained by the defendants of the plaintiff's vessel MV VIOLET ACE in C.S.No.705 of 2017 is a wrongful arrest for the following reasons:-

(a) There is no privity of contract between the plaintiff in this suit, who is the owner of the vessel MV VIOLET ACE, which was subjected to arrest in C.S.No.705 of 2017, and the defendants herein.

(b) The defendants' claim was only against Safe Pacific Shipping (Hong Kong) Co. Limited, Hong Kong/second defendant in C.S.No.705 of 2017.

(c) There is no connection for the plaintiff whatsoever neither with Safe Pacific Shipping (Hong Kong) Co. Limited, Hong Kong/second defendant in C.S.No.705 of 2017 nor with the defendants herein insofar as the alleged non-payment of the value of bunker invoices to the defendants herein.

(d) The plaintiff also contends that they are also not aware of the



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settlement deed dated 13.07.2017 entered into between the defendants and Pacific Marine & Civil Solutions Limited.

(e) Based on the report alleged to have given by the LSR Services Limited, the plaintiffs in C.S.No.705 of 2017/defendants herein had obtained an order of arrest of the vessel MV VIOLET ACE, owned by the plaintiff herein. The said report of the LSR Services Limited submitted by the defendants herein is disputed by the plaintiff in this suit.

(f) On coming to know that there is no privity of contract with the plaintiff in this suit, the defendants herein, who had filed a suit in C.S.No.705 of 2017, had withdrawn the said suit by filing a memo in the presence of the counsel for MV VIOLET ACE in the said suit. This Court had also recorded the said memo and had permitted withdrawal of the said suit and also directed issuance of warrant of release in respect of MV VIOLET ACE, which was detained at Ennore Port from 08.09.2017 till 12.09.2017. On account of unlawful detention owing to wrongful arrest obtained by the defendants herein, the plaintiff has suffered losses under various heads as listed out supra.

9. Despite service of suit summons on both the defendants, no one has



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entered appearance. Therefore, the learned Master, vide proceedings dated 11.07.2023, recorded the fact that service of suit summons has been completed on both the defendants. The exparte evidence was also recorded on the side of the plaintiff. One Mr.Jai Kumar was examined on the side of the plaintiff as PW1. He has also filed a proof affidavit reiterating the contents of the plaint. Through PW1, the following documents were marked as exhibits on the side of the plaintiff:-

| <b><i>Exhibit</i></b> | <b><i>Description</i></b>                                                                                        |
|-----------------------|------------------------------------------------------------------------------------------------------------------|
| Ex.P1                 | Photocopy of the power of attorney dated 23.11.2020                                                              |
| Ex.P2                 | Photocopy of the Fixture Note dated 22.10.2015                                                                   |
| EX.P3                 | Photocopy of the Bill of Lading bearing No.SUV/TAR 2015001 dated 17.12.2015                                      |
| Ex.P4                 | Photocopy of the Invoice No. NP/47V49/12 dated 18.03.2024                                                        |
| Ex.P5                 | Photocopy of the settlement Deed dated 13.07.2017                                                                |
| Ex.P6                 | Photocopy of the plaint filed in C.S.No.705 of 2017 along with the Application dated 07.08.2017                  |
| Ex.P7                 | Photocopy of the order of arrest dated 08.09.2017 passed by the Hon'ble Madras High Court in C.S.No.705 of 2017  |
| Ex.P8                 | Photocopy of the Memo of Release filed by the plaintiff dated 11.09.2017                                         |
| Ex.P9                 | Photocopy of the order of Release dated 11.09.2017 passed by the Hon'ble Madras High Court in C.S.No.705 of 2017 |
| Ex.P10                | Photocopy of the contract dated 01.06.2017 between NMCC and Toyota                                               |
| Ex.P11                | Photocopy of the fixture note dated 09.08.2017                                                                   |
| Ex.P12                | Photocopy of the Hire Statement dated 17.08.2017 issued by MOL                                                   |
| Ex.P13                | Photocopy of the Time Charter Party (NYPE 93) dated 23.02.2009                                                   |
| Ex.P14                | Photocopy of the Invoice No.P&I/091/17-18 dated 18.07.2017 issued by                                             |



