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A.Nos.2275 & 2276 of 2023 in
C.S(Comm Div)Nos.109 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on	06.09.2024
Order Pronounced on	19.10.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

A.Nos.2275 & 2276 of 2023 in
C.S(Comm.Div)No.109 of 2022

In both applications:

The Shipping Corporation of India Limited,
Shipping House,
245, Madame Cama Road,
Mumbai, Maharashtra - 400 021
Represented by its
Regional Deputy General Manager.

... Applicant

-vs-

Mr.Nicholas John Richardson

... Respondent

Prayer in A.No.2275 of 2023: Judge's Summons filed under Order XIV Rule 8 of Madras High Court Original Side Rules Read with Order VII Rule II of Civil Procedure Code to reject the plaint in C.S(Comm.Div)No.109 of 2022.



A.Nos.2275 & 2276 of 2023 in
C.S.(Comm Div)Nos.109 of 2022

Prayer in A.No.2276 of 2023 Judge's Summons filed under Order XIV Rule 8 of Madras High Court Original Side Rules Read with Clause 12 of the Letters Patent Act 1862 Read with Section 151 of Civil Procedure Code to revoke the leave to sue granted against the defendant in A.No.2098 of 2022 in C.S.(Comm.Div) No.109 of 2022.

In both applications:

For Applicant : Mr.Joy Thattil Ittoop
Mr.Bijish B Tom

For Respondent : Mr.K.Krishnaswamy
for Mr.S.Vasudevan

COMMON ORDER

After obtaining leave to sue in Application No.2098 of 2022, by order dated 07.06.2022, the suit was filed as an admiralty action *in personam* to recover damages from the defendant for the collision allegedly caused by the defendant. The sole defendant was served suit summons on 01.07.2022. By these applications, the defendant seeks rejection of the plaint and revocation of leave to sue, respectively.

Counsel and their contentions

2/29



A.Nos.2275 & 2276 of 2023 in
C.S(Comm Div)Nos.109 of 2022

WEB COPY

2. Oral arguments on behalf of the applicant were advanced by Mr.Joy Thattil Ittoop and on behalf of the respondent by Mr. K.Krishnaswamy.

3. Learned counsel for the applicant/defendant submitted that the alleged collision occurred on 30.01.2018 about 23 nautical miles into the sea off the Kanyakumari coast. By referring to Section 3 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (the Admiralty Act), he submitted that the Court's jurisdiction is exercisable in respect of maritime claims only over the waters up to the limits of the territorial waters of their respective jurisdictions. Since the collision occurred beyond the territorial waters, he contended that leave is liable to be revoked. As regards actions *in personam* under Section 7 of the Admiralty Act, learned counsel contended that such actions would only lie where the defendant actually and voluntarily resides or carries on business. By pointing out that the defendant carries on business in Mumbai in the State of



A.Nos.2275 & 2276 of 2023 in
C.S(Comm Div)Nos.109 of 2022

WEB COPY

Maharashtra, learned counsel contended that the action is not maintainable before this Court.

4. Learned counsel next contended that the plaintiff failed to exhaust pre-institution mediation in terms of Section 12A of the Commercial Courts Act, 2015 (the Commercial Courts Act) and, therefore, the plaint is liable to be rejected in terms of the law laid down by the Hon'ble Supreme Court in *Patil Automation Private Limited and others v. Rakheja Engineers Private Limited*, (2022) 10 SCC 1 (*Patil Automation*).

5. In response to these contentions, learned counsel for the respondent/plaintiff submitted that the cause of action arose within the jurisdiction of this Court. Learned counsel submitted that the plaintiff's boat, NELSON - I, sunk on account of collision with the defendant's ship, MV SCI MUMBAI, which was operated in a rash and negligent manner. Learned counsel also submitted that the radar



A.Nos.2275 & 2276 of 2023 in
C.S(Comm Div)Nos.109 of 2022

WEB COPY

images available with the Directorate General of Shipping establish that the collision was caused by the defendant. According to learned counsel, such loss is liable to be compensated by the defendant, as the owner of the ship, in terms of the Merchant Shipping Act, 1958 (the Merchant Shipping Act) and the Merchant Shipping (Prevention of Collisions at Sea) Rules, 1975.

