IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2025

CORAM:

THE HONOURABLE MR. JUSTICE **N. ANAND VENKATESH**

C.S.(Comm.Div.) No.46 of 2024

MS ELBSUN GmbH & Co. KG.,
represented by its authorised representative
Mr.Lucas Jayakumar,
Am Elbdeich 76,
21706 Drochtersen,
Germany .. Plaintiff

Vs

Owners and Parties interested in the
Vessel MV NEW LEGEND (IMO No.9562037)
A Hong Kond Flag sea-going Vessel,
registered at Hong Kong
together with her hull, tackle, engines,
machinery, boats, bunkers, equipment,
paraphernalia and all other appurtenances
presently lying at Kamarajar Port, Ennore,
Tamil Nadu in India territorial Waters and
represented by its Master .. Defendant

PRAYER :

Plaint filed under Order XLII, Rule 1, 2 and 3 of the O.S.Rules r/w.Order VII Rule 1 of C.P.C., and Sections 3 and 4 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 and Section 7 of the Commercial Court Act, 2015 praying for a judgment and decree against the defendant as under:

a) for a sum of EUR 2,256,982.61/- (Euro Two Million Two Hundred Fifty-Six Thousand, Nine Hundred and Eighty-Two and Sixty One Cents) (being Cost of

Repairs of an amount of EUR 1,560,420.84/- plus Loss of Hire from 17.09.2023 to 07.11.2023 15.00 LT amounting to EUR 527,833.80/- plus interest @ 18% p.a. from 17.09.2023 up to 27.02.2023 amounting to EUR 168,727.97/-), equivalent to INR 20,24,73,910/- (Indian Tupee Twenty Crores, Twenty Four Lakhs, Seventy-Three Thousand, Nine Hundred and Ten only) converted at the rate of 1 EUR equaling Rs.89.71 as on 26.02.2024 and further interest on the aforesaid claim from the date of filing of the present suit till the date of realisation together with costs;

b) For arrest and sale of the Defendant Vessel MV NEW LEGEND (IMO 9562037), flying the flag of Hong Kong, now lying at Kamarajar Port, within the jurisdiction of this Court along with her hull, engines, gears, tackles, bunkers, machinery, apparel, plant, furniture, fixtures, appurtenances and paraphernalia, plant and machinery lying at Kamarajar Port and direct the deposit of the sale proceeds in this Court.

For Plaintiff : Mr. Amir Sing Pasrich
Mr.S.Raghunathan
Mr.Karan Bhamani
Ms.Sharanya Vaidhiyanathan

For Defendant : Mr.K. Mukund Rao
Mr. Karthik Ranganathan,
Sr. Standing Counsel (Income Tax)

JUDGMENT

This suit was filed for recovery of money from the defendant and for the arrest and sale of the defendant's Vessel.

2. Initially along with the suit, Appln.Nos.1141 and 1142 of 2024 were moved before this Court seeking for the arrest of the Vessel and the following