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| <b><i>Exhibit</i></b> | <b><i>Description</i></b>                                                                                                         |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------|
|                       | Vessel Agents                                                                                                                     |
| Ex.P15                | Photocopy of the Invoices issued towards costs relating to release of Vessel.                                                     |
| Ex.P16                | Original Consolidated statement of account setting out the details of the damages claimed herein(Feb 2021)                        |
| Ex.P17                | Photocopy of the Invoice No.IV-TBC-1707-210 dated 26.07.2017 issued by the Bunker supplier Toyota Tsusho Petroleum Pvt.Ltd. Tokyo |
| Ex.P18                | Photocopy of the statement of Facts issued by the Master on behalf of MOL dated 30.08.2017                                        |
| Ex.P19                | Photocopy of the Bunker Delivery Note bearing No.01264 dated 04.09.2017                                                           |
| Ex.P20                | Photocopy of the letter dated 11.09.2017 addressed by NMCC                                                                        |
| Ex.P21                | Photocopy of the statement of Facts dated 12.09.2017 issued by the Master of the Vessel                                           |
| Ex.P22                | Photocopy of the Letter dated 12.09.2017 addressed to the DC (Preventive General by the vessel agents MOL Lines India Pvt. Ltd.   |
| Ex.P23                | Photocopy of the off-hire statement dated 13.09.2017 issued by Nissan to MOL.                                                     |
| Ex.P24                | Photocopy of the statement of facts dated 25.01.2017 issued by MOL Lines India Pvt.Ltd                                            |
| Ex.P25                | Photocopy of the Port clearance dated 31.08.2017 issued by the DC(Imports).                                                       |
| Ex.P26                | Photocopy of the General Terms and Conditions(GTC) for sales of Marine Fuels of Toyota.                                           |
| Ex.P27                | Photocopy of the Equasis Report dated 25.11.2020                                                                                  |
| Ex.P28                | Photocopy of the Remittance Payment Report dated 25.08.2017 setting out the hire paid by MOL.                                     |
| Ex.P29                | Photocopy of the LSR Report dated 06.09.2017                                                                                      |

## **DISCUSSION**

10. The following are the undisputed facts.

(a) The suit in C.S.No.705 of 2017 was filed by the defendants herein



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under the admiralty jurisdiction of this Court seeking arrest of the vessel MV VIOLET ACE, owned by the plaintiff. Through Equasis Report dated 25.11.2020 (Ex.P27), it is proved that the plaintiff is the owner of the vessel MV VIOLET ACE.

(b) The suit claim in C.S.No.705 of 2017, even according to the defendants, arose out of the non-payment of certain invoices raised by the defendants herein against Safe Pacific Shipping (Hong Kong) Co. Limited / second defendant in C.S.No.705 of 2017 as well as against some unconnected parties, with whom the plaintiff in this suit has no connection.

(c) The plaintiff has no connection whatsoever with Safe Pacific Shipping (Hong Kong) Co. Limited, Pacific Marine & Civil Solutions Limited, and the defendants herein.

(d) The plaintiff's vessel MV VIOLET ACE was ordered to be arrested by this Court through its order dated 08.09.2017 in A.No.5436 of 2017 in C.S.No.705 of 2017 when the vessel MV VIOLET ACE was lying at the Port of Ennore, within the admiralty jurisdiction of this Court. The warrant of arrest was also effected on the vessel MV VIOLET ACE on 08.09.2017 itself.



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(e) The defendants herein, who are the plaintiffs in C.S.No.705 of 2017, after coming to know that they have wrongfully obtained the order of arrest of the vessel MV VIOLET ACE, filed a memo before this Court in C.S.No.705 of 2017 seeking permission of this Court to withdraw the said suit and also issue warrant of release in respect of the vessel MV VIOLET ACE.

