



IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	23.10.2025
<i>Pronounced on</i>	23.01.2026

CORAM

THE HONOURABLE DR.JUSTICE R.N.MANJULA

C.S. No.127 of 2005

The Board of Trustees of the Port of Chennai,
Represented by its Chairman,
Rajaji Salai, Chennai - 1.

... Plaintiff

Vs.

M/s.T.N.S.S.STEELS Pvt., Limited,
Rep. by its Managing Director
No.8, Rathinasabapathy Street,
Thondiarpet, Chennai - 600 021.

... Defendant

PRAYER : Civil Suit is filed under Order VII Rule 1 of Civil Procedure Code r/w. Order IV Rule 1 of Original Side Rules to pass a judgment and decree directing the defendant to pay the plaintiff a sum of Rs.1,08,84,931/- (Rupees One Crore Eight Lakhs, Eighty Four Thousand Nine Hundred and Thirty One only) together with interest thereon at the rate of 15% per annum, for the balance amount of Rs.1,08,84,931/- from the date of plaint till the date of realisation and costs of the suit.

For Plaintiff : Mr.R.Karthikeyan

For Defendant : Mr.R.N.Amarnath

JUDGMENT



The suit has been filed for recovery of a sum of Rs.1,08,84,931/- (Rupees One Crore Eight Lakhs, Eighty Four Thousand Nine Hundred and Thirty One only) from the defendant together with interest at the rate of 15% per annum from the date of plaint till the date of realisation and costs of the suit.

2. The facts pleaded in the plaint filed by the plaintiff in brief:

The vessel "M.V.Island Pride" arrived on 01.11.1999 and berthed at Coast Guard Berth on "Cold Move" under the Steamer Agency of M/s. Hauers Lines Pvt. Ltd. On 10.04.2000 M/s. Hauers Lines Pvt. Ltd. sold the vessel "M.V.Island Pride" to the defendant. On 03.12.1999, M/s. Hauers Lines Pvt. Ltd. approached the Chairman, Chennai Port Trust to waive the berth hire charges upto 10.04.2000 i.e. upto the date of disposal of the vessel to the defendant on the ground that the vessel has been regularly calling at Chennai Port and has provided a life line service to the Andaman and Nicobar Islands, over the years and was carrying defence cargo to Port Blair in Andaman. At the end of October, 1999, the main engine was broken down near Chennai Port. On the frequent request of M/s. Hauers Lines Pvt. Ltd., the plaintiff Board had held a detailed discussion and resolved in Board Resolution No.88 dated 31.08.2000 to allow the waiver of 80% of



Port Charges on the Vessel "M.V.Island Pride" from 01.11.1999 to 31.03.2000 and to collect 100% charges from 01.04.2000 onwards. In accordance with the Board Resolution No.88 dated 31.08.2000 necessary marine services bill was made up to 10.04.2000 on M/s. Hauers Lines Pvt. Ltd. and agents have paid their dues.

2.1. The defendant who has purchased the vessel had appointed M/S.AKP Shipping and Chartering Pvt. Ltd., as their Steamer Agent to clear the above vessel after paying Port Related Charges. The Steamer Agent of the defendant has not paid even pre-payment of Port charges as per the practice in vogue. In the mean time, the defendant vide letter dated 30.09.2000 requested the plaintiff, Port Trust to waive the charges, as how it was given to the previous owners. A suitable reply has been given by the plaintiff through his counsel on 30.01.2001.

2.2. The Marine Services Bill made towards the vessel related charges from 10.04.2000 has been sent to M/s.AKP Shipping & Chartering Pvt. Ltd., and the same has been returned as the above agent was not available in the given address. So, the defendant who is the owner of the vessel has to indicate the present address of his agent, but there was no reply. Since



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neither the Agent nor the owner of the vessel has come forward to settle the dues of the Port Trust, the plaintiff had no other alternate except to invoke Section 64 of the Major Port Trust's Act 1963 and Regulation 4(5) of Madras Port Trust (Distrain / Arrest & Sale of Vessel) Regulations to sell the vessel and recover the charges from the sale proceeds of the vessel. The proposal has been approved by the Chennai Port Trust Board vide its Resolution No:11 dated 21.06.2002. The resolution was also communicated to the defendant on 31.01.2003 in writing and that has been acknowledged. The action for disposal of the vessel through tender was also undertaken by the Controller of Stores functioning under the plaintiff.

2.3. There was a tender floated and at the time of finalizing / getting competent sanction for accepting the highest bid for vessel "M.V. Island Pride", the defendant filed a writ petition in W.P.No.14568 of 2003 challenging the letter of the plaintiff dated 31.01.2003 and obtained a stay subject to a condition of payment of Rs.1,00,000/- within a period of 15 days. Accordingly, the defendant paid a sum of Rs.1,00,000/- on 20.05.2003. He immediately filed an application to vacate the interim stay along with the counter affidavit. In the meantime ,the defendant has also filed three other Writ Petitions in W.P.Nos.14268 to 14270 of 2003 for the



following reliefs:

- a) W.P.No.14268/2003 was filed to quash the Tender No.T/F3/51/02/C relating to sale of "M.V.Island Pride".
- b) W.P.No.14269/2003 was filed to grant waiver of Port hire charges payable for berthing the vessel "M.V.Island Pride".
- c) W.P.No.14270/2003 was filed to permit the petitioner to dismantle the vessel "M.V.Island Pride" respectively.