6. Learned counsel further submitted that the plaintiff's claim qualifies as a maritime claim under the Admiralty Act and that it is maintainable as an action *in personam* under Sections 6 and 7 thereof. As regards the exercise of jurisdiction under Section 7 of the Admiralty Act, learned counsel submitted that an action *in personam* is maintainable as long as the cause of action arises, wholly or partly, within India or the defendant voluntarily resides or carries on business or personally works for gain in India. By referring to the Senior Courts Act, 1981 (the Senior Courts Act), learned counsel submitted that Section 7 is inspired by the UK statute and that it



A.Nos.2275 & 2276 of 2023 in
C.S(Comm Div)Nos.109 of 2022

WEB COPY

departs from the International Convention on Certain Rules concerning Civil Jurisdiction in matters of Collision, 1952 (International Collision Convention). By comparing and contrasting Article 1 of the International Collision Convention, which limits jurisdiction to the Court where the defendant has its habitual residence or place of business or the Court of the place where the arrest was effected, with Section 22(2) of the Senior Courts Act, learned counsel submitted that Section 7 is substantially similar to the Senior Courts Act. Learned counsel also referred to the judgment of the Hon'ble Supreme Court in *M.V.Elisabeth and others v. Harwan Investment and Trading Pvt. Ltd.* 1993 Supp (2) SCC 433 (*M.V. Elisabeth*), which was pronounced prior to the enactment of the Admiralty Act, to contend that the genesis, evolution and basis for the exercise of admiralty jurisdiction was discussed elaborately therein in that context.



A.Nos.2275 & 2276 of 2023 in
C.S(Comm Div)Nos.109 of 2022

WEB COPY

7. Learned counsel then submitted that the cause of action did not end with the collision and extended to events subsequent thereto, such as the lodging of the police complaint, the estimation of loss suffered by the plaintiff, etc. Since a part of the cause of action arose within the jurisdiction of India and, in particular, within the jurisdiction of this Court, he submitted that leave is not liable to be revoked.

8. As regards the alleged non compliance with Section 12A of the Commercial Courts Act, by referring to *Patil Automation*, learned counsel submitted that the Supreme Court fixed 20.08.2022 as the cut off date for the application of Section 12A. Since the suit was presented on 28.02.2022, learned counsel submitted that the plaint is not liable to be rejected with reference to *Patil Automation*.



A.Nos.2275 & 2276 of 2023 in
C.S(Comm Div)Nos.109 of 2022

Discussion, analysis and conclusions

WEB COPY

9. The record discloses that the plaint was presented on 28.02.2022, re-presented on 26.04.2022 and admitted on 14.06.2022. In *Patil Automation*, the Supreme Court declared that Section 12A of the Commercial Courts Act is mandatory and that the plaint is liable to be rejected if the suit is instituted in contravention of Section 12A. However, the Court made such declaration effective from 20.08. 2022. Since the suit was admittedly presented and even admitted prior to 20.08.2022, the plaint is not liable to be rejected on the ground of contravention of Section 12A. Because the contravention of Section 12A is the only basis on which A.No.2275 of 2023 was filed, such application is liable to be rejected.

10. Turning to the application to revoke leave, such application was filed on the ground that an action *in personam* is not maintainable before this Court under the Admiralty Act. The expression “admiralty jurisdiction” is defined in Section 2(1)(a) of the Admiralty



A.Nos.2275 & 2276 of 2023 in
C.S(Comm Div)Nos.109 of 2022

Act as under:

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“(a)”admiralty jurisdiction” means the jurisdiction exercisable by a High Court under section 3, in respect of maritime claims specified under this Act”

Section 3, in turn, confers admiralty jurisdiction on the respective High Courts in respect of all maritime claims by prescribing as under:

“3. Admiralty jurisdiction. – Subject to the provisions of sections 4 and 5, the jurisdiction in respect of all maritime claims under this Act shall vest in the respective High Courts and be exercisable over the waters up to and including the territorial waters of their respective jurisdictions in accordance with the provisions contained in this Act:

Provided that the Central Government may, by notification, extend the jurisdiction of the High Court up to the limit as defined in section 2 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (80 of 1976). “

(emphasis added)

As is evident from the text of Section 3, admiralty jurisdiction is



A.Nos.2275 & 2276 of 2023 in
C.S(Comm Div)Nos.109 of 2022

WEB COPY

exercisable over waters up to the limits of the territorial waters. The words “respective High Courts” and “up to and including the territorial waters of their respective jurisdictions”, which are emphasised in bold font above, underscore that this jurisdiction is vested in specific High Court(s).