(f) This Court, by order dated 11.09.2017, based on the memo filed by the plaintiffs' counsel therein, ordered release of the vessel MV VIOLET ACE from arrest and also directed the Registry to issue warrant of release by releasing the said vessel from arrest. Warrant of release was executed on the vessel on 11.09.2017, but, however, the port clearance was give only on 12.09.2017 and the said vessel also sailed out of the Port at Ennore only on 12.09.2017. This Court, while releasing the said vessel, had also granted liberty to the plaintiff herein to institute a suit seeking damages from the defendants herein, if they so desire in case the arrest is a wrongful arrest.

11. As seen from the aforementioned undisputed facts, it is conclusively established that the defendants herein have wrongfully arrested the vessel MV VIOLET ACE, owned by the plaintiff, in C.S.No.705 of



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2017. If not for the said fact, the defendants would not have withdrawn the said suit by filing a memo and seeking release of the vessel from arrest. The plaintiff has proved beyond any reasonable doubt that the defendants had wrongfully arrested the vessel MV VIOLET ACE on 08.09.2017, when she was at Ennore Port, within the admiralty jurisdiction of this Court.

12. Prior to the filing of this suit, since the defendants are foreign companies having office outside the jurisdiction of this Court, the plaintiff has obtained leave to institute the suit against the defendants, since the cause of action for filing of the suit arose only within the jurisdiction of this Court, where the defendants had instituted the suit and obtained wrongful arrest of the vessel MV VIOLET ACE, owned by the plaintiff. This Court had also granted leave to the plaintiff for initiating this suit against the defendants by its order dated 17.12.2021 passed in A.No.4731 of 2021 in C.S.DR.No.13699 of 2021. The plaintiff has established through its pleadings made in the plaint as well as the documents filed along with the plaint that the cause of action for filing this suit against the defendants arose within the admiralty jurisdiction of this Court and hence, the suit filed before



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this Court, eventhough the defendants are not having their office within the jurisdiction of this Court, is still maintainable on account of the aforementioned undisputed facts.

13. The wrongful arrest was obtained by the defendants on 08.09.2017. The suit in the normal course ought to have been filed on or before 08.09.2020. The plaintiff has pleaded in the plaint that on account of outbreak of COVID-19 pandemic and the subsequent lockdowns declared by the Government of India and the Government of Tamil nadu, the normal functioning of all the institutions including this Court was severally affected disabling the plaintiff from filing the suit in time. The plaintiff has relied upon the orders passed by Hon'ble Supreme Court on 23.03.2020 and 06.05.2020 in W.P.(Civil) No.3 of 2020, wherein the Hon'ble Supreme Court suspended the applicability of any time bars and extended the period of limitation for initiating any legal proceedings. In the instant case, the suit was filed on 08.02.2021, when the lockdown was inforce. Therefore, the reason given by the plaintiff for not filing the suit within 3 years from the date when the cause of action arose has to be accepted and the suit is held to



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be within the period of limitation.

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14. As seen from Ex.P1, Mr.Jai Kumar (PW1) has been appointed as the Attorney to represent the plaintiff before the Courts in India. PW1 has been duly authorised to represent the plaintiff's interest in this suit by letting in oral and documentary evidence in respect of the plaintiff's suit claim. The plaintiff has also filed the following documents:-

|       |                                                                             |
|-------|-----------------------------------------------------------------------------|
| Ex.P2 | Photocopy of the Fixture Note dated 22.10.2015                              |
| EX.P3 | Photocopy of the Bill of Lading bearing No.SUV/TAR 2015001 dated 17.12.2015 |
| Ex.P4 | Photocopy of the Invoice No. NP/47V49/12 dated 18.03.2024                   |
| Ex.P5 | Photocopy of the settlement Deed dated 13.07.2017                           |

On bare perusal of the aforementioned documents, it clear that the plaintiff has no connection whatsoever with the defendants at the time when the defendants had wrongfully arrested their vessel MV VIOLET ACE.

15. The plaintiff has also filed a copy of the plaint filed in C.S.No.705 of 2017 and the order of arrest dated 08.09.2017 obtained by the defendants in the said suit, as documents which have been marked as Exs.P6 and P7.