2.4. After the vessel was sold to M/s.Duraimurugan & Co., the same was inspected and found that the keel of the vessel plates were in very damaged condition and that the vessel might sink at any time. If the vessel sinks, it would jeopardize the entire Chennai Port Trust navigation operation. Due to such precarious condition and having no other alternative, it was allowed to scrap the vessel inside the Port after entering into a Memorandum of Understanding by the parties i.e. the plaintiff and M/s.Duraimurugan & Co. In the meanwhile the Hon'ble High Court, by its order dated 20.10.2003 in W.P.No.14568 of 2003 and W.P.No.14269 to 14270 of 2003, dismissed these writ petitions as withdrawn. In view of that, on 30.10.2003 the Controller of Stores of the plaintiff's Board issued acceptance letter to M/s.Duraimurugan & Co. for disposal of "M.V.Island



Pride” for the disposal of “M.V.Island Pride” at the auction price of Rs.27,07,007/- which is the highest tender. M/s.Duraimurugan & Co. after getting clearance from the authorities, dismantled the vessel and removed it from the Port premises after the payment of all Port dues.

2.5. Even after the realization of the bid amount of Rs.27,07,007/- and after deducting a sum of Rs.1,00,000/- deposited by the defendant by a conditional order of this Court, the balance amount of Rs.1,08,84,931/- is due from the defendant. The defendant failed and neglected to pay the dues despite repeated demand made by the plaintiff. Hence, the plaintiff has filed the suit for recovery of a sum of Rs.1,08,84,931/- due from 10.04.2000 to 29.10.2003.

3. The averments made in the written statement filed by the defendant in brief:

The defendant has purchased the Vessel on 10.04.2000 from M/s.Hauers Lines Pvt. Ltd. The application made by M/s.Hauers Lines Pvt. Ltd. Dated 03.12.1999 to the Chairman of the Port Trust to waive the port charges from 01.11.1999 to 31.03.2000 was favourably considered by the



Chairman of the Port Trust and orders were passed waiving 80% of the Port charges. The reasons given for waiving the Port charges is applicable to the defendant also. The concession was given to the erstwhile owner of the vessel, since one of the Trustees of the Port Trust by name Mr. S.N. Srikanth was one of the Directors of M/s Hauers Lines Pvt. Limited. The vessel was not in trade worthy condition at the time of purchase. The vessel was purchased solely for the purpose of dismantling it as scrap. The defendant made an application dated 30.09.2000 seeking waiver of the Port charges in view of the fact that for the same vessel 80% of the Port charges were waived by the Port Trust already.

3.1. Since the defendant was expecting orders on his application seeking waiver of the Port charges, he could not pay the Port charges. The plaintiff ought to have granted waiver of the Port charges as it was done in the case of M/s Hauers Lines Pvt. Limited. It is true that the defendant filed WP.No.14568 of 2003 challenging the order of the plaintiff dated 31.01.2003. During the pendency of the Writ Petition, the defendant has also made a payment of Rs.1,00,000/- to the plaintiff on 20.05.2003 as per orders of this Court.



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3.2. In view of the critical conditions of the vessel, the defendant sought for a space in the Port Trust for breaking the vessel. However, the plaintiff refused to allot a space in the Port area to break the vessel. Though the defendant purchased the vessel, he could not move the vessel out of the Port due to the precarious condition of the vessel. On 02.11.2001, the Port Trust granted permission to the defendant to break the vessel within the Port area on stringent unworkable conditions which are listed as under:

- (1)The vessel should have sufficient mooring ropes for towing and securing etc. Preferably new coils (3 Nos.) at each end.
- (2)The towage will be under taken subject to weather conditions (Minimum two voith Tugs to be manned additionally by Pilots).
- (3)The owner of the vessel to obtain:
 - (a)Clearance from Tamil Nadu Pollution Control Board for ship breaking activities to be carried out in the Port.
 - (b)Clearance from Sales Tax Authorities.
 - (c)Clearance from Commissioner of Customs for removal of broken parts out of the Port.
 - (d)Clearance from Controller of explosives.



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C.S.No.127 of 2017

(e)Permission from the Safety Officer/Fire Officer & Assistant Safety Officer of Chennai Port for hot work etc.

3.3. The defendant approached the Tamil Nadu Pollution Control Board seeking permission for ship breaking activities in the Port. The Tamil Nadu Pollution Control Board refused to entertain the request of the defendant by stating they were not at all concerned with the breaking of vessel within Port area. The plaintiff has sent a letter dated 31.01.2003 stating that the vessel would be detained and sold for Port charges. In spite of the protest made by the defendant, the vessel was sold to a third party by the plaintiff. The purchaser of the vessel namely M/s.Duraimurugan and Co. was granted permission by the plaintiff to scrap the vessel inside the Port area, but the same was not granted to the defendant by the plaintiff due to some extraneous reasons.

3.4. The vessel was sold to M/s.Duraimurugan and Co. for a throw away price and the Company was favoured with an order permitting to dismantle the vessel in the Port area even without getting permission from the Tamil Nadu Pollution Control Board and without required to do any other statutory compliance. The plaintiff is not entitled to claim any amount from the defendant. On the other hand, the defendant is entitled to claim a sum of Rs. 45,00,000/- from the plaintiff.