order came to be passed by this Court on 27.02.2024

"The plaintiff is a ship owner owning a Vessel by name MV ELBSUN. The plaintiff Vessel MV ELBSUN was at the Port of Istanbul, Turkey on 17.09.2023. The defendant Vessel MV NEW LEGEND had also arrived at the very same Port on that date. While the plaintiff's Vessel was in the Outer anchorage of the said Port and was stationary, the defendant Vessel, which is presently lying at the Kamarajar Port, Ennore, Chennai, within the admiralty jurisdiction of this Court had collided with the plaintiff's Vessel MV ELBSUN at the port of Istanbul, Turkey. The plaintiff claims that in view of the collision, their Vessel MV ELBSUN suffered heavy damages as a result, they had suffered heavy loss on account of the huge amount of money spent by them towards repairs to bring the Vessel back to Seaworthiness. The plaintiff also claims that due to the damage caused to the plaintiff's Vessel, it was remaining idle without trading for 51 days as it was kept in the dockyard for repairs. The plaintiff categorically contends that only due to the recklessness of the defendant Vessel, the collision had happened, which resulted in damage caused to the plaintiff Vessel. As seen from the documents filed along with the plaint, there has been a series of communications exchanged between the plaintiff and the owners of the defendant Vessel. According to the plaintiff, despite assurances given by the owners of the defendant Vessel that they will provide a LOU (Letter of Undertaking) for the loss suffered by the plaintiff, till date, they have not provided the LOU as agreed by them. The plaintiff has also warned the owners of the defendant Vessel, while it was at a Port in Malaysia that in case they fail to provide the LOU, the plaintiff will be constrained to seek arrest of the defendant Vessel. However, according to the plaintiff despite the said warning, the owners of the defendant Vessel has not provided the LOU for the loss suffered by the plaintiff, till date. The plaintiff also contends that the owners of the defendant Vessel is a Flag of convenience ship, as it is flying a Liberian Flag. The plaintiff also claims that the defendant Vessel is in the watchlist of the creditors and is a high risk Vessel. The plaintiff has filed

documents along with the plaint, which includes the survey report conducted in the presence of the plaintiff's representative as well as owners of the defendant Vessel representative as well as the Surveyors. As seen from the preliminary survey report, dated 18.09.2023, which has been filed along with the plaint, it reveals that the cause of accident is only because of the defendant's Vessel MV NEW LEGEND. The relevant extract from the preliminary survey report, dated 18.09.2023 is reproduced hereunder :

"CAUSE OF THE INCIDENT

The above-described damages to MV "ELBSUN" could reasonably be attributed due to hit by MV "NEW LEGEND" at Istanbul anchorage area C on 17th Sept. 2023.

It is evidencable with the video records taken, ship's documents and Coastal Safety's casualty report that at the time of the incident, M/V "ELBSUM" was stationary at the anchorage area C and she was hit by M/V "NEW LEGEND", which was underway and making maneuvering at Istanbul anchorage area C.

Taking the above into account, we are of the opinion that the liability for the occurrence of the subject incident completely lies on M/V "NEW LEGEND", which hit/contacted M/V "ELBSUM" being stationary at her anchor position."

2. The findings of the preliminary survey report, dated 18.09.2023 is also confirmed by the final survey report, dated 20.11.2023 and the extract of the same is reproduced hereunder :-

"5.1

In view of the reported circumstances, video taken by crew indicating the casualty, ECDIS records, Class Occasional Survey Report as well as physical appearance of the findings, the above detailed damages are consistent with the casualty under review, namely "ELBSUN struck by NEW LEGEND on 17th Sep 2023 at Istanbul Anchorage, whilst ELBSUN was lying stationary on anchor at Anchorage Area C".

5.2

A video (taken by duty Officer) as well as ECDIS records, clearly indicating the proceeding of "NEW LEGEND" at the time of the subject casualty, presented for our perusal during our initial attendance on board, outcome of which were in line with reported casualty circumstances as detailed above and per Master's Statement."

3. Mr.Sathish Parasaran, learned Senior Counsel appearing for the plaintiff has also shown to this Court a video of the collision between the two Vessels, which has resulted in damage caused to the plaintiff's Vessel.

4. On a prima facie consideration, this Court observes from the said video that the plaintiff's Vessel was stationary at the time of the accident and the defendant Vessel due to its recklessness had collided with the plaintiff's Vessel resulting in damage caused to the plaintiff's Vessel. The plaintiff has also filed other documents along with the plaint to substantiate the plaintiff's claim that only due to the fault of the defendant Vessel, the plaintiff Vessel had suffered damages.

5. The suit claim of the plaintiff i.e., EUR 2,256,982.61 comprises of the following :-

Cost of Repairs - EUR 1,560,420.84/-

Loss of Hire (17.09.2023 to 07.11.2023 15.00 LT) -EUR 527, 833.80/-

Interest @ 18% p.a. from 17.09.2023 upto 27.02.2023 (i.e., prior to filing of the present Suit) - EUR 168,727.97/-

6. Being a collision claim, the said claim is a maritime claim falling within Section 4 of the Admiralty and Settlement (Jurisdiction and Settlement of Maritime Claim) Act, 2017.