11. The expression “territorial waters” is defined in Section 2(1)(k) of the Admiralty Act as having the same meaning assigned to it in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (Act 80 of 1976). Under Section 3(2) of Act 80 of 1976, “the limit of the territorial waters is the line every point of which is at a distance of twelve nautical miles from the nearest point of the appropriate baseline.” Thus, admiralty jurisdiction is exercisable over waters up to 12 nautical miles into the sea. This leads to the question as to which High Court would have jurisdiction and whether the Admiralty Act contains any provisions to identify the jurisdictional High Court. The expression “High



A.Nos.2275 & 2276 of 2023 in
C.S(Comm Div)Nos.109 of 2022

WEB COPY

Court” is defined in Section 2(1)(e) of the Admiralty Act as under:

“(e) “High Court”, in relation to an admiralty proceeding, means any of the High Court of Calcutta, High Court of Bombay, High Court of Madras, High Court of Karnataka, High Court of Gujarat, High Court of Orissa, High Court of Kerala, High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh or any other High Court, as may be notified by the Central Government for the purposes of this Act; “

The above provision defines High Court in relation to an admiralty proceeding by mentioning specific High Courts, each of which exercises jurisdiction over territories or States with a coast, whereas other High Courts exercising jurisdiction over landlocked territories or States are not mentioned. The definition does not, however, contain any indication as to which of the named High Courts would have jurisdiction over a particular dispute or the basis for identifying such High Court.

12. The text of Section 3 also discloses that the exercise of



A.Nos.2275 & 2276 of 2023 in
C.S(Comm Div)Nos.109 of 2022

WEB COPY

admiralty jurisdiction under Section 3 is subject to the provisions of Sections 4 and 5. Section 4 enables the exercise of jurisdiction by the High Court to hear and determine any question on a maritime claim against any vessel, provided such maritime claim arises out of matters specified in clauses (a) to (w) of sub-section (1) of Section 4. Since Section 4 enables the exercise of jurisdiction to determine maritime claims against any vessel, i.e. thing or *rem*, in contrast to person, it is clear that Section 4 is directed at actions *in rem*. Section 5, which deals with arrest of a vessel, reads, in relevant part, as under:

"5. Arrest of vessel in rem -(1) The High Court may order arrest of any vessel which is within its jurisdiction for the purpose of providing security against a maritime claim which is the subject of an admiralty proceeding...."
(emphasis added)

Thus, Section 4 does not contain an express prescription with regard to the jurisdictional High Court for an action *in rem* but the nature of jurisdiction indicates that it should be the High Court with jurisdiction over the vessel. Section 5, by contrast, uses the phrase



A.Nos.2275 & 2276 of 2023 in
C.S(Comm Div)Nos.109 of 2022

WEB COPY

“the High Court may order arrest of any vessel which is within its jurisdiction” for the purpose of securing a maritime claim, thereby making it abundantly clear that jurisdiction to arrest can be exercised only if the vessel concerned is within the High Court's jurisdiction. Against this statutory backdrop, it is instructive to turn to *M.V.Elisabeth* for guidance on the basis for exercising admiralty jurisdiction.

13. In *M.V.Elisabeth*, after tracing the history of admiralty law, while holding that the admiralty jurisdiction of the High Court of Andhra Pradesh extended to outward cargo, the Supreme Court held as under in paragraphs 55 and 89 (in relevant part):

“55. An action in rem is directed against the ship itself to satisfy the claim of the plaintiff out of the res. The ship is for this purpose treated as a person. Such an action may constitute an inducement to the owner to submit to the jurisdiction of the court, thereby making himself liable to be proceeded against by the plaintiff in personam. It is,



WEB COPY



A.Nos.2275 & 2276 of 2023 in
C.S(Comm Div)Nos.109 of 2022

however, imperative in an action in rem that the ship should be within jurisdiction at the time proceedings are started. A decree of the court in such an action binds not merely the parties to the writ but everybody in the world who might dispute the plaintiff's claim."

89. All persons and things within the waters of a State fall within its jurisdiction unless specifically curtailed or regulated by rules of international law. The power to arrest a foreign vessel, while in the waters of a coastal State in respect of a maritime claim, wherever arising, is a demonstrable manifestation and an essential attribute of territorial sovereignty...."

Sections 4 and 5 of the Admiralty Act read in the light of *M.V. Elisabeth* lead to the conclusion that an admiralty action *in rem* is maintainable in the High Court having jurisdiction over the vessel at the time of commencement of such action irrespective of the place where the cause of action for the maritime claim arose and irrespective of the place of residence or business or place of incorporation of the defendant(s). Because this is an action *in personam*, it is necessary to consider the basis for the exercise of



A.Nos.2275 & 2276 of 2023 in
C.S(Comm Div)Nos.109 of 2022

WEB COPY

admiralty jurisdiction by a High Court in such matters.