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The plaintiff has also filed the memo filed by the defendants herein in C.S.No.705 of 2017 seeking permission of this Court to withdraw the said suit and for release of vessel MV VIOLET ACE, and the said memo has been marked as Ex.P8. The order of release dated 11.09.2017 passed by this Court in C.S.No.705 of 2017 on a request made by the defendants herein based on Ex.P8 (Memo), has also been filed as a document, which has been marked as Ex.P9. Exs.P6 to P9 marked on the side of the plaintiff will prove that the plaintiff had wrongfully obtained arrest of the vessel MV VIOLET ACE, owned by the plaintiff, while she was at the Port of Ennore on 08.09.2017.

16. It is to be noted that while seeking arrest of the vessel MV VIOLET ACE in C.S.No.705 of 2017, the defendants herein had relied upon a report given by the LSR Services Limited dated 06.09.2017. The plaintiff has categorically contended that the said report has no relevance for the purpose of proving the ownership of the vessel MV VIOLET ACE. Eventhough the said report (Ex.P29) states that the vessel MV VIOLET ACE is likely to be chartered by the second defendant in C.S.No.705 of



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2017, there was no such charter. Therefore, it is clear that based on an irrelevant document, namely, report submitted by the LSR Services Limited dated 06.09.2017, which has been marked as Ex.P29, the defendants herein, with no probable cause, had negligently chosen to file a suit in C.S.No.705 of 2017 and had wrongfully obtained arrest of the vessel MV VIOLET ACE. It is clear that the owners of the vessel MV VIOLET ACE are not liable for the suit claim made by the defendants herein in C.S.No.705 of 2017.

17. The plaintiff has also filed the following documents to substantiate their claim for loss on account of wrongful arrest made by the defendants in C.S.No.705 of 2017.

|        |                                                                                    |
|--------|------------------------------------------------------------------------------------|
| Ex.P10 | Photocopy of the contract dated 01.06.2017 between NMCC and Toyota                 |
| Ex.P11 | Photocopy of the fixture note dated 09.08.2017                                     |
| Ex.P12 | Photocopy of the Hire Statement dated 17.08.2017 issued by MOL                     |
| Ex.P13 | Photocopy of the Time Charter Party (NYPE 93) dated 23.02.2009                     |
| Ex.P14 | Photocopy of the Invoice No.P&I/091/17-18 dated 18.07.2017 issued by Vessel Agents |



|        |                                                                                                                                   |
|--------|-----------------------------------------------------------------------------------------------------------------------------------|
| Ex.P10 | Photocopy of the contract dated 01.06.2017 between NMCC and Toyota                                                                |
| Ex.P15 | Photocopy of the Invoices issued towards costs relating to release of Vessel.                                                     |
| Ex.P16 | Original Consolidated statement of account setting out the details of the damages claimed herein(Feb 2021)                        |
| Ex.P17 | Photocopy of the Invoice No.IV-TBC-1707-210 dated 26.07.2017 issued by the Bunker supplier Toyota Tsusho Petroleum Pvt.Ltd. Tokyo |
| Ex.P19 | Photocopy of the Bunker Delivery Note bearing No.01264 dated 04.09.2017                                                           |
| Ex.P23 | Photocopy of the off-hire statement dated 13.09.2017 issued by Nissan to MOL.                                                     |
| Ex.P28 | Photocopy of the Remittance Payment Report dated 25.08.2017 setting out the hire paid by MOL.                                     |

As seen from the aforesaid exhibits, it is clear that the plaintiff had to suffer loss as claimed in the plaint on account of unlawful detention of their vessel MV VIOLET ACE from 08.09.2017 to 12.09.2017 at the Port of Ennore, within the admiralty jurisdiction of this Court.