7. This Court after giving due consideration to the averments contained in the plaint and the averments contained in the affidavit filed in support of this application as well as the documents filed along with the plaint and after hearing the *submissions made by the learned Senior Counsel for the plaintiff is of the considered view that a prima facie case has been made out by the plaintiff for the grant of an order of arrest of the respondent / defendant Vessel as prayed for in this application(A. No.1141 of 2024). The balance of convenience and irreparable hardship has also been established by the plaintiff. Accordingly, there shall be an order of arrest as prayed for in A. No.1141 of 2024.*

8. Registry is directed to issue the warrant of arrest, today as per the admiralty Rules of the Madras High Court.

9. The learned counsel for the plaintiff is permitted to communicate this order to the concerned authorities as well as the Master of the defendant Vessel, through all modes of service including through email without waiting for the certified copy of the order.

10. Notice to the respondent / defendant, returnable by 06.03.2024. Private notice is also permitted.

11.Order 39 Rule 3, CPC to be complied with.

12. Post the matter on 06.03.2024. "

3. After the service of notice on the defendant, the matter was listed for hearing on 05.03.2024 and the following order came to be passed by this Court.

'A. No.1281 of 2024 has been filed by the /defendant seeking to raise the order of arrest of the respondent / defendant Vessel granted by this Court on 27.02.2024 in A. Nos.1141 and 1142 of 2024 in C.S. (Comm. Div.) No.46 of 2024.

2. In the affidavit filed in support of A. No.1281 of 2024, the applicant / defendant has undertaken to take a Fixed Deposit for a sum of Rs.20,32,72,712/- to secure the suit claim of the plaintiff, without prejudice to their rights and contentions in the main suit. On such deposit being made, the applicant / defendant seeks for an order from this Court to release the respondent / defendant Vessel from arrest. The learned counsel *for the respondent / plaintiff has not raised any serious objection for the same. But however, he would submit that the deposit of the amount by the applicant / defendant to the credit of this suit is without prejudice to the rights and contentions of the plaintiff in the main suit.*

3. After recording the rival submissions, the following order is passed by this Court :

The applicant / defendant is directed to take a Fixed Deposit for a sum of Rs.20,32,72,712/- (Rupees Twenty Crores, thirty two lakhs, seventy two thousand seven hundred and twelve only) in any Schedule Bank, favouring the Registrar General of this Court to the credit of this suit, within a period of one week from the date of receipt of a copy of this order. On receipt of the same by the Registrar General of this Court within the stipulated time, the Registry of this Court shall issue a release warrant in accordance with the Admiralty rules of this Court releasing the defendant Vessel from arrest and the arrest order dated 27.02.2024 passed in A. Nos.1141 and 1142 of 2024 shall stand vacated.

The Fixed Deposit Receipt shall be taken for a period of one year and shall be renewed periodically by the applicant / defendant till the disposal of the suit.

4. Post the matter for reporting compliance on ***12.03.2024.'***

4. Pursuant to the above order, the defendant took a Fixed Deposit for a sum of Rs.20,32,72,712/- favouring the Registrar General of this Court. Since the said security was furnished by the defendant, this Court disposed of Appln.Nos.1141 and 1142 of 2024, by an order dated 12.03.2024 and the same is extracted hereunder:

'As directed by this Court on 05.03.2024, the defendant has taken a Fixed Deposit for a sum of Rs.20,32,72,712/- favouring the Registrar General of this Court, within the stipulated time. Pursuant to the same, the defendant Vessel has been released

from arrest and has also sailed out of the Port of Ennore.

2. The learned counsel for the defendant would now submit that the defendant will be taking out an application seeking for reduction of security.