14. Section 6 of the Admiralty Act deals with the exercise of admiralty jurisdiction *in personam* and the said provision is as under:

“6. Admiralty jurisdiction in personam.—

Subject to section 7, the High Court may exercise admiralty jurisdiction by action in personam in respect of any maritime claim referred to in clauses (a) to (w) of sub-section (1) of section 4. “

The language of Section 6 indicates that exercise of admiralty jurisdiction *in personam* is subject to Section 7 and extends to any maritime claim referred to in clauses (a) to (w) of sub-section (1) of Section 4. The matters enumerated in clauses (a) to (w) of sub-section (1) of Section 4 include loss or damage caused by the operation of a vessel. Therefore, on a conjoint reading of Sections 3, 4 & 6, a claim arising out of or relating to loss or damage caused by the operation of a vessel, such as the claim in this suit, may be maintained as an action



WEB COPY

in personam provided it satisfies the requirements of Section 7.

15. Section 7 reads as follows:

“7. Restrictions on actions in personam in certain cases. – (1) *Where any maritime claim arising in respect of a damage or loss of life or personal injury arising out of any –*

(i) collision between vessels,

(ii) the carrying out of or omission to carry out, a manoeuvre in the case of one or more vessels,

(iii) non-compliance, on the part of one or more vessels, with the collision regulations made in pursuance of section 285 of the Merchant Shipping Act, 1958 (44 of 1958),

the High Court shall not entertain any action under this section against any defendant unless –

(a) the cause of action, wholly or in part, arises in India; or

(b) the defendant, at the time of commencement of the action by the High Court, actually and voluntarily resides or carries on business or personally works for gain in India:



WEB COPY



A.Nos.2275 & 2276 of 2023 in
C.S(Comm Div)Nos.109 of 2022

Provided that an action may be entertained in a case, where there are more defendants than one and where one of the defendants who does not actually and voluntarily reside or carry on business or personally work for gain in India is made a party to such action either with the leave of the court, or each of the defendants acquiesces in such action.

(2) The High Court shall not entertain any action in personam to enforce a claim to which this section applies until any proceedings previously brought by the plaintiff in any court outside India against the same defendant in respect of the same incident or series of incidents have been discontinued or have otherwise come to an end.

(3) The provisions of sub-section (2) shall apply to counter-claims as they apply to actions except counter-claims in proceedings arising out of the same incident or series of incidents.

(4) A reference to the plaintiff and the defendant for the purpose of sub-section (3) shall be construed as reference to the plaintiff in the counter-claim and the defendant in the counter-claim respectively.

(5) The provisions of sub-sections (2) and (3) shall



WEB COPY



A.Nos.2275 & 2276 of 2023 in
C.S(Comm Div)Nos.109 of 2022

not apply to any action or counter-claim if the defendant submits or agrees to submit to the jurisdiction of the High Court.

(6) Subject to the provisions of sub-section (2), the High Court shall have jurisdiction to entertain an action in personam to enforce a claim to which this section applies whenever any of the conditions specified, in clauses (a) and (b) of sub-section (1) is satisfied and any law for the time being in force relating to the service of process outside the jurisdiction shall apply.”

16. Three aspects should be noticed in Section 7. First, the heading is “restrictions on actions *in personam* in certain cases”. Although a heading does not control the meaning of a statutory provision, it is indicative that the provision is intended to impose restrictions with regard to certain types of action *in personam*. Sub-section (1) of Section 7 makes it clear that these restrictions are limited to maritime claims in respect of damage or loss of life or personal injury arising out of: collision between vessels; the carrying



A.Nos.2275 & 2276 of 2023 in
C.S(Comm Div)Nos.109 of 2022

WEB COPY

out of or failure to carry out a manoeuvre in relation to one or more vessels; or non-compliance with the collision regulations made under Section 285 of the Merchant Shipping Act by one or more vessels. When read with Section 6, the conclusion that follows is that the restrictions in Section 7 do not apply to other types of maritime claim *in personam*. Secondly, as regards an action *in personam* that falls within the scope of Section 7, a restriction is imposed that “ the High Court shall not entertain any action under this section against any defendant unless the cause of action arises, wholly or partly, in India or the defendant, at the time of commencement of the action, voluntarily resides or carries on business or personally works for gain in India. Thirdly, sub-section (2) of Section 7 imposes a further restriction that the High Court should not entertain an action *in personam*, if it falls within the scope of Section 7, unless any other proceedings previously brought by the plaintiff in any Court outside India against the same defendant in respect of the same incident or series of incidents have been discontinued or have otherwise come to



A.Nos.2275 & 2276 of 2023 in
C.S(Comm Div)Nos.109 of 2022

WEB COPY

an end. The implications of Section 7 on the exercise of admiralty jurisdiction *in personam* fall for consideration next.