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3.5. The defendant is a Private Limited company incorporated under the Company's Act and is dealing in Ferrous and Non-ferrous scrap and they are having a ship breaking yard at Vallinaikkam at Ramnad District. The defendant is also doing the activities of ship breaking for the purpose of securing the scrap materials from wrecked ships. Even this vessel was purchased solely for the purpose of dismantling as scrap. The sale agreement was signed by one Mr. S.N.Srikanth as Director of M/s Hauers Lines Pvt. Limited and he was also the trustee of the Chennai Port Trust at the time of the sale. As the vessel could not be moved out of the Chennai Port Trust and was unfit for trading, the Chennai Port Trust granted waiver of the 80% of the berth hire charges payable by M/s Hauers Lines Pvt. Limited, at the instance of Mr.S.N.Srikanth.

3.6. The defendant informed the Chennai Port Trust by his letter dated 04.04.2000 regarding the purchase of the vessel by him and sought for allotment of space in timber pond area for breaking the said vessel. The defendant made the request on the basis that the engine of the ship was fully opened and dismantled and that there was no sludge oil, fuel or explosive items in the ship and on the basis that two ships (Tugs) were broken in the



same area with the permission of the Port Trust. By a letter dated 24.04.2000, the plaintiff informed the defendant to obtain clearance from the Central Pollution Board (Ministry of Environment and Forest), Collector of Customs, Collector of Explosive, Commissioner of Police (Traffic) and they also required the defendant to sign a Memorandum of Understanding. In those letters a diametrically opposite stand was also taken by the plaintiff.

3.7. The defendant made efforts to tow the vessel to Vallinaikkam or Kakinada. Due to the defaults on the part of the tug owners, the vessel could not be towed out of Chennai Port. When the survey report was in favour of towing, the Mercantile Marine Department refused to give permission to tow the vessel on the ground that the weather was not conducive for towing the vessel.

3.8. In such circumstance, the plaintiff by letter dated 27.09.2000 informed the defendant to pay a sum of Rs.9 lakhs towards pre-payment of Port charges. By a letter dated 30.09.2000, the defendant informed the plaintiff about his difficulty and also requested the plaintiff to grant waiver of the Port charges as it was done to the erstwhile owner of the vessel. The plaintiff rejected the request of the defendant. The defendant sent a notice



dated 02.11.2000 requesting the Port Trust to waive the hire charges. But without doing the needful, the plaintiff granted permission on 02.11.2001 to the defendant to break the vessel within the Port area on stringent conditions which are incapable of compliance. When the Tamil Nadu Pollution Control Board was sought for permission for breaking the ship, the Tamil Nadu Pollution Control Board themselves have stated that they are not concerned with the breaking of the vessels inside the Port area. Without taking note of all these facts, the tender has been called for by fixing the date of disposal of the vessel on 10.04.2003. The tender notice does not incorporate stringent conditions, which were incorporated while considering the request of the defendant. Had the defendant been allowed to break the vessel without such stringent conditions, he would have initiated steps to dismantle the vessel either in the Port area or in any other area as may be specified.

3.9. There are other vessels which have been dismantled in the Port area. The plaintiff stated in the tender notification that they will allow the buyer to dismantle the vessel inside the Port area after getting a Memorandum of Understanding from the purchaser.

3.10. Had the Port Trust granted waiver of the Port charges as given



to M/s.Hauers Lines Private Limited, the defendant would not have put to so much hardship. The defendant is entitled to claim a sum of Rs. 1,00,000/- (Rupees one lakh only) deposited to the plaintiff pursuant to the interim order passed by this Court. The defendant would have earned a sum of Rs. 15,00,000/- (Rupees fifteen lakhs only) by breaking the vessel and by scraping and selling the scrap. Hence, the plaintiff is liable to compensate the loss to the defendant. In the Ports under the Major Port Trust Act, the ships for breaking are charged with only bed water charges due to the fact that no services as rendered to trading vessels need be rendered for scrap ships. Except bed water charges, usual berth charges are not liable to be levied for scrap ships in the ordinary course. In a similar condition for a ship by name “M.V.Eleni” the plaintiff only collected bed water charges from the owner of the vessel. The plaintiff misused their powers and sold the vessel for a rock bottom price and hence the plaintiff is liable to pay a sum of Rs. 35,07,007/- (Rupees Thirty five lakhs seven thousand and seven only) to the defendant. By raising such a claim in the written statement filed by the defendant, he raised the above counter claim.

4. The reply to the counter claim in brief:

The counter claim is devoid of merits. The Plaintiff Board has



resolved to waive 80% charges for the period from 01.11.1999 to 31.03.2000 i.e. for 4 months to the erstwhile owner only by considering the life line services rendered by the vessel over the years by carrying defence cargo to Port Blair in Andaman and it has been decided to collect 100% charges from 01.04.2000 onwards. As the vessel is unfit for lifeline services, the defendant has purchased the same only for scrap purposes as he is dealing in Ferrous and Non-ferrous scrap. Hence, 100% waiver of the charges cannot be claimed as a matter of right. Being in a Public domain, the Chennai Port Trust, cannot forgo the legitimate charges due to them.

4.1. The pre-payment of vessel related charge is mandatory before sailing of the vessel. Even, the erstwhile owner had paid 100% charges from 01.04.2000 to 10.04.2000 i.e till the date of purchase of the vessel by the defendant. The defendant vide their letter dated 13.06.2000 had accepted to make payment from 11.04.2000 through their agent M/s. AKP Shipping and Chartering Pvt. Ltd. But, without making any payment and without taking any steps to remove the vessel even during the monsoon season, the defendant had simply requested to waive the charges vide letter dt. 30.09.2000.