18. The plaintiff has also filed other documents, which have been marked as exhibits, namely, Exs.P18, P20, P21, P22, P24 & P25, to prove that the vessel was arrested by the orders of this Court on 08.09.2017 and allowed to sail out of the Port of Ennore only on 12.09.2017. The plaintiff



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has also filed the following documents, namely, Exs.P26 & P27, to prove that they are the owners of the vessel MV VIOLET ACE.

|        |                                                                                         |
|--------|-----------------------------------------------------------------------------------------|
| Ex.P26 | Photocopy of the General Terms and Conditions(GTC) for sales of Marine Fuels of Toyota. |
| Ex.P27 | Photocopy of the Equasis Report dated 25.11.2020                                        |

19. As seen from the aforementioned documents, which have been marked as exhibits on the side of the plaintiff, the plaintiff has proved that the plaintiff is the owner of the vessel MV VIOLET ACE. As observed earlier, the plaintiff has also proved through oral and documentary evidence that they have suffered losses as claimed in the plaint. The details of the losses suffered by the plaintiff are once again reproduced hereunder:-

| <b><i>Sl.No.</i></b> | <b><i>Particulars</i></b>         | <b><i>Amount</i></b> |
|----------------------|-----------------------------------|----------------------|
| 1.                   | Off-Hire (3.175 days X USD 22000) | USD 69,850.00        |
| 2.                   | Brokerage (0.5%)                  | USD 349.25           |
| 3.                   | Victualing fee                    | USD 211.67           |
| 4.                   | Other fee                         | USD 74.08            |
| 5.                   | Fuel charge during off-hire       | USD 5825.13          |



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| <i><b>Sl.No.</b></i> | <i><b>Particulars</b></i>                                                | <i><b>Amount</b></i>   |
|----------------------|--------------------------------------------------------------------------|------------------------|
| 6.                   | Additional port expenses                                                 | USD 30302.00           |
| 7.                   | Fees charged for vessel release work by Indian correspondent             | USD 1906.44            |
| 8.                   | Lawyer fees for vessel release and fees for court appointed commissioner | USD 4016.474           |
| 9.                   | <b>Total Amount</b>                                                      | <b>USD 1,11,836.54</b> |
| 10.                  | Legal Costs                                                              | USD 35000              |
| 11.                  | <b>Full Total Amount</b>                                                 | <b>USD 1,46,836.54</b> |

20. The plaintiff has also claimed interest at the rate of 24% per annum, which, in the considered opinion of this Court, is excessive. If at all the plaintiff is entitled for interest, they are entitled only for banking rate of interest, that is prevailing at this point of time. After giving due consideration to the current scenario, this Court is of the considered view that the plaintiff is entitled for interest at 6% per annum from 08.09.2017, when the vessel MV VIOLET ACE was unlawfully detained, till the date of payment.

21. The plaintiff has also filed supporting invoice (Ex.P15) towards the part of legal costs incurred by them. Considering the nature of the dispute, this Court is satisfied that USD 4016.474 claimed towards the fees



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incurred for lawyers and for court appointed commissioner is a reasonable one. Judicial notice can also be taken to the fact that the vessel MV VIOLET ACE, which was wrongfully arrested, being a ship owned by a foreign company, the plaintiff could have certainly incurred legal costs by the engagement of P&I correspondents (Protection and Indemnity), foreign lawyers and Indian lawyers as well. Therefore, being a commercial suit, the legal costs of USD 35000, and USD 4016.474 towards the fees incurred for lawyers for release of the vessel MV VIOLET ACE and for court appointed commissioner are realistic costs. Hence, the same is awarded by this Court.

22. The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (in short “the Admiralty Act”), is the statute applicable in India insofar as maritime claims are concerned. The said legislation does not define a wrongful arrest, but, gives protection for the owners of any vessel from any wrongful arrest, and the High Court while granting arrest may impose certain conditions on the claimant as per the provisions of Section 11 of the Admiralty Act, which states that the maritime claimant can be directed to provide unconditional undertaking to pay such sums of money as



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damages or such security of a kind for an amount and upon such terms as may be determined by the Court for any loss or damage which may be incurred by the defendant as a result of the arrest, on account of (a) the arrest having been wrongful or unjustified; or (b) excessive security having been demanded and provided. Section 11 of the Admiralty Act is reproduced hereunder:-