17. As noticed in the preceding paragraph, the object of Section 7 is not to expand the basis for exercising admiralty jurisdiction *in personam* in cases falling under Section 7, but rather to impose restrictions in relation thereto. When viewed from that perspective, it becomes clear that clauses (a) and (b) of sub-section (1) of Section 7 are not intended to confer jurisdiction on any High Court, as defined in Section 2(1)(e), if the cause of action arose, wholly or partly, in India or if the defendant resided or carried on business or personally worked for gain in India at the time of commencement of the action. Instead, clauses (a) and (b) are intended to act as additional pre-requisites or conditions for the exercise of jurisdiction if relating to a maritime claim *in personam* falling within the scope of Section 7. These restrictions may be better appreciated in contradistinction to the exercise of admiralty jurisdiction *in rem* subject to the relevant



A.Nos.2275 & 2276 of 2023 in
C.S(Comm Div)Nos.109 of 2022

WEB COPY

vessel being within jurisdiction irrespective of the place of residence, business or incorporation of the defendant and irrespective of cause of action. Because Section 7 deals with *in personam* maritime claims relating to vessel collisions or movement, it is clearly conceivable that these may be vessels registered outside India and owned by a foreign person/entity. While *in rem* admiralty jurisdiction may be exercised even in such situations if the vessel enters the territory over which the High Court concerned exercises jurisdiction, in my view, the additional requirements in clauses (a) and (b) of Section 7(1) were introduced to preclude the exercise of *in personam* admiralty jurisdiction merely based on location of vessel. The question as to which High Court has jurisdiction in respect of *in personam* maritime claims, especially those falling under Section 7, remains open and warrants examination.

18. Section 2(2) of the Admiralty Act deals with words and



A.Nos.2275 & 2276 of 2023 in
C.S(Comm Div)Nos.109 of 2022

expressions not defined therein by making the definitions in the
Merchant Shipping Act applicable thereto. Section 2(2) is as under:

*“2(2)The words and expressions used herein but not
defined and defined in the Merchant Shipping Act, 1958
(44 of 1958) shall have the meanings respectively assigned
to them in that Act.”*

As noticed earlier, Section 2(1)(e) of the Admiralty Act defines the
expression “High Court” in relation to an admiralty proceeding by
naming specific High Courts, but does not define or prescribe criteria
for identifying the jurisdictional High Court. Section 3(15) of the
Merchant Shipping Act defines the jurisdictional High Court as
under:

*“3(15) “High Court”, in relation to a vessel, means the High Court
within the limits of whose appellate jurisdiction-*

- (a) the port of registry of the vessel is situate; or*
- (b) the vessel is for the time being; or*
- (c) the cause of action wholly or in part arises;”*

Since this definition is with reference to a vessel, its applicability to



A.Nos.2275 & 2276 of 2023 in
C.S(Comm Div)Nos.109 of 2022

WEB COPY

an action *in personam* is contentious. Therefore, the exercise of admiralty jurisdiction *in personam* has to be decided primarily with reference to the Letters Patent, where applicable, such as in this case, and also by examining whether the additional pre-requisites of Section 7 of the Admiralty Act are satisfied. I turn to this aspect next.

19. The Amended Letters Patent, 1865 confers civil admiralty jurisdiction on this Court under clause 32 as follows:

“32. Civil – And we do further ordain that the said High Court of Judicature at Madras shall have and exercise all such civil and maritime jurisdiction as may now be exercised by the said High Court as a Court of Admiralty or of Vice-Admiralty, and also such jurisdiction for the trial and adjudication of prize causes and other maritime questions arising in India, as may now be exercised by the said High Court.”



A.Nos.2275 & 2276 of 2023 in
C.S(Comm Div)Nos.109 of 2022

As is evident from the discussion in *M.V.Elisabeth*, admiralty jurisdiction was being exercised by High Courts in India much prior to the enactment of the Admiralty Act, including with reference to both the Colonial Courts of Admiralty (India) Act, 1891 (enacted pursuant to the Colonial Courts of Admiralty Act, 1890) and the Letters Patent. Such jurisdiction was exercised by a particular High Court if the vessel or cause of action fell within its appellate jurisdiction.