4.2. Even when there was a threat to the vessel sinking, the defendant was insisting to waive the berth hire charges without opting to the same. The



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defendant has been informed through a reply sent by the plaintiff on 10.11.2000 that the Port will be constrained to take action as per section 64 to recover rates and charges by distraint of vessel, if 100% charges are not paid. Neither the agent nor owner of the vessel i.e. defendant, came forward to settle the Port Marine dues. Hence, there was no alternative for the plaintiff, except to invoke section 64 of the Major Port Trusts Act, 1963 and Regulation 4(5) of Madras Port Trust (Distraint/Arrest & Sale of Vessel) Regulations, to sell the vessel and to recover the charges from the sale proceeds of the vessel. Accordingly a resolution was passed in Resolution No.11 dated 21.06.2002 to take action for disposal of vessel through tender and the same was also communicated to the defendant on 31.01.2003 in writing and the same was acknowledged by him. The defendant was not paid the port marine dues between the period from 11.04.2000 to 31.01.2003, for nearly 3 years. At the time of finalizing the tender to the highest bidder, the defendant had filed writ petition No.14568 of 2003 and thereafter on the condition made by this Court, he had paid Rs.1,00,000/-.

4.3. In the letter dated 02.11.2001 itself, it was clearly informed that allotment of space for breaking may be considered subject to the payment of charges and compliance to the conditions stipulated therein. Further, it has informed that if no reply is received within 15 days from the date of receipt,



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it will be presumed that they are not interested to pay dues and further action will be taken in accordance with Section 64 of the Act. The notice was received in person by the defendant on 02.11.2001 itself and thereafter various reminders have also been sent to the defendant. But the defendant neither replied nor taken any steps to remove the vessel. Hence, as a last resort, the vessel was sold through tender to M/s. Duraimurugan & Co., on the same conditions as stipulated to the defendant. It is submitted that after the sale, the vessel was inspected and found that the keel of the vessel plates was in very damaged condition and vessel would sink at any time. As it would jeopardize the entire Chennai Port Trust Navigation operation, without any alternative, it was allowed to scrap the vessel inside the Port after entering into a Memorandum of Understanding. Had the defendant paid the entire Berth Hire charges, they may be allowed to scrap as allowed to M/s. Duraimurugan & Co.

4.4. Without any basis the defendant has made a counter claim for Rs.45,00,000/- and for which the plaintiff is not liable to pay. The writ petition filed by the defendant for waiving the port charges have been subsequently withdrawn. The legitimate charges payable by the defendant could not have been waived by the plaintiff. The vessel M.V.ELENI was allowed to dismantle inside the Port only on payment of necessary berth hire



charges as per the Hon'ble High Court's direction in C.S.97 of 1997.

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5. On the basis of the above pleadings, this Court has framed the following issues:

“1. Whether the plaintiff is entitled to claim berth hire charges from the defendant ?

2. Whether the plaintiff is entitled to get the suit claims from the defendant ?

3. Whether the plaintiff is right in entering into Memorandum of Understanding with M/s.Duraimurugan and Company for scrapping the vessel inside the port area ?

4. Whether the plaintiff is liable to refund the sum of Rs.28,07,007/- collected from the defendant ?

5. Whether the plaintiff is liable to pay damages to the defendant towards loss of profit ?

6. Whether the defendant is entitled to get waiver of 80% of the port charges as waived in the case of M/s.Hauers Lines Pvt. Ltd., with respect to the same vessel in “M.V Island Pride” ?

7. Whether the plaintiff is right in imposing the conditions including the prior permission from Tamil Nadu Pollution



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C.S.No.127 of 2001

Control Board for breaking the vessel in Port area as contained in the plaintiff's letter dated 02.11.2001 while such conditions were not imposed when the same vessel was dismantled by M/s.Duraimurugan and Co.?"

6. During the course of the trial, one witness was examined on the side of the plaintiff as P.W.1 and Exs.P1 to P22 were marked. On the side the defendant, no witnesses were examined and Exs.D1 to D5 were marked.

Discussion:

7. The suit has been filed by the plaintiff for recovery of a sum of Rs.1,08,84,931/- which is claimed to be the due to be paid by the defendant towards marine services bills raised on account of the unpaid berth hire charges for the period from 10.04.2000 to 20.10.2003 in respect of a vessel by name "M.V.Island Pride". The above vessel has been regularly calling in Chennai Port for carrying the defence cargo to Port Blair in Andaman. The vessel had arrived on 01.11.1999 and berthed at Coast Guard Berth on "Cold Move" under the steamer agency M/s Hauers Lines Pvt. Limited. The main engine of the vessel was broken down during the month of October 1999.

8. M/s Hauers Lines Pvt. Limited requested the plaintiff to waive the



port charges for the period between 01.11.1999 and 31.03.2000.

Considering the long life services rendered by the vessel for the defence at Andaman, the plaintiff Board allowed the waiver of 80% of the Port charges for the period between 01.11.1999 to 31.03.2000. The board has also passed a resolution to that effect. It is resolved that 100% charges should be collected from 01.04.2000 onwards. In accordance with the resolution passed to collect the marine service charges, M/s Hauers Lines Pvt. Limited had paid the dues until 10.04.2000 and thereafter, sold the same to the defendant.