***11. Protection of owner, demise charterer, manager or operator or crew of vessel arrested. ---***

*(1)The High Court may, as a condition of arrest of a vessel, or for permitting an arrest already effected to be maintained, impose upon the claimant who seeks to arrest or who has procured the arrest of the vessel, an obligation to provide an unconditional undertaking to pay such sums of money as damages or such security of a kind for an amount and upon such terms as may be determined by the High Court, for any loss or damage which may be incurred by the defendant as a result of the arrest, and for which the claimant may be found liable, including but not restricted to the following, namely:—\*

*(a)the arrest having been wrongful or*



*unjustified; or*

*(b)excessive security having been demanded and provided.*

*(2)Where pursuant to sub-section (1), the person providing the security may at any time, apply to the High Court to have the security reduced, modified or cancelled for sufficient reasons as may be stated in the application.*

*(3)If the owner or demise charterer abandons the vessel after its arrest, the High Court shall cause the vessel to be auctioned and the proceeds appropriated and dealt with in such manner as the court may deem fit within a period of forty-five days from the date of arrest or abandonment:*

*Provided that the High Court shall, for reasons to be recorded in writing, extend the period of auction of the vessel for a further period of thirty days.*

23. In the case on hand, this Court also did not impose any condition on the defendants as indicated in Section 11 of the Admiralty Act while granting the order of arrest of the vessel MV VIOLET ACE in C.S.No.705 of 2017. Under the Admiralty Act, wrongful arrest has also not been defined. Since the wrongful arrest has not been defined, this Court will have



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to apply English Law, which is almost *pari materia* to Indian Law. Under the English Law, the test for wrongful arrest as derived from the old authorities of the Privy Council, namely, ***The Evangelismos [1858 (12) Moo PC 352]; and The Strathnaver [1875 (1) App Cas 58]***, requires proof by the owner of the arrested ship of *malafides* or *crassa negligentia* on the part of the arresting party. This is the phraseology most commonly used to represent the test derived from the aforesaid decisions. Therefore, it is clear that damages for wrongful arrest may be awarded in atleast three circumstances, namely, (a) where the arrest is initiated maliciously; or (b) negligently; or (c) unwarrantably or with so little foundation.

24. In the case on hand, negligently and unwarrantably, with little foundation, the defendants had sought for arrest of the vessel MV VIOLET ACE, owned by the plaintiff, and had also obtained arrest of the said vessel on 08.09.2017 in A.No.5436 of 2017 in C.S.No.705 of 2017. The recklessness of the plaintiffs in C.S.No.705 of 2017/defendants herein is also proved through their subsequent conduct of filing a memo seeking permission of this Court to withdraw the said suit and seeking for issuance



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of warrant of release after coming to know that the vessel MV VIOLET ACE is not liable for the suit claim. The documents filed by the plaintiff in this suit, which have been marked as exhibits, also prove that the defendants herein had obtained arrest of wrong vessel MV VIOLET ACE. The losses suffered by the plaintiff in this suit on account of wrongful arrest of its vessel MV VIOLET ACE by the defendants herein are also proved through the documents marked as exhibits on the side of the plaintiff, which has also been discussed by this Court in the preceding paragraphs. As a trading ship, the vessel MV VIOLET ACE, owned by the plaintiff, would have certainly suffered losses as claimed in the plaint, which are also supported by the exhibits marked on the side of the plaintiff.

25. For the foregoing reasons, the plaintiff is entitled for the suit claim. Accordingly, the suit is partly decreed in favour of the plaintiff by passing a judgment and decree against the defendants by directing them (a) to pay jointly and severally to the plaintiff a sum of USD 1,46,836.54/- together with interest at 6% per annum from 08.09.2017, being the date of



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wrongful arrest of the vessel MV VIOLET ACE owned by the plaintiff, till  
the date of payment.

(b) the defendants are directed to pay the costs of the suit.