20. In *Seawaves Shipping Services v. Adriatic Tankers Shipping Co./MANU/TN/1108/1995*, while dismissing an appeal against the rejection of an application before this Court for arrest and sale of a vessel at the Port of Kandla, Gujarat State, the Division Bench of this Court considered whether this Court could exercise admiralty jurisdiction over a vessel which is lying outside the limits of its appellate jurisdiction. After referring to and extracting from *M.V.Elisabeth*, this Court concluded that admiralty jurisdiction could



A.Nos.2275 & 2276 of 2023 in
C.S(Comm Div)Nos.109 of 2022

not be exercised. Paragraph 11 of the said judgment is set out below:

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“11. The Act did not alter in any manner the territorial jurisdiction of the Admiralty Courts in India. By Act XVI of 1891, the High Court of Madras was declared to be a Court of Admiralty along with High Courts of Bombay and Fort William in Bengal. There was no subsequent legislation either by the British Parliament or by Indian Legislature enhancing the territorial limits of the High Courts at Madras, Bombay and Calcutta in their Admiralty Jurisdiction. With reference to the subjects and causes, the scope of the jurisdiction has been as wide as that of the High Court of England. But with reference to territorial limits it can by no stretch of imagination be said that all the three High Courts had and have concurrent jurisdiction over the entirety of Indian Territorial waters. If that contention is accepted it will lead to uncertainty and conflict of decisions. With reference to the same incident, one suit may be filed in Bombay and another suit in Madras. Law in a civilized country has to necessarily prescribe a definite



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A.Nos.2275 & 2276 of 2023 in
C.S(Comm Div)Nos.109 of 2022

forum. Otherwise, questions relating to Forum non Convenience will often arise and transfer of proceedings from one High Court to another will be sought.

In reaching the above conclusion, the Division Bench of this Court derived support from Section 3(15) of the Admiralty Shipping Act. It remains to be seen whether the cause of action for this suit arose within the limits of its appellate jurisdiction.

21. Before filing the suit, the plaintiff lodged a complaint at the Colachel Marine Police Station, Tamil Nadu. Such complaint was registered as First Information Report No.6 of 2018 (the FIR). Apart from the above, the plaintiff has not brought an action in any Court outside India against the defendant in respect of this incident. Therefore, the restriction under sub-section (2) of Section 7 does not apply.



A.Nos.2275 & 2276 of 2023 in
C.S(Comm Div)Nos.109 of 2022

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22. As regards the requirements of clause 32 of the Letters Patent read with clauses (a) or (b) of sub-section (1) of Section 7, in paragraphs 36 to 43 of the plaint, the plaintiff has asserted that the cause of action has arisen partly within the jurisdiction of this Court in as much as the plaintiff's boat, TN12MFB111, was registered in Thoothukudi; FIR No.6 of 2018 was registered by the Sub-Inspector of Police, Marine Police Station, Colachel, Tamil Nadu; the District Collector, Thoothukudi called for an inquiry report from the Director, Fisheries Department, Thoothukudi; the loss was estimated in Thoothukudi District; and notices were issued by the plaintiff's lawyer to the defendant from within the jurisdiction of this Court. The material documents *prima facie* appear to support these assertions.

23. When these facts and circumstances are considered cumulatively, I conclude that a part of the cause of action arose in Tamil Nadu. The additional requirements of clauses (a) and (b) of



A.Nos.2275 & 2276 of 2023 in
C.S(Comm Div)Nos.109 of 2022

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sub-section (1) of Section 7 of the Admiralty Act, i.e. that the cause of action should arise, wholly or partly, within India or the defendant should voluntarily reside or carry on business or personally work for gain in India are satisfied because the defendant and owner of the vessel alleged to be the cause of collision is an entity with its registered office in Mumbai, Maharashtra, India. Consequently, no case is made out to revoke leave.

24. For reasons set out above, both these applications are dismissed without any order as to costs.

19.10.2024

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A.Nos.2275 & 2276 of 2023 in
C.S(Comm Div)Nos.109 of 2022

SENTHILKUMAR RAMAMOORTHY J.

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Pre-delivery order in

A.Nos.2275 & 2276 of 2023 in
C.S(Comm.Div)No.109 of 2022

19.10.2024