9. The defendant has appointed M/s.AKP Shipping and Chartering Pvt. Ltd., as their steamer agent. After the purchase, the defendant has also requested the plaintiff to waive the port charges by stating that the vessel is not marine worthy and he has purchased the same for the purpose of breaking it. The plaintiff was also aware of the fact that the vessel has been berthed at Chennai Port from 01.11.1999, in view of its break down of the main engine during the end of October 1999.

10. Obviously, the defendant could have purchased the vessel just for breaking and not for sailing. As the defendant intended to dismantle the



vessel as scrap and realise the purpose for which he has bought the vessel, he requested the plaintiff to accord him permission to carryout the breaking activity in Chennai Port itself. But unfortunately, the defendant was not given permission to break the vessel in the Chennai Port and neither was he given with any waiver of the port charges which accrued from the date of his purchase.

11. The allegation of the defendant is that the waiver benefit has been given to the earlier period from 01.11.1999 to 31.03.2000, just because one of the Port trustees was holding a directorship of M/s Hauers Lines Pvt. Limited. It is not denied by the plaintiff that one of the trustees was a director of M/s Hauers Lines Pvt. Limited. But, it is stated by the plaintiff that the waiver was accorded on routine fashion as how it was being given to many vessels and there is no favouritism shown in granting of waiver.

12. So far as the defendant is concerned, he was aware of the condition of the vessel when he purchased it from the earlier owner. But his only intention for purchasing is to dismantle the vessel and sell the scrap on profit. As the said purpose could not be accomplished and the vessel was also not seaworthy, he is not able to shift it to some other Port. However, the



defendant was receiving the marine bills towards Port charges continuously.

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13. The dock master who was examined as P.W.1 has admitted in his evidence that the vessel had lost the seaworthiness on and from 01.11.1999 when it was docked in the Port area. The evidence of P.W.1 also reveals that the plaintiff was aware of the fact that the defendant has purchased the vessel just for breaking. In such case, it would have not been possible for the defendant to shift his vessel to any other Port. The defendant would have purchased it with a strong belief that the breaking of the vessel could be done at the earliest and hence, he need not pay the marine service charges by docking the vessel in the Port for long. The previous agent M/s Hauers Lines Pvt. Limited had availed 80% waiver of marine bill charges and had also sold the vessel subsequently to the defendant without burning his fingers.

14. The defendant was compelled to remove the vessel from Chennai Port, despite it was within the knowledge of the plaintiff that it is not possible. The plaintiff has taken a stand that waiver has already been granted to the vessel for the earlier period and hence, no further waiver could be granted. The defendant could have been aware of the risk of buying



the vessel which has lost its seaworthiness and which was berthed idle at the Port on charges.

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15. The plaintiff's witness P.W.1 has stated that the vessel owner had to keep his vessel in a seaworthy condition. Since the defendant has purchased the vessel not for sailing, but for scraping, he cannot be expected to keep the vessel in a seaworthy condition by spending huge money. From the evidence on record, it is learnt that even the main engine of the vessel got damaged and its condition was beyond resurrection. As the only option open to any owner of the vessel is to make it a scrap, it was a burden for the defendant to meet out the marine bill charges or to restore the vessel to seaworthy condition. As the plaintiff was aware that the main engine was not available in the vessel, the pressure given by the plaintiff to the defendant appears unnatural. No doubt, the plaintiff is only a facilitator and service provider for the vessels and he does not have the obligation to keep the unseaworthy vessel to be berthed and that too, at free of cost. But the plaintiff who is very sensitive about the Port safety and the environmental hazard that might be caused by the retired Island Pride, could have been vigilant while according waiver on the vessel to the benefit of the earlier owner and he should have imposed a condition on the earlier owner himself



that the ship should be dismantled without causing any environmental hazard to the Port. Mere waiver without any such condition had allowed M/s.Hauers Lines Pvt. Limited to get rid off the vessel and escape from any liability.

16. At some point, the vessel had reached the terminal stage and the danger was inevitable. Only at that stage, the plaintiff had invoked distraint/arrest of the vehicle. When the power to distraint the vessel was always available for the plaintiff to exercise even when the charges on the vessel was not paid and became due, the plaintiff did not prefer to take such action and waited until the vessel reached the stage of 'about to wreck'. At that stage, and after giving notice to the defendant and his agent to take steps to remove the vessel, the plaintiff had invoked the provisions for distraint / arrest and sale of the vessel under Section 64 of the Major Port Trust Act, 1963 read with Regulation 4 (5) of the Madras Port Trust. Even thereafter, the defendant was not able to settle the dues and the tender was floated for auction sale by incorporating the terms for dismantling the vessel inside the Port itself by any successful bidder. Even when the tender was floated for sale of the vessel, the defendant filed a writ petition in W.P.No.14568 of 2003 and got an order of interim stay by complying with the condition of



payment of Rs.1,00,000/- on 20.05.2003. However, the said writ petition was later withdrawn in view of the critical condition of the vessel. Thereafter, the vessel was sold to M/s. Duraimurugan and Co. for a price of Rs.27,07,007/-.

17. The new purchaser of the vessel had the advantage of breaking the vessel inside the Port itself because of the about to sink condition of the vessel. Despite the vessel was subject to encumbrance of large marine service charges, the tender was floated without showing the encumbrance on the vessel. When the vessel was sold to a third person, the purchaser was not forced to take charge of the dues before taking delivery of the vessel. In fact, as per the provisions of the Port Trust Act, the vessel could not be delivered or moved out of the Port unless the charges due to the Port are settled. Still, the above encumbrance on the vessel was not passed on to the new purchaser. So, there is a possibility to presume a constructive waiver of the Port charges, even though the parties have not entered into any terms between themselves for waiver in accordance with Section 63 of the Indian Contract Act.