3. Registry is directed to number the said application, once it is filed and if it is otherwise in order and list the same for hearing on ***28.03.2024.***

4. Since the defendant has furnished security as directed by this Court and the defendant Vessel has already sailed out the Port of Ennore, nothing survives for further adjudication in A. Nos.1141 and 1142 of 2024 as well as in A. No.1281 of 2024 as those applications are now substituted by the security which is now available to the credit of the suit. Therefore, A. Nos.1141 and 1142of 2024 and A. No.1281 of 2024 are disposed of. '

5. The suit, thereafter proceeded to the stage of filing of written statement. The defendant was set *exparte* for not filing the written statement. Hence, the defendant filed A.Nos.4199 and 4200 of 2024 to set aside the order dated 05.07.2024 setting the defendant *exparte* and this Court, by an order dated 19.08.2024, set aside the order of setting the defendant *exparte* and the written statement filed by the defendant came on file.

6. As a subsequent development, the parties reached a settlement and it was reported to this court that the matter was taken up for hearing on 23.04.2025 and the

following order came to be passed by this Court.

'Both learned counsel for the plaintiff and learned counsel for the defendant submit that a settlement was reached. They seek a short accommodation to execute necessary documents and place them before the Court. Parties are also permitted to serve notice and a copy of such settlement agreement on one of the learned standing counsel for the Income Tax Department by specifying the next date of hearing.

2. List the matter on 03.06.2025.'

7. Ultimately, when the suit was listed for hearing on 20.08.2025, the Settlement Agreement dated 12.05.2025 and the Joint Memorandum of Compromise was placed before this Court. After hearing both sides and after hearing the learned Senior Standing Counsel for the Income Tax Department, the following order came to be passed by this Court;

'Parties have reached a settlement and submitted a settlement agreement dated 12.05.2025 and joint memorandum of compromise dated June 2025. In terms thereof, the defendant has agreed to pay the plaintiff a sum of 2,210,000.00 Euros (net of banking charges, foreign exchange loss, bank charges and any other deductible taxes).

2. As a condition for release of the vessel MV NEW LEGEND (IMO No.9562037), the defendant had created a fixed deposit account in the name of the Registrar General of this Court for a sum of Rs.20,32,72,712/-. Parties have agreed that the settlement amount be paid to the plaintiff through its legal representatives, M/s.Clyde and Co., Europe

LLP in Germany at the bank account indicated in clause 1(ii) of the settlement agreement, from and out of this sum.

3. Upon notice being issued to the Income Tax Department, Mr.Karthik Ranganathan, learned senior standing counsel, appears on behalf of the Department. He submits that he has requested for responses to queries and for the production of the Income Tax Residency Certificate of the plaintiff. Pending response to the outstanding queries and the production of the above mentioned document, he submits that 90% of the amount agreed to be received by the plaintiff may be directed to be remitted to the bank account indicated in the settlement agreement. He clarifies that interest accruals on the deposit should not be paid at this juncture. If the tax residency certificate were to be produced by the plaintiff indicating that the plaintiff is a company registered / incorporated in Germany, learned senior standing counsel submits that he will not object to the release of the balance 10%.

4. Accordingly, the following interim directions are issued:

(i) The Registrar General is directed to take all necessary steps to encash the fixed deposit receipt and remit 90% of the sum deposited (excluding interest accruals) i.e., Rs.18,29,45,440/- out of the sum of Rs.20,32,72,712/- in equivalent Euros to the following bank account of the plaintiff's legal representatives, Clyde and Co., Europe, LLP in Hamburg, Germany:

Account Holder	*: Clyde & Co Europe LLP,*
Bank	*: Deutsche Bank AG*
IBAN	*: DE66 2007 0024 0378 5383 00*
BIC	*: DEUTDEDBHAM*
Ref	*: Matter No.10629235 ECV/JONH*

(ii) After making the remittance, both the remaining 10%, i.e. Rs.2,03,27,272/-, and interest accrued on Rs.20,32,72,712/- until the date of remittance to the plaintiff shall be retained by the Registrar General by opening two

separate accounts for such purpose. The sum of Rs.2,03,27,272/- shall be placed in a non-interest bearing account and the interest component in an interest bearing fixed deposit account for an initial period of three months on auto-renewable basis.