15.03.2024

Index:yes/no  
Neutral citation: yes/no  
Speaking/non-speaking  
rkm

**Plaintiff's witnesses:**

Mr.Jai Kumar - PW1

**Documents exhibits on the side of the plaintiff:-**

| <i>Exhibit</i> | <i>Description</i>                                  |
|----------------|-----------------------------------------------------|
| Ex.P1          | Photocopy of the power of attorney dated 23.11.2020 |



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| <b><i>Exhibit</i></b> | <b><i>Description</i></b>                                                                                                         |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| Ex.P2                 | Photocopy of the Fixture Note dated 22.10.2015                                                                                    |
| EX.P3                 | Photocopy of the Bill of Lading bearing No.SUV/TAR 2015001 dated 17.12.2015                                                       |
| Ex.P4                 | Photocopy of the Invoice No. NP/47V49/12 dated 18.03.2024                                                                         |
| Ex.P5                 | Photocopy of the settlement Deed dated 13.07.2017                                                                                 |
| Ex.P6                 | Photocopy of the plaint filed in C.S.No.705 of 2017 along with the Application dated 07.08.2017                                   |
| Ex.P7                 | Photocopy of the order of arrest dated 08.09.2017 passed by the Hon'ble Madras High Court in C.S.No.705 of 2017                   |
| Ex.P8                 | Photocopy of the Memo of Release filed by the plaintiff dated 11.09.2017                                                          |
| Ex.P9                 | Photocopy of the order of Release dated 11.09.2017 passed by the Hon'ble Madras High Court in C.S.No.705 of 2017                  |
| Ex.P10                | Photocopy of the contract dated 01.06.2017 between NMCC and Toyota                                                                |
| Ex.P11                | Photocopy of the fixture note dated 09.08.2017                                                                                    |
| Ex.P12                | Photocopy of the Hire Statement dated 17.08.2017 issued by MOL                                                                    |
| Ex.P13                | Photocopy of the Time Charter Party (NYPE 93) dated 23.02.2009                                                                    |
| Ex.P14                | Photocopy of the Invoice No.P&I/091/17-18 dated 18.07.2017 issued by Vessel Agents                                                |
| Ex.P15                | Photocopy of the Invoices issued towards costs relating to release of Vessel.                                                     |
| Ex.P16                | Original Consolidated statement of account setting out the details of the damages claimed herein(Feb 2021)                        |
| Ex.P17                | Photocopy of the Invoice No.IV-TBC-1707-210 dated 26.07.2017 issued by the Bunker supplier Toyota Tsusho Petroleum Pvt.Ltd. Tokyo |
| Ex.P18                | Photocopy of the statement of Facts issued by the Master on behalf of MOL dated 30.08.2017                                        |
| Ex.P19                | Photocopy of the Bunker Delivery Note bearing No.01264 dated 04.09.2017                                                           |
| Ex.P20                | Photocopy of the letter dated 11.09.2017 addressed by NMCC                                                                        |
| Ex.P21                | Photocopy of the statement of Facts dated 12.09.2017 issued by the Master of the Vessel                                           |
| Ex.P22                | Photocopy of the Letter dated 12.09.2017 addressed to the DC (Preventive General by the vessel agents MOL Lines India Pvt. Ltd.   |



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| <b><i>Exhibit</i></b> | <b><i>Description</i></b>                                                                     |
|-----------------------|-----------------------------------------------------------------------------------------------|
| Ex.P23                | Photocopy of the off-hire statement dated 13.09.2017 issued by Nissan to MOL.                 |
| Ex.P24                | Photocopy of the statement of facts dated 25.01.2017 issued by MOL Lines India Pvt.Ltd        |
| Ex.P25                | Photocopy of the Port clearance dated 31.08.2017 issued by the DC(Imports).                   |
| Ex.P26                | Photocopy of the General Terms and Conditions(GTC) for sales of Marine Fuels of Toyota.       |
| Ex.P27                | Photocopy of the Equasis Report dated 25.11.2020                                              |
| Ex.P28                | Photocopy of the Remittance Payment Report dated 25.08.2017 setting out the hire paid by MOL. |
| Ex.P29                | Photocopy of the LSR Report dated 06.09.2017                                                  |

**AQJ**

**ABDUL QUDDHOSE, J.**

rkm



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