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18. Though the defendant has not taken a specific plea that the Port charges have been waived and hence, he was not liable to pay, the fact remains that the Port charges are on the vessel which has been docked at the plaintiff's Port and which has been sold and delivered to a third party auction purchaser for a price less than the pending Port dues for which the vessel was distrained. And further, the third party was permitted to move the vessel from its original position at the Port and as per the terms of the tender and as directed by the plaintiff even before the Port dues in respect of the vessel has not been settled fully. As the regulation of the plaintiff's Trust does not allow such a movement of the vessel before the charges are paid and if the plaintiff allows it to happen, then it has to be presumed that the plaintiff has waived his right to claim the Port charges then remained after appropriating the sale price against the pending dues. Or that the plaintiff has chosen to accept the sale price offered by the third party auction purchaser as the full quit towards the Port charges due for the vessel.

19. Though the defendant has not pleaded for waiver of the Port charges on the vessel and eventually against him, he has been continuously disowning the liability of the Port dues in view of the sale made by the plaintiff to a third party auction purchaser for a sale price much less than the



pending Port dues. The plaintiff while accepting such a sale price from a third party purchaser was aware about the pending Port charges due on the vessel and the consequences of his action of allowing the third party to move the vessel for scrapping it after it was sold to him. In this regard, it is appropriate to refer the judgment of the Hon'ble Supreme Court held in ***Bhagwati Prasad vs. Chandramaul, reported in 1965 SCC Online SC 111.*** In the said judgment, the Hon'ble Supreme Court has observed that the general rule is that the relief should be founded on pleadings made by the parties, but where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely, in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. It is further observed that the Court has to consider whether the parties know that the matter in question was involved in the trial, and whether they had led evidence on the same. If it appears that the parties did not know about the matter in issue and if one party did not have the opportunity to lead evidence in respect of the same, then the relief granted should be strictly on the basis of the pleading made by the respective parties. For a better understanding, the essential part of the above judgment is extracted as under:



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C.S.No.127 of 2017

“10. But in considering the application of this doctrine to the facts of the present case, it is necessary to bear in mind the other principle that considerations of form cannot override the legitimate considerations of substance. If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely, in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is : did the parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another.

11. Therefore, in dealing with Mr Setalvad's argument, our enquiry should not be so much about the form of the pleadings as their substance; we must find out whether the ground of licence on which the plaintiff's claim for ejectment has been confirmed by the High Court was in substance the subject-matter of the trial or not; did the defendant know that alternatively, the plaintiff would rely upon the plea of licence and has evidence been given about the said plea by both the parties or not? If the answers to these questions are in favour of the plaintiff, then the technical objection that the plaintiff did not specifically make out a case for licence, would not avail the defendant.

12. Turning then to the pleadings and evidence in this



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C.S.No.127 of 2017

case, there can be little doubt that the defendant knew what he was specifically pleading. He had admitted the title of the plaintiff in regard to the plot and set up a case as to the manner in which he spent his own money in constructing the house. The plaintiff led evidence about the tenancy set up by him and the defendant led evidence about the agreement on which he relied. Both the pleas are clear and specific and the common basis of both the pleas was that the plaintiff was the owner and the defendant was in possession by his permission. In such a case the relationship between the parties would be either that of a landlord and tenant, or that of an owner of property and a person put into possession of it by the owner's licence. No other alternative is logically or legitimately possible. When parties led evidence in this case, clearly they were conscious of this position, and so, when the High Court came to the conclusion that the tenancy had not been proved, but the defendant's agreement also had not been established, it clearly followed that the defendant was in possession of the suit premises by the leave and licence of the plaintiff. Once this conclusion was reached, the question as to whether any relief can be granted to the plaintiff or not was a mere matter of law, and in deciding this point in favour of the plaintiff, it cannot be said that any prejudice has been caused to the defendant."

20. The plaintiff was aware that if any upset price for the vessel during the auction is notified by including the pending Port charges due, no one will come forward to purchase the vessel. As the keel of the vessel plates were found in a very damaged condition, the vessel was expected to sink at any time. The plaintiff has taken urgent measures to get rid off the vessel. Because it was strongly believed by the plaintiff that the vessel would jeopardize the entire Port Trust navigation operation, if it was allowed to sink. Such an eventuality was averted by accepting the auction



price offered by M/s. Duraimurugan and Co. at Rs.27,07,007/- and allowing him to take delivery of the vessel even without the Port charges on the vessel was cleared. Such a gesture on the part of the plaintiff can only be construed as limiting the Port charges for the price for which the vessel was sold in the auction and the waiver of the remaining Port charges on the vessel.

21. Section 64 of the Madras Port Trusts Act prescribes that the owner of any vessel on which dues are payable under the Act, neglects to pay the same, on demand the Board may distrain / arrest such vessel and detain the same until the amount due to the Board has been paid. If such dues are not paid within 5 days from the date of such distraint / arrest, the vessel or thing so distrained can be sold and the sale proceeds can be utilised to satisfy the dues and the surplus remainder of the sale proceeds, if any, shall be payable to the owner of the vessel as per the regulations. No master of the vessel can move away the vessel from the dock without paying the Port charges. The auction sale purchaser M/s.Duraimurugan and Co. had the advantage of delivering the vessel and move it for scrapping even when the Port charges on the vessel was due. Hence, a constructive waiver granted by the plaintiff to M/s.Duraimurugan and Co. has to be presumed. In fact,



M/s.Duraimurugan and Co. was given with immediate permission to dismantle the vessel on account of the emergency.