(iii) The plaintiff is directed to provide the tax residency certificate.

(iv) The defendant is directed to respond to outstanding queries, if any.

5. List the matter on 26.08.2025.'

8. Pursuant to the above order, the matter was listed for hearing on 10.09.2025 and this court dealt with the request made by the defendant for withdrawal of the amount that was deposited in the Registry. A direction was issued to the Registry to proceed further with the process without any further delay.

9. The suit was again listed on 24.09.2025 and this Court directed the plaintiff to produce the Tax Residency Certificate. A further direction was also given to the Registry to furnish the Bank account details of the Registry to the counsel for plaintiff in order to enable the plaintiff to produce the Tax Residency Certificate.

10.The suit was thereafter listed on three other occasions at which point of time, the issue regarding the claim made by the Income Tax Department was deliberated and no final order was passed.

11.The suit was listed for hearing today. It was brought to the notice of this Court that pursuant to the settlement between the parties, the amount has been settled by the defendant to the plaintiff outside India. The only other issue to be resolved is that the defendant wants to get back the amount that was deposited.

12. This process can happen in two ways, either the Registry itself can encash it and pay it to the defendant or the defendant can be asked to furnish the Bank Account details and the Registry can transfer the amount to the Bank Account of the defendant. The Income tax Department is now intervening on the ground that the interest component on the Fixed Deposit will be taxable and the Fixed Deposit *per-se* will be taxable.

13. Considering the fact that both the plaintiff and the defendant are foreign entities, it will be too difficult for the Income Tax Department to thereafter recover the amount, therefore, as a balancing measure, Income Tax Department

is seeking for retaining 10% of the principle amount as well as the interest component and to pay the remaining 90% to the defendant.

14. The learned counsel for the plaintiff submitted that since the matter has been settled between the parties and the amount has been paid to the plaintiff outside India, the plaintiff is only interested in withdrawing the suit and is seeking for refund of the Court Fees.

15. In the considered view of this court, it will be beyond the scope of the present lis to get into the nitty-gritties of the claims made by the Income Tax Department towards the principle amount and the interest that has accrued, which is claimed by the defendant.

16. This Court already applied its mind on this issue when the order was passed on 20.08.2025. Accordingly, the directions were issued in paragraph 4(I & II). At that point of time, the intention was to remit the 90% of the amount to the plaintiff. Now that the plaintiff has received the amount from the defendant, ultimately it boils down to the defendant making the claim on the amount that was deposited and the interest that has accrued on the said deposit.

17. In view of the above, **M/s.Bose and Mitra & Co.**, is permitted to encash the Fixed Deposit receipt of the sum deposited to the tune of Rs.20,32,72,712/-. In so far as the interest that has accrued on the Fixed Deposit, the said **Bose and Mitra & Co.,** shall be permitted to encash 90% and the remaining 10% shall be retained in the Bank Deposit of Kotak Mahindra Bank, Mumbai Branch.

18. In so far as the claim made by the Income Tax Department is concerned, the same shall be independently worked out by the defendant before the Income Tax Department and it is not necessary for this court to get into the issue on the claims that have been made by the Income Tax Department on both the principle amount and the interest that has accrued thereon.

19. Liberty is also granted to the Income Tax Department to proceed further against the defendant in accordance with law.

20. In view of the above, this suit is disposed of as withdrawn and the

Registry is directed to refund the Court Fee of Rs.60,74,217/-. No costs.

04.12.2025

msr
Index:Yes/No
Internet:Yes/No

Note:

The Registry is directed to hand over the Fixed Deposit Receipt to the learned counsel for the defendant in order to enable the defendant to proceed further with the directions issued by this Court.

N. ANAND VENKATESH, J.

msr

C.S.(Comm.Div.) No.46 of 2024

04.12.2025