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22. The defendant was all along writing to the plaintiff about his inability to shift the vessel and necessity to accord immediate permission to dismantle the vessel inside the Port area. The auction purchaser was allowed to break the vessel, because the ownership of the vessel was passed on to him through auction sale. Anyone who purchases the vessel whose dues are yet to be paid, is presumed to be purchasing the vessel subject to the dues on the same. The defendant had purchased the vessel from M/s Hauers Lines Pvt. Limited only because as on the date of the sale, M/s Hauers Lines Pvt. Limited had paid the remaining 20% service charges along with other Port charges concerning “M.V.Island Pride” and the delivery of the vessel without dues had been given in favour of the defendant. Despite the charges payable for the vessel as claimed by the plaintiff was at a hefty sum of Rs.1,08,84,931/-, the plaintiff had chosen to accept Rs.27,07,007/-, as the highest tender. It appears as though the waiver for the pending charges beyond the sale price of the vessel has been waived in favour of M/s.Duraimurugan and Co, when he took charge of “M.V.Island Pride”.



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23. In other words, despite M/s.Duraimurugan and Co., bought the vessel, the Port charges due on the vessel have not been passed on to M/s.Duraimurugan and Co. In case, the defendant had purchased the vessel from M/s Hauers Lines Pvt. Limited before they paid the Port charges, then the defendant would not have been allowed to take delivery of the vessel before its Port charges are cleared. Hence, the incidental dealing on the question of waiver and the finding is very much based on the materials available and the evidence led by both parties. Hence, the plaintiff will not be prejudiced for taking up this issue incidentally and rendering an answer for the same in the interest of substantial justice.

24. When a specific question was put to P.W.1 whether it is mandatory for the Port Trust to collect berth charges in case of erect vessel, he has answered in affirmative and said that any vessel inside the port either wreck or floating has to pay the charges as prescribed in the scale of rates. The condition of “M.V.Island Pride” has almost reached the stage of wrecking and it was expected even by the plaintiff that the vessel was about to sink and endanger the whole Port area.



25. M/s.Duraimurugan and Co. was allowed to purchase “M.V.Island Pride” at such a terminal stage and they were also given with the benefit of dismantling the vessel inside the Port area. Even though the plaintiff was aware that the defendant had also purchased the vessel from M/s.Hauers Lines Pvt. Limited only for the purpose of breaking and scrapping, he was not allowed to do that in any reasonable time and he was made to run pillar to post. In fact, on 10.04.2000 when the vessel was sold, it was not in a seaworthy condition. When the main engine itself was not available in the vessel, it is unnatural to expect the defendant to make it seaworthy.

26. P.W.1 has stated in his evidence that as per Merchant Shipping Act, the vessel needs to be docked twice in five years, but, this vessel was neither done with any such dry docking nor any underwater inspection and hence, its condition got deteriorated. Various conditions have been laid down for granting permission to the defendant to scrap the vessel. As the defendant could not meet out the same, the vessel could not be scrapped and it needed to be docked idle for nearly three years. Though the plaintiff had the power to distraint the vessel and sell it on auction to realise the Port charges payable on the vessel, that was not done at the earliest point of time



when the charges were kept due and the charges were allowed to accumulate for nearly three years.

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27. P.W.1 has stated that Ex.P19 bills spread across the period from 16.09.2000 to 16.03.2005. As the demand has also been made for advance payment for the future period also, the invoices is seen to have been made till 16.03.2005. However, the plaint does not exhibit any break up figures to show how the total claim of Rs.1,08,84,931/- has been arrived at. Undoubtedly, the plaintiff has got the right as per the regulations to distraint the vessel in the event of Port charges not paid. As stated already, such an option was not exercised by the plaintiff at the earliest opportunity. As the plaintiff was aware of the complete lack of seaworthiness of the vessel, the plaintiff could not have expected the vessel to sail and earn any profit for its owner and enable him to pay the dues of the Port charges. So, it was unreasonable to delay the distraint proceedings for nearly three years by adding up the charges for all that period.

28. It is stated already that the vessel was sold to the auction purchaser M/s.Duraimurugan and Co. for scrapping and not for sailing. Even the defendant had purchased the vessel for only scrapping purpose.



Had the defendant been given with the permission at the earliest point of time by considering the deterioration of the vessel and its unseaworthy condition, the Port charges would not have got accumulated.

29. When a specific question was asked whether M/s.Duraimurugan and Co. was asked to get clearance from the Tamil Nadu Pollution Control Board as how the defendant was required to do, P.W.1 has stated that these details are known to Controller of Stores. But the Controller of Stores was not examined as a witness to depose on this aspect. The precarious condition of the vessel has been briefed by the defendant in all his communications. In fact, in Ex.P15, which is also a plaintiff's document, it is alleged that the vessel was in a precarious condition. In such case, the plaintiff could have shown indulgence in according permission by anticipating the impending danger that might cause to the Port shortly.

30. One of the reasons for denying the permission to break "M.V.Island Pride" is that the defendant did not pay the Port charges in advance. Such liability was not imposed on M/s.Duraimurugan and Co. This is probably because the plaintiff has seen M/s.Duraimurugan and Co. as a saviour and hence, he was allowed to exercise his right to dismantle the



vessel inside the Port itself. Even though P.W.1 has stated that he was not aware of the terms imposed for dismantling, it is seen from Ex.P22, note order of the plaintiff that the top portion of the vessel as much as possible will be dismantled in the present position itself and the bottom portion will be taken to a place as directed by Deputy Port Conservator without any hindrance to the Port Trust. The above office note would only convey that for the successful bidder, prior approval has been accorded to break it partially in a very same position where the vessel was docked. Even for further dismantling, reasonable assistance had been given by earmarking a place by the Deputy Port Conservator. However, such a facility has not been offered to the defendant, though he was all along approaching the plaintiff by highlighting the worst condition of the vessel.

31. When P.W.1 was confronted with the details in terms of the tender, P.W.1 has stated that the tender was floated by the Controller of Stores and he was not aware of its terms. The tender for disposal of “M.V.Island Pride” issued by the Controller of Stores of the plaintiff has been produced as Ex.P17. On perusal of the same, it is seen that an exhaustive safety plan has been laid down by allowing the successful bidder to complete the breaking of the vessel inside the Port under the supervision



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of the plaintiff's officers. As the plaintiff was aware of the unseaworthy condition of "M.V.Island Pride" for sailing, the plaintiff could have accorded immediate permission to scrap the vessel and thereby avoided the Port charges from getting accumulated. Even though the plaintiff is a facilitator and service provider for vessels called at the Port, some humanitarian consideration could have been shown at the earliest in order to avoid imminent danger arose due to the long idle docking of "M.V.Island Pride". Many unreasonable and untimely decisions taken by the plaintiff were also contributed to the escalation of the Port charges from time to time.

32. As the plaintiff was aware of the deteriorating condition of the vessel, it would have been possible for the plaintiff to visualise the danger and also the inability of the defendant. It was not only the vessel which had reached the terminal stage, but also the defendant who was loitering in the office of the plaintiff to get approval or waiver for dismantling the vessel.

33. As the vessel has lost the main engine and the rest of the engine parts also got damaged, there would have been no scope for rehabilitation of the vessel and make it fit worthy for sailing. The defendant did not have any money out of the sale after he purchased the vessel, rather he had spent more



money on litigation. The plaintiff could have exercised reasonable discretion to waive the Port charges in view of the extraordinary situation arose in the transactions concerning “M.V.Island Pride”. But it was done constructively by accepting a sale price from a third party bidder though it was much below than the pending Port charges due.

34. As stated already, the plaintiff has not given any breakup figures to substantiate the claim of Rs.1,08,84,931/- except by producing the bunch of bills raised from time to time. Since the plaintiff's unreasonableness and inaction was the reason for the accumulated higher charges, no liability can be fixed upon the defendant to bear the same. This is especially so, the auction purchaser M/s.Duraimurugan and Co. was allowed to scrap the vessel in the Port area without having obligation to pay Port charges accumulated on the vessel. The act of the plaintiff to accept any auction price below than the pending dues to be paid on the vessel would amount to constructive waiver of the remaining charges by act of parties. **Hence, the issues Nos.1 and 2 are answered against the plaintiff.**

35. So far as the issue raised under issue No.3 is concerned, it is about the right of the plaintiff to enter into a memorandum of understanding with



M/s.Duraimurugan and Co. to scrap the vessel inside the Port area. But, giving an answer to this question will not in any way help either the plaintiff or the defendant to assert their respective rights or claim. Further, this issue cannot be effectively answered in the absence of M/s.Duraimurugan and Co. being a party and his stand on the issue is heard. For the claim made in the plaint and the counter claim made by the defendant, this issue is not relevant. **Thus, the issue No.3 is answered.**

36. The issue Nos. 6 and 7 are about the entitlement and relative reasonableness of the defendant to get waiver. The defendant's claim is not only about waiver, but, it is also about granting permission to dismantle the vessel inside the Port area. Considering the inaction on the part of the plaintiff in according permission to the defendant to scrap the vessel inside the Port area in its existing position and the relative facility accorded to the third party auction purchaser, it has been held already that the plaintiff is not entitled to claim the suit amount from the defendant. So, to deal with any issue on waiver at this remote point is superfluous. This is especially so when it has been already held that the plaintiff is not entitled to get the decree for the suit amount. **Thus, the issue Nos.6 and 7 are answered.**



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37. The defendant has made a counter claim showing that he sustained a loss in view of the inaction on the part of the plaintiff and that the plaintiff has to refund a sum of Rs.28,00,000/- collected from the defendant. The defendant knows the risk of the transaction involving “M.V.Island Pride” and its condition when he purchased the same. No assurance was given by the plaintiff that the defendant will be accorded with permission to dismantle the vessel in the very same existing position. So, it would be unreasonable on the part of the defendant also to make any counter claim. Disallowing the claim of the plaintiff itself is an equitable relief granted to the defendant. Hence, the defendant is not entitled to claim any other amount as shown in his counter claim. **Thus, the issue Nos.4 & 5 are answered.**

38. In the result, both the Civil Suit of the plaintiff and the counter claim of the defendant are **dismissed**. No costs.

23.01.2026

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
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To

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C.S.No.127 of 2005

R.N.MANJULA, J.,

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C.S.No.127 of 2